

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1717-01  
Bill No.: SB 367  
Subject: Attorney General, State; Domestic Relations; Employees - Employers; Health Care; Labor and Industrial Relations Department  
Type: Original  
Date: March 21, 2013

Bill Summary: This proposal creates a right to unpaid leave for employees that are affected by domestic violence.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Various State Funds	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 14 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
Federal Funds	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Local Government</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Office of Administration - Division of Personnel (OA)** assume this proposal would have some impact on the Personnel Advisory Board and the Division of Personnel. Administration of the proposed legislation is complex and the amount of leave and duration of leave connects to those benefits currently available under the federal Family and Medical Leave Act (FMLA). Determination would have to be made whether the employer counts time for a qualifying FMLA condition under FMLA or Domestic Violence Leave. It appears that in some cases, the leave under this proposal would be limited by an employee's use of FMLA for other purposes. However, it does not appear that use of the proposed leave for circumstances not covered by the FMLA count against the employee's FMLA entitlement. Rules would need to be updated to incorporate this new form of leave. OA would have to ensure agencies were made aware of this legislation, as well as inform them of the requirement to post this information in locations where employees have access to it.

Additionally, new programming and leave tracking procedures would need to be adopted and implemented in order to track this form of leave.

The proposal enables an employee who is the victim, family or household member of domestic violence to retain their health benefits when they are not being paid, which will result in costs to the employer. There would also be loss of manpower for that time necessary for the employee to be off work. Depending upon the work involved and the employee's job duties, state agencies may need to assess the situation immediately and develop contingency plans to cover work load as necessary. This may require hiring temporary employees or requiring co-workers to work overtime to cover the work. These costs would vary so it is unknown what the fiscal impact would be on the employer.

It is impossible at this point in time to estimate the cost of any necessary programming changes to the SAM II system, or to estimate the recurring costs for the necessary administrative and record keeping work by affected state agencies. OA is unable to estimate the frequency or duration of leave that could be requested under this proposal. OA would have to defer to the other state agencies for estimates of overtime costs related to the proposed legislation.

Officials at the **Department of Mental Health (DMH)** assume the fiscal impact to the Department is unknown as it would be difficult to calculate because of the unknown variables involved. Criteria to consider would be:

1. The number of employees at DMH who would be involved in domestic violence

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ASSUMPTION (continued)

- situations;
2. The number of employees at DMH who have qualifying relatives/household members who would be involved in domestic violence situations;
  3. The number of applicants to DMH (depending upon the definition of applicant) who would be involved in domestic violence situations;
  4. The number of applicants to DMH (depending upon the definition of applicant) who have qualifying relatives/household members who would be involved in domestic violence situations;
  5. The number of employees/applicants who would apply to use this benefit;
  6. We currently provide 12 weeks of unpaid leave to employees who have worked at least 1,250 hours in the previous 12 months, for
    - a. qualifying serious health conditions for either themselves or for immediate family members (spouse, child, or parent)
    - b. birth of son or daughter
    - c. placement of child for adoption or foster care
    - d. qualifying exigencies related to call to or active military duty;
  7. The expansion of coverage to all employees and applicants instead of only those that have worked at least 1,250 hours;
  8. The expansion of relationships connected to the employee;
  9. The nature of the work performed at our 24/7 facilities and the need for continued coverage;
  10. The sourcing of temporary employees to cover absences; and
  11. The overtime expense of using existing employees to cover absences.

Officials at the **Department of Corrections (DOC)** assume the current DOC FMLA policies cover some aspects of this bill, but definitions of family and "household" members are expanded. Current FMLA policy includes only immediate family members. The possibility of expansion from 12 weeks to 24 weeks of unpaid leave due to this legislation will require policy updates by the Department. Certification process, including clarification of who may certify "domestic violence" incidents that would meet the criteria of this bill would require additional policy development. The Department would be required to develop a sophisticated tracking system and add new codes to current SAM II systems. An exact fiscal impact cannot be estimated, therefore the fiscal impact is unknown per each year for the DOC.

