

Vermont Adds Crime Victims to Its List of Protected Classes with New Law

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The categories of individuals protected under Vermont’s anti-discrimination statute (21 V.S.A. §495) has been expanded to include crime victims.

H.B. 711, signed by Governor Phil Scott on May 28, 2018, adds crime victims to the list of protected classes in the state’s Fair Employment Practices Act, making retaliation and discrimination against these individuals unlawful. The new law also requires employers to provide an employee who is a crime victim with unpaid leave to attend related legal proceedings. The law goes into effect on July 1, 2018.

The statute defines “crime victim” as any of the following:

1. A person who has obtained a relief from an abuse order issued under 15 V.S.A. § 1103 (a state domestic relations abuse prevention law);
2. A person who has obtained an order against stalking or sexual assault issued under 12 V.S.A. chapter 178;
3. A person who has obtained an order against abuse of a vulnerable adult issued under 33 V.S.A. chapter 69; or
4. (i) A victim as defined in 13 V.S.A. § 5301, provided that the victim is identified as a crime victim in an affidavit filed by a law enforcement official with a prosecuting attorney of competent state or federal jurisdiction; and (ii) shall include the victim’s child, foster child, parent, spouse, stepchild or ward of the victim who lives with the victim, or a parent of the victim’s spouse, provided that the individual is not identified in the affidavit as the defendant.

In addition, the new law carves out circumstances upon which “crime victims” are allowed to take unpaid leave from employment. These circumstances (listed in 21 V.S.A. §472c) include allowing the employee to attend:³

- A deposition or other court proceeding relating to a criminal proceeding where the employee is a “victim” and the employee has a right or obligation to appear at the proceeding;
- A relief from abuse hearing pursuant to 15 V.S.A. §1103 when the employee seeks relief as the plaintiff;
- A hearing concerning an order against stalking or sexual assault when the employee seeks relief as the plaintiff; or
- A hearing seeking relief from abuse, neglect, or exploitation when the employee seeks relief as the plaintiff.

The statute allows the employee to use accrued sick, vacation, or any other accrued paid leave in lieu of taking unpaid leave. Further, the law states that employment benefits for the duration of the leave must be provided to the employee at the same level of coverage that would be provided if the employee were continuing employment.

Upon returning from the leave, the law mandates that the employee maintain the same job

with the same level of compensation, benefits, and all other terms and conditions of employment. The statute does not apply if the employee was told, prior to his or her leave, that he or she was going to be terminated from her employment, or if the employer can prove, *by clear and convincing evidence*, that the employee would have been terminated during the same time frame as his or her leave.

Any aggrieved person may bring a court action seeking compensatory and punitive damages or equitable relief, including reasonable attorney's fees.

Vermont employers should ensure their policies and practices address the new law and supervisors and other managers are trained.

Jackson Lewis attorneys are available to answer inquiries regarding this new law and assist employers in achieving compliance with its requirements.

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