

EMPLOYMENT AND ANTIDISCRIMINATION LAW UPDATE

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OUTLINE OF PRESENTATION

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- Act 136 (H.477): Leave for alleged crime victims
 - Act 183 (S.11): COVID-19-Related Paid Leave Grant Program and unemployment insurance benefits increases
 - Act 147 (H.729): Updating the statute of limitations for discrimination related to employment, housing, and public accommodations
 - Act 182 (S.226): Eliminating the severe or pervasive standard for housing discrimination
 - H.329: The discrimination bill that did not pass

ACT 136 (H.477): LEAVE FOR ALLEGED CRIME VICTIMS

- Act 184 of 2018 (H.711) prohibited employment discrimination against crime victims and permitted individuals to take leave in relation to:
 - a criminal proceeding in which they were identified as the victim of the crime; or
 - a proceeding in which they were seeking a relief order against stalking, sexual abuse, abuse, neglect, or exploitation.
- There was a mistake in the bill, however:
 - The definition of “employee” for purposes of the leave statute (21 V.S.A. § 472c) was worded in such a way that an individual would have already had to have been determined to be the victim of a crime in a prior proceeding or obtained a relief order against stalking, abuse, neglect, or exploitation.

ACT 136 (H.477): LEAVE FOR ALLEGED CRIME VICTIMS

- Act 136 corrected the error and expanded the existing law:
 - Corrected error in existing definition of “employee” to provide that an individual is entitled to leave regardless of whether the individual has been determined to be a crime victim in a prior proceeding or obtained a relief order against stalking, abuse, neglect, or exploitation.
 - Added a definition of “alleged victim” that:
 - is based on the definition of “victim” from the old law; and
 - includes family members in instances permitted by the old law plus when an individual suffered physical or emotional injury as a result of a violent crime.

ACT 136 (H.477): LEAVE FOR ALLEGED CRIME VICTIMS

- Act 136 also:
 - Expanded the list of family members who may qualify for leave:
 - Old law defined “family member” as a spouse, child, sibling, parent, next of kin, domestic partner, or legal guardian of a victim.
 - Act 136 added foster child, or stepchild; ward who lives with the alleged victim; domestic partner or civil union partner; grandparent or grandchild; parent-in-law; and an individual for whom the alleged victim stands in loco parentis or who stood in loco parentis for the alleged victim when the alleged victim was a child.
 - Clarified that leave is permitted for proceedings in which the employee is the alleged victim or a family member of the **alleged** victim of a crime.

ACT 183 (S.11): COVID-19-RELATED PAID LEAVE GRANT PROGRAM

- Found in sections 51 and 51a of Act 183.
- A \$15,800,000.00 program administered by the Department of Financial Regulation.
- Employers may apply on a quarterly basis for grants to cover the cost of COVID-19-related paid leave provided from 7/1/22 to 6/30/23.
- Maximum grant per employee is \$850.00.
 - Employer may receive reimbursement for 100% of an employee's wage up to \$21.25 per hour.
 - Maximum hours of reimbursement per employee is the lesser of 40 or the employee's average weekly hours.

ACT 183 (S.11): UNEMPLOYMENT INSURANCE BENEFITS

- Found in sections 52 through 52g of Act 183.
- Beginning 7/1/22, temporarily increases maximum weekly benefit by \$60.00 until the sooner of:
 - \$8,000,000.00 in additional benefits being paid;
 - 7/1/25; or
 - the implementation of an increase in the UI weekly benefit formula.
- Increases weekly benefit and maximum weekly benefit (from current law) by \$25.00 on or before 7/1/25.
 - Implementation requires replacement of Unemployment Insurance Mainframe with a modern IT system.
 - Sunsets after \$92,000,000.00 in additional benefits paid out (vs. existing law).

ACT 147 (H.729): STATUTE OF LIMITATIONS FOR DISCRIMINATION CLAIMS

- Under prior law, discrimination claims related to employment, public accommodations, and housing were subject to two different statutes of limitations:
 - Claims for economic damages were subject to a six-year statute of limitations under 12 V.S.A. § 511.
 - Claims for personal injuries were subject to a three-year statute of limitations under 12 V.S.A. § 512.
- Act 147 adds 12 V.S.A. § 525, which establishes a six-year statute of limitations for all claims brought under 21 V.S.A. § 495b (employment discrimination) and 9 V.S.A. § 4506(a) (discrimination in housing and public accommodations).

ACT 182 (S.226): HOUSING DISCRIMINATION

- Sec. 20 of Act 182 amends 9 V.S.A. § 4503, which governs unfair housing practices.
- Most significantly, Act 182 eliminates the severe or pervasive standard for determining if harassment based on an individual's protected characteristic constitutes unlawful discrimination:
 - “Notwithstanding any judicial precedent to the contrary, harassing conduct need not be severe or pervasive to be unlawful pursuant to the provisions of this section.” 9 V.S.A. § 4503(d)(2).
 - However, “behavior that a reasonable person with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment or discrimination pursuant to this section.” 9 V.S.A. § 4503(d)(3).

ACT 182 (S.226): HOUSING DISCRIMINATION

- Act 182 also provides guidance for courts to apply in determining whether unlawful harassment occurred:
 - Determination shall be made according to the totality of the circumstances, and a single incident may constitute unlawful harassment.
 - Incidents that may be harassment shall be considered in the aggregate with varying types of conduct and conduct based on multiple characteristics viewed in totality, rather than in isolation.

ACT 182 (S.226): HOUSING DISCRIMINATION

- Conduct may constitute unlawful harassment regardless of whether:
 - plaintiff is person being harassed;
 - plaintiff acquiesced or otherwise submitted to or participated in the conduct;
 - conduct is also experienced by others outside of protected class involved in the conduct;
 - plaintiff was able to enjoy benefit of applicable terms, conditions, privileges, or protections in sale or rental, or to obtain services or facilities in connection with dwelling or other real estate, despite conduct;
 - conduct resulted in a physical or psychological injury; or
 - conduct occurred outside the dwelling or other real estate.

H.329: THE DISCRIMINATION BILL THAT DID NOT PASS

- H.329 did not make cross-over, but two provisions from the bill were enacted in other bills:
 - statute of limitations in Act 147 (H.729); and
 - elimination of severe or pervasive standard in relation to housing discrimination in Act 182 (S.226).
- H.329 contained two other significant changes to Vermont's antidiscrimination laws that generated lots of discussion and may reappear in a future biennium:
 - elimination of the severe or pervasive standard in relation to:
 - employment discrimination; and
 - public accommodations discrimination.



Any Questions?