Officials at the **Department of Labor and Industrial Relations** assume the Department does not have any data regarding hours of work missed by employees due to domestic violence. The proposed legislation would require the Department to provide unpaid leave of up to twelve weeks to employees who experience or whose family members experience domestic violence. In

ASSUMPTION (continued)

addition, the Department would be required to continue to pay any employee benefits, such as health insurance, life insurance and long-term disability premiums and retirement contributions. This would have an unknown fiscal impact to the Department.

Officials at the **Department of Elementary and Secondary Education** assume the impact is unknown. It would depend on the employee taking leave, that individual's salary and the length of absence.

Officials at the **Department of Health and Senior Services (DHSS)** assume section 285.630.2, requires an employer with fifty or more employees to allow twelve workweeks of leave for anyone who is a victim of domestic violence. This leave is to be unpaid; therefore, there will be no costs incurred for payment to the employee.

Depending upon an employee's job requirements and how long an employee would be gone from their position, the department may have to hire a temporary employee to cover the duties of the position. The impact of this legislation is unknown depending upon the employee's specific position, the time they are away from their position, and how many instances of this leave time DHSS employees would use.

Officials at the **Department of Natural Resources** assume that the domestic violence leave would run concurrently with the Family and Medical Leave Act leave, should both laws apply, rather than providing an additional twelve weeks of leave per year. The department assumes if an employee is a victim of domestic violence or has family or household members who are victims of domestic violence chooses to utilize the provisions outlined in this proposal, there would be an unknown cost as a result of covering reasonable accommodations requested, training and covering work duties in the employees' absence, and maintaining health coverage for employees on domestic violence leave, including coverage for family members under any group health plan at the level and under the conditions that coverage would have been provided if the employee had continued in be employed for the duration of the leave.

Officials at the **Office of the State Public Defender** assume that if an employee would meet the outlined requirements and be on leave; the caseloads would continue and there would be costs associated with providing representation in those cases. It is estimated the annual costs would be less than \$100,000.

Officials at the **Missouri Veterans Commission** assume this impact is unknown but has a high probability for significant impact as it could result in increases to overtime to cover absences for unplanned and/or unscheduled absences.

ASSUMPTION (continued)

Officials at the **Office of State Courts Administrator** assume this is permissive and they have no way of knowing how many employees would be taking the leave. Although, there should be no cost, it is possible production could go down. If there is any significant increase in workload, it will be reflected in future budget requests.

Officials at the **University of Missouri** assume there would be a monetary cost to the proposal but there is inadequate information to allow for a fiscal assessment.

Officials at the **Northwest Missouri State University** assume the National Crime Victimization Survey reveals that 13% of women and less than 5% of men report domestic violence annually. Applying those national statistics literally, as many as 46 female (13% of 357) and 16 male (5% of 328) employees could be affected. The average salary and benefits per hour for female employees is \$31.84/hour or \$254.72/day and \$37.54/hour or \$300.32/day for males. The bill allows for up to three months leave. If 62 employees in a given year needed to use one day of leave as a result of documented domestic violence, the cost would be \$16,522.24. If 62 employees in a given year needed to use the full three months, the cost would be \$8,937,523.20.

Officials at the **Missouri Consolidated Health Care Plan, Missouri House of Representatives, Missouri Housing Development Commission, Missouri Lottery, Missouri State Employees' Retirement System** and the **Parkway School District** each assume that there is no way to determine the impact, so the impact is assumed to be unknown.

Officials at the **Office of State Treasurer** assume an unknown impact due to the potential lost productivity.

Officials at the **Missouri Senate** assume no impact. Since fringe benefits are paid by the Office of Administration, any additional costs associated with continuing health care benefits would be their responsibility.

Officials at the **Office of Attorney General** assume that costs could be absorbed. However, if there is a significant increase in investigations they may seek an additional appropriation.

Officials at the **University of Central Missouri** estimate an impact of \$50,000.

Officials at the **Missouri State University** assume costs are anticipated from this proposal, in administrative time associated with determining eligibility, keeping track of the leaves, recouping coverage costs when the employee does not return to work, together with lost productivity in the

ASSUMPTION (continued)

office affected.

Officials at the **MoDOT & Patrol Employees' Retirement System** assume it is unknown at this time what level of fiscal impact is associated with this proposal. The administration of this proposal could require programming of our pension administration system, which would incur a cost.

