

No. 184. An act relating to employment protections for crime victims.

(H.711)

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Employment Protection for Crime Victims * * *

Sec. 1. 21 V.S.A. § 495 is amended to read:

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition:

(1) For any employer, employment agency, or labor organization to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability;

(2) For any person seeking employees or for any employment agency or labor organization to cause to be printed, published, or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, age, or disability;

(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise discriminate against any individual

because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability;

(4) For any labor organization, because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age to discriminate against any individual or against a qualified individual with a disability or to limit, segregate, or qualify its membership;

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Sec. 2. 21 V.S.A. § 495d is amended to read:

§ 495d. DEFINITIONS

As used in this subchapter:

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(14) “Pregnancy-related condition” means a limitation of an employee’s ability to perform the functions of a job caused by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

(15) “Crime victim” means any of the following:

(A) a person who has obtained a relief from abuse order issued under 15 V.S.A. § 1103;

(B) a person who has obtained an order against stalking or sexual assault issued under 12 V.S.A. chapter 178;

(C) a person who has obtained an order against abuse of a vulnerable adult issued under 33 V.S.A. chapter 69; or

(D)(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.

Sec. 3. 21 V.S.A. § 472c is added to read:

§ 472c. LEAVE; CRIME VICTIMS

(a) As used in this section:

(1) "Employer" means an individual, organization, governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within this State.

(2) "Employee" means a person who is a crime victim as defined in section 495d of this chapter and, in consideration of direct or indirect gain or profit, has been continuously employed by the same employer for a period of six months for an average of at least 20 hours per week.

(b) In addition to the leave provided in section 472 of this title, an employee shall be entitled to take unpaid leave from employment for the purpose of attending a deposition or court proceeding related to:

(1) a criminal proceeding, when the employee is a victim as defined in 13 V.S.A. § 5301 and the employee has a right or obligation to appear at the proceeding;

(2) a relief from abuse hearing pursuant to 15 V.S.A. § 1103, when the employee seeks the order as plaintiff;

(3) a hearing concerning an order against stalking or sexual assault pursuant to 12 V.S.A. § 5133, when the employee seeks the order as plaintiff; or

(4) a relief from abuse, neglect, or exploitation hearing pursuant to 33 V.S.A. chapter 69, when the employee is the plaintiff.

(c) During the leave, at the employee's option, the employee may use accrued sick leave, vacation leave, or any other accrued paid leave. Use of accrued paid leave shall not extend the leave provided pursuant to this section.

(d) The employer shall continue employment benefits for the duration of the leave at the level and under the conditions coverage would be provided if the employee continued in employment continuously for the duration of the leave. The employer may require that the employee contribute to the cost of benefits during the leave at the existing rate of employee contribution.

(e) The employer shall post and maintain in a conspicuous place in and about each of its places of business printed notices of the provisions of this section on forms provided by the Commissioner of Labor.

(f)(1) Upon return from leave taken under this section, an employee shall be offered the same or comparable job at the same level of compensation, employment benefits, seniority, or any other term or condition of the employment existing on the day leave began.

(2) This subsection shall not apply if, prior to requesting leave, the employee had been given notice or had given notice that the employment would terminate.

(3) This subsection shall not apply if the employer can demonstrate by clear and convincing evidence that during the period of leave the employee's job would have been terminated or the employee would have been laid off for reasons unrelated to the leave or the condition for which the leave was granted.

(g) An employer may adopt a leave policy more generous than the leave provided by this section. Nothing in this section shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater leave rights than the rights provided by this section. A collective bargaining agreement or employment benefit program or plan shall not diminish rights provided by this section. Notwithstanding the provisions of this section, an employee may, at the time a need for leave arises, waive some or all of the rights under this

section, provided that the waiver is informed and voluntary and that any changes in conditions of employment related to the waiver shall be mutually agreed upon between the employer and the employee.

(h) Subsection (b) of this section shall not apply to an employer that provides goods or services to the general public if the employee's absence would require the employer to suspend all business operations at a location that is open to the general public.

* * * Effective Date * * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

Date Governor signed bill: May 28, 2018