

PROPOSED BY: Staff

BILL NO. 21- 2929

INTRODUCED BY: Alderman Osherow

ORDINANCE NO. 2913

AN ORDINANCE AMENDING THE PERSONNEL RULES AND REGULATIONS OF THE CITY OF DES PERES ESTABLISHING A NEW CATEGORY OF LEAVE ENTITLED VICTIMS ECONOMIC SAFETY AND SECURITY ACT (VESSA) AS PROVIDED FOR UNDER RSMO 285.630

WHEREAS, effective August 28, 2021, the Missouri General Assembly under House Bill 432 enacted the Victims Economic Safety and Security Act (VESSA) which requires in part that all Missouri public entities, including employers with at least twenty (20) employees, provide unpaid leave and reasonable safety accommodations to employees who experience domestic or sexual violence or have a family or household member who experiences domestic or sexual violence; and

WHEREAS, the City of Des Peres wishes to amend its Personnel Rules & Regulations to reflect this mandatory change in state law in which all public entities are now subject to by establishing a new category of leave governed under Article IX entitled "Attendance & Leave"; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DES PERES, MISSOURI, AS FOLLOWS:

SECTION ONE: Ordinance #1998 entitled *Personnel Rules and Regulations of the City of Des Peres, Missouri*, is hereby amended by addition of Section 9.15 to read as follows:

Section 9.15 Victims Economic Safety and Security Act (VESSA)

- A. The City will grant up to two (2) weeks of unpaid leave per year to eligible employees as provided for under this section, though the employee may choose to substitute paid leave from their accrued leave banks. VESSA leave shall not be available where such leave would result in an employee taking more leave than the amount of leave allowed under the Family and Medical Leave Act (FMLA). Similar to FMLA leave, VESSA leave can be taken intermittently or on a reduced work schedule. The City will maintain health coverage for an employee on VESSA leave at the same level and under the same conditions as if the employee was still working continuously for the duration of leave.
- B. VESSA leave is available for any of the following reasons:
 - 1. Seeking medical attention from or recovering from, physical or psychological injuries caused by domestic or sexual violence against the employee or the employee's family or household member;
 - 2. Obtaining victim service for the employee or the employee's family or household member;
 - 3. Obtaining psychological or other counseling for the employee or the employee's family or household member;

4. Participating in safety planning, including temporary or permanent relocation, or other actions to increase the employee or the employee's family or household member's safety from future domestic or sexual violence; and
5. Seeking legal assistance to ensure the health and safety of the employee or the employee's family or household member, including participating in court proceedings related to the violence.

C. Employees working for the City are eligible to take VESSA leave if:

1. They are victims of domestic or sexual violence, or
2. They have a family or household member who is a victim of domestic or sexual violence. VESSA defines the term "family or household member" to include spouses, parents, children and "other blood relatives and relatives through a present or prior marriage."

D. Employees who wish to take VESSA leave must provide:

1. At least forty-eight (48) hours' advance notice of the need for leave unless such notice is impractical, in which case the notice must be given as soon as possible; and
2. A sworn statement of the employee and documentation showing that the employee is eligible for the leave, such as a police report or document from a victim services organization, or medical professional corroborating eligibility.

E. Upon request, the City will attempt to make reasonable safety accommodations unless such accommodations would result in undue hardship for the City. Such an accommodation must be made timely to the known limitations resulting from the domestic or sexual violence experiences of an employee or an employee's family or household member. Reasonable safety accommodations encompass the following actions by the City:

1. Adjustment to a job structure, workplace facility or work requirement;
2. A transfer or reassignment;
3. A modified schedule;
4. Leave from work;
5. A changed telephone number or seating assignment;
6. Installation of a lock or implementation of a safety procedure; or
7. Assistance in documenting domestic violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic violence.

An employee requesting such accommodation is required to provide a written statement signed by the employee or someone acting on the employee's behalf certifying the requested accommodation is for purposes authorized under VESSA. All documentation collected in connection with VESSA leave will be maintained separate from the employee personnel files and with the strictest of confidence.

F. Retaliation against employees for exercising their rights under VESSA is prohibited.

G. Any employee who takes leave under this section shall be entitled, upon return from such leave, to be restored by the City to the position of employment held by the employee when the leave commenced or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. No benefits accrued shall be lost by taking this leave and all seniority will be restored upon return from leave.

SECTION TWO: This ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen and approval by the Mayor.

Voting in Favor: Barrett, Concagh, Fitzpatrick, Osherow, Pound

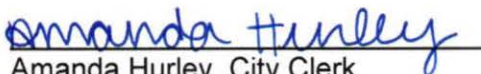
Voting Against:

Absent: Kleinschmidt

This ordinance passed this 11th day of October, 2021.