Officials at the **City of Kansas City** assume there would likely be some increased costs to the City, but the City cannot determine the amount of costs. This bill would create a new cause of action and protected status for certain employees, victims of domestic violence. Possible costs would be loss of work from these individuals (similar to FMLA leave, but totaling twelve weeks), and possible claims for violation of this statute, so there would be costs of defense and possible damages, which include actual damages and fees and costs, but no punitive damages. Because the City has no idea how many employees could claim protection under this bill, it has no way of currently quantifying the potential costs to the City from this bill.

Officials at the **Department of Social Services - Children's Division, Division of Finance and Administrative Services** and the **Division of Family Support** each assume there is no fiscal impact to their organization from this proposal.

Officials at the **Department of Social Services - Division of Legal Services (DLS)** assume as written, this bill will have an unknown fiscal impact on the DLS. If however, the Children's Division is obliged to provide the certifications required under sections 285.630.4 and 285.635.3, it may be necessary to enact an appeal process to comport with due process requirements in the event the Children's Division denied the certification request. If that appeal process consisted of some type of "fair hearing," in all likelihood DLS lawyers would represent the division in those hearings.

Officials at the **Department of Social Services - Division of Human Resource Center** assume the proposal indicates that this would be unpaid leave, several of the examples provided (seeking medical attention and obtaining psychological or other counseling) are already covered under our sick leave policy and in some situations, the Family Medical Leave Act (FMLA). In the other situations, there would not be additional costs for salary, but there would be a cost for overtime worked by other staff to cover the employee's absence. Without knowing the individuals that would take the leave and the amount of leave that would be used, it is not possible to project a cost.

ASSUMPTION (continued)

Missouri Consolidated Health Care Plan (MCHCP) would need to estimate the impact of continuing to pay medical insurance premiums in qualifying situations. There would be some additional processing (e.g., setting up leave codes, notifying MCHCP of the leaves, etc.), but it is anticipated that this could be absorbed by current staff.

The rights provided to an individual for an accommodation exceed the standards set by the Americans with Disability Act as that law only requires that we accommodate the employee for their own medical condition. The proposed legislation would include family members (285.630). While we cannot anticipate the increased staff time needed to process accommodation requests, it is anticipated that this would result in additional staff time.

The non-discrimination clause has established a new protected category which will require the Department of Social Services Office for Civil Rights to review and respond to internal and external complaints. While the Human Resource Center is not able to project the cost associated with this increased workload, it is anticipated that there will be an increase.

Given that the Attorney General's Office would be the enforcement agency; this would be a conflict of interest as they are the counsel responsible for representing and defending the Department of Social Services (DSS) and administering the legal expense fund on our behalf in such claims. If DSS would have to retain private counsel for representation, additional cost would be incurred.

Officials at the **Administrative Hearing Commission, Department of Agriculture, Department of Conservation, Department of Economic Development, Department of Higher Education, Department of Insurance, Financial Institutions and Professional Registration, Department of Public Safety - Alcohol and Tobacco Control, Department of Public Safety - Capitol Police, Department of Public Safety - Fire Safety, Department of Revenue, Joint Committee on Administrative Rules, Joint Committee on Public Employee Retirement, Lincoln University, Linn State Technical College, Metropolitan Community College, Missouri Ethics Commission, Missouri Gaming Commission, Missouri Highway Patrol, Missouri Western State University, Office of Administration - Budget and Planning, Office of the Governor, Office of Prosecution Services, Office of the State Auditor, Special School District, State Emergency Management Agency, State Tax Commission** and the **St. Louis County** each assume there is no fiscal impact to their organization from this proposal.