Presiding Officer

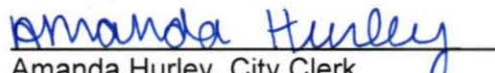
ATTEST:


Amanda Hurley, City Clerk

This ordinance approved this 11th day of October, 2021.


Mark Becker, Mayor

ATTEST


Amanda Hurley, City Clerk

1st Reading 10-11-2021
2nd Reading 10-11-2021



THE GRAVILLE LAW FIRM, LLC

13354 MANCHESTER ROAD, SUITE 210 • DES PERES, MISSOURI 63131

MISSOURI EMPLOYMENT LAW UPDATE **VICTIMS ECONOMIC SAFETY AND SECURITY ACT (VESSA)**

Missouri's new Victims Economic Safety and Security Act ("VESSA") went into effect on August 28th as a result of the passage of House Bill 432 and all Missouri employers with at least twenty employees will need to provide leave and reasonable safety accommodations to employees who are the victim of domestic or sexual violence. [**Domestic violence** has been defined as abuse or stalking by any family or household member, while abuse broadly covers all attempts or threats of violence against a family or household member as well as actual assault and battery.] [**Sexual violence** has been defined as either a sexual assault or trafficking for the purposes of sexual exploitation.]

Unpaid Leave Requirements

Victims of domestic or sexual violence, or family or household members of a victim of domestic or sexual violence, are entitled to unpaid leave from work to address such violence and may engage in any number of activities, including but not limited to:

- Seeking medical attention for themselves or a family or household member
- Obtaining services from a victim services organization
- Obtaining counseling for themselves or a family or household member
- General safety planning, including temporary or permanent relocation
- Seeking legal assistance

This leave need not be taken all at once, and may be taken intermittently or on a reduced work schedule, just like FMLA leave. Employees must provide forty-eight hours advance notice of the employee's intention to take leave unless that *is not practicable*. An employer can require certification that the employee qualifies for leave, and such certification may be the following:

- Documentation from:
 - a victim services organization;
 - an attorney;
 - a clergy member;
 - a medical or other professional who is providing assistance;
- A police or court record; or
- Other corroborating evidence (undefined by statute).

Employers must maintain "the strictest confidence" for all such certification documentation.

Number of Employees	VESSA Leave Granted
1 to 19 Employees	None
20 to 49 Employees	One week of unpaid leave per year
More than 50 Employees	Two weeks of unpaid leave per year

In no case shall the amount of leave taken be more than is allowed under the FMLA

While the Employee is on Leave

Employers can check in with their employee while they are out on leave to determine if and when the employee intends to return to work. During the time the employee is on leave, they are still entitled to health coverage and the employer shall continue to maintain such coverage at the same level and under the same conditions as if the employee was still working continuously for the duration of leave. If the employee does not return from leave, the employer can try and recover from the employee the premiums that the employer paid to maintain coverage for the employee or the employee's family during the period of leave. However, if the reason the employee does not return from leave is related to domestic violence or sexual violence, or other circumstance beyond the control of the employee, then employers cannot recover those premiums. In situations where an employee claims they cannot return to work for one of these reasons, the employer can require certification in the same form as if the employee were requesting leave except that the employee may also tender a sworn statement in lieu of any of those forms of certification. Again, employers must maintain "the strictest confidence" for all such certification documentation.

Return from Leave

Once the employee returns from leave, the employee shall be restored to their former position, former pay, former benefits, and other terms and conditions of employment, or, if this is not possible, to an equivalent position, with equivalent pay, benefits, and terms and conditions of employment. No benefits accrued can be lost by taking this leave and all seniority will be restored upon return from leave.

Accommodation Requests

If an employer has at least twenty employees, the employer will be required to provide reasonable safety accommodations, in a timely manner, to victims of domestic or sexual violence, or those who have a family or household member who has been a victim of domestic or sexual violence. The employer may require a written and signed statement from the employee or the employee's agent certifying the reasonable safety accommodation is for the purposes authorized by statute. If the accommodation would impose an undue hardship on the operation of the employer and the employer can show that, they need not provide the accommodation. The statute defines the following as "reasonable safety accommodations" but this list is not exhaustive:

- Adjustment to job structure
- Change of work location
- Transfer or reassignment
- Change in seating assignment
- Leave from Work
- Install Locks
- Safety Procedures
- Modified Schedule
- Change of Phone Number

Notice to Employees

Every employer covered by this law must deliver a notice, prepared or approved by the Director of the Department of Labor no later than October 27, 2021 and must provide employees hired after October 27, 2021 with this same notice upon beginning employment.

Questions?

If you have any questions about VESSA or about any of the other recent legislative updates which may be impacting your business, please do not hesitate to reach out to us!