ASSUMPTION (continued)

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

**Oversight** assumes it is difficult to predict how many individuals would utilize this leave and specifically which state agencies and local political subdivisions would be impacted. Due to this uncertainty, Oversight will show the impact as Unknown to General Revenue, Various State Funds and Local Political Subdivisions.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>GENERAL REVENUE</b>			
<u>Cost</u> - Office of Administration - one time computer programming to SAM II system for tracking this leave	(Unknown)	\$0	\$0
<u>Cost</u> - State Agencies - administrative and overtime expenses to cover for people on domestic violence leave	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>VARIOUS STATE FUNDS</b>			
<u>Cost</u> - State Agencies - administrative and overtime expenses to cover for people on domestic violence leave	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
<b>FEDERAL FUNDS</b>			
<u>Savings</u> - Reduction in reimbursable expenditures	Unknown	Unknown	Unknown
<u>Cost</u> - Reduction in federal reimbursements for expenditures	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
<u>Cost</u> - Local Political Subdivisions - administrative and overtime expenses to cover for people on domestic violence leave	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS</b>	<u><b>(Unknown)</b></u>	<u><b>(Unknown)</b></u>	<u><b>(Unknown)</b></u>

FISCAL IMPACT - Small Business

Small business that employ at least 15 employees would be required to provide this benefit.

FISCAL DESCRIPTION

This act creates a right to unpaid leave for employees that are affected by domestic violence.

Any person employed by a public employer or private employer with at least 15 employees is entitled to unpaid leave if they are, or a family or household member is, a victim of domestic violence. Domestic violence is defined as assault, battery, coercion, harassment, sexual assault, unlawful imprisonment, and stalking. Such individuals are entitled to 12 weeks of leave per year if their employer employs at least 50 employees and 8 weeks per year if their employer employs at least 15 but not more than 49 employees.

Employees are required to give 48 hours notice of the intent to take such leave and may be required to provide certification to the employer that such leave is necessary. Permissible reasons for taking leave include seeking medical attention, recovering from injury, obtaining victim services, obtaining counseling, participating in safety planning, and seeking legal assistance.

On return from leave, employees are to be restored to the same or equivalent employment position and shall not lose accrued benefits. Employers are required to maintain health coverage for the employee while on leave but the premium may be recovered if the employee does not return.

FISCAL DESCRIPTION (continued)

Employers and public agencies delivering public assistance are barred from discriminating against individuals covered under the act and such entities are required to make reasonable accommodations regarding such individual unless the accommodation would constitute an undue hardship. Reasonable accommodations include an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure, or assistance in documenting domestic violence that occurs at the workplace or in work-related settings.

The Attorney General is given the authority to enforce the provisions of the act.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

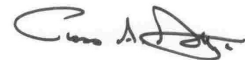
Administrative Hearing Commission  
City of Kansas City  
Department of Agriculture  
Department of Conservation  
Department of Corrections  
Department of Economic Development  
Department of Elementary and Secondary Education  
Department of Health and Senior Services  
Department of Higher Education  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Labor and Industrial Relations  
Department of Mental Health  
Department of Natural Resources  
Department of Public Safety  
    Alcohol and Tobacco Control  
    Capitol Police  
    Fire Safety  
Department of Revenue  
Department of Social Services  
    Division of Children's Services  
    Division of Family Support  
    Division of Finance and Administrative Services

SOURCES OF INFORMATION (continued)

Division of Human Resources Center  
Division of Legal Services  
Joint Committee on Administrative Rules  
Joint Committee on Public Employee Retirement  
Lincoln University  
Linn State Technical College  
Metropolitan Community College  
Missouri Consolidated Health Care Plan  
Missouri Ethics Commission  
Missouri Gaming Commission  
Missouri Highway Patrol  
Missouri House of Representatives  
Missouri Housing Development Commission  
Missouri Lottery  
Missouri Senate  
Missouri State University  
Missouri State Employees' Retirement System  
Missouri Veterans Commission  
Missouri Western State University  
MoDOT & Patrol Employees' Retirement System  
Northwest Missouri State University  
Parkway School District  
Office of Administration  
    Budget and Planning  
    Division of Personnel  
Office of Attorney General  
Office of the Governor  
Office of Prosecution Services  
Office of the Secretary of State  
Office of the State Auditor  
Office of State Courts Administrator  
Office of the State Public Defender  
Office of State Treasurer  
Special School District

SOURCES OF INFORMATION (continued)

State Emergency Management Agency  
State Tax Commission  
St. Louis County  
University of Central Missouri  
University of Missouri



Ross Strope  
Acting Director  
March 21, 2013