

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0336-04
Bill No.: SCS for SB 130
Subject: Attorney General, State; Domestic Relations; Employees - Employers; Health Care; Department of Labor and Industrial Relations
Type: Original
Date: April 24, 2015

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Other State	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other State Funds</u>	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Other Federal *	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Net of additional costs and offsetting revenues.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Revenue**, the **Office of Administration - Information Technology Services Division** and the **Missouri Department of Conservation** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a previous version, officials from the **Department of Transportation** and the **City of Jefferson** each assumed the proposal will have no fiscal impact on their respective organizations.

Officials from the **Office of State Courts Administrator** assume this proposal would create a permissive leave category 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 would be reflected in future budget requests.

Officials from the **Attorney General's Office (AGO)** assume this proposal authorizes the AGO to investigate alleged or suspected violations. While the number of alleged or suspected violations is unknown, the AGO anticipates that 1 FTE is necessary to fully address the intent of this proposal. The AGO may seek additional appropriations if the need exceeds existing resources.

Officials from the **Office of Administration - Division of Budget and Planning** deferred to the Office of Administration - Division of Personnel for an estimate of the fiscal impact for a previous version of this proposal.

Officials from 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. OA officials stated that administration of the proposed legislation would be 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). Determinations would have to be made whether the employer counts time for a qualifying FMLA condition under FMLA or a 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 would 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.

ASSUMPTION (continued)

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

The proposal would enable an employee who is the victim, or who has a family or household member who is a victim of domestic violence to retain their health benefits when they are not being paid, which would result in costs to the employer. There would also be a loss of manpower for that time when the employee is allowed to be off work. Depending on 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.

We are assuming passage of this legislation in the spring of FY 2015 with an effective date of August 31, 2015.

Officials from the **Office of Administration - Division of Accounting (OA)** state currently, employees who require time away from work to address tasks related to domestic violence may use annual leave or compensatory time or, under specific circumstances, sick leave or leave without pay may be used. The state already pays for an employee's health insurance during periods of annual leave, compensatory time, and sick leave use. Thus, the fiscal impact would be limited to employees who use leave without pay as a result of domestic violence.

In FY 2014, there were approximately 10,000 state employees in a leave without pay status at some point during the year. OA does not track whether the use of leave without pay, or any other type of leave, is related to domestic violence. Accordingly, OA has no mechanism with which to estimate the number of instances in which an employee's use of leave without pay is related to a domestic violence incident. OA assumes this proposal would not cause the use of leave without pay to increase.

OA officials assume the proposal would cost the state \$350 for every two weeks of leave without pay utilized related to domestic violence, but OA has no way of estimating the amount of leave without pay that will be so used.

ASSUMPTION (continued)

In response to a previous version, officials from the **Department of Labor and Industrial Relations (DOLIR)** assumed the changes proposed in this legislation would have no fiscal impact as long as the bill does not raise conformity issues with federal law. However, if the language is found to be noncompliant with federal regulations, this proposal could have a significant negative fiscal impact on DOLIR.

DOLIR officials stated the Division would ask the US Department of Labor to review the language for conformity issues and would supplement this response once additional information is received.

DOLIR officials noted non-conformity with federal law could jeopardize the certification of Missouri's Unemployment Insurance (UI) program. If the program is not certified, Missouri could lose approximately \$38 million in federal funds the state receives annually to administer the UI program. In addition, DOLIR could lose approximately \$12 million in federal funds each year that the Department of Economic Development - Division of Workforce Development receives to administer Wagner-Peyser reemployment services.

Finally, if the proposed legislation causes Missouri's program to be out of compliance or out of conformity with federal law, Missouri employers could lose part or all of the current federal credit against state unemployment taxes and would be required to pay the full 6.0 percent; an additional \$889 million per year cost for Missouri employers.

Oversight assumes this proposal could be implemented in compliance with relevant federal law and would have no impact on DOLIR or employers.

In response to a previous version, officials from the **City of Kansas City** assumed there would likely be an undetermined cost to the City. The proposal would provide leave to an employee who is a victim of domestic violence to prepare for civil or criminal litigation. City officials stated it is unclear just what would constitute "preparing" for litigation. Additionally, the proposal would provide a duty to the employer to provide a reasonable accommodation to such employee, and city officials noted that reasonable accommodations often come at a cost to an employer, particularly when the accommodation sought is a piece of equipment, or possibly added security.

ASSUMPTION (continued)

Finally, there is a provision for actual damages, in addition to reasonable attorney's fees, so there is the threat of litigation related to leave and accommodations for victims of domestic violence, and the potential for damages. However, because the City has absolutely no idea how many of its employees are victims of domestic violence, city officials stated they cannot predict or estimate the fiscal impact of this proposal. The proposal would provide that the employer could recover health care premiums it paid for the employee if he/she does not return to work following expiration of this leave. This could result in savings to the City, but one that would likely be negligible based on the likely number of employees to whom this would apply, and the administrative costs of collecting the premiums.

In response to a previous version, officials from **Cole County** assumed this proposal would have the potential to create a negative fiscal impact on their organization in the form of loss of productivity and expenses associated with premises modification or security services. County officials state they could not provide an estimate of the cost.

In response to a previous version, officials from the **St. Louis County Government** assumed this proposal would create some additional cost associated with providing medical insurance. Average annual cost to the County for medical insurance per employee is around \$8,000. The impact is difficult to determine.

In response to a previous version, officials from the **City of Columbia** assumed this proposal would create an unfunded mandate, and would create administration responsibilities which could not be estimated. The cost of employee-only health insurance is \$200 for two weeks. The impact may not be significant but is difficult to determine.

Oversight assumes the state, and local governments, would have costs to integrate an additional category of leave into their personnel systems. Further, Oversight assumes there would be the potential for additional personnel costs in agencies such as the Department of Corrections, the Department of Mental Health, and Department of Social Services, and in schools which require certain functions to be staffed regardless of an individual employee's availability.

Oversight also assumes certain state agencies, and organizations such as public schools, would have costs for replacement or substitute personnel during employee absences allowed by this proposal.

Finally, Oversight assumes the state and local governments would have costs for the employee accommodations which would be mandated by the proposal.

ASSUMPTION (continued)

Oversight does not have any information regarding the number of employees who would be eligible for this new leave category, the number who would elect to take such leave, or the entities that would be impacted.

Accordingly, Oversight will include an Unknown impact to the General Revenue Fund, Other State Funds, and to Local Governments.

Oversight notes that certain state agencies have positions which are supported, completely or in part, with federal funds. Oversight assumes there would be additional costs to these agencies if an employee supported by federal funds uses the leave or requests the employer accommodations authorized by this proposal, but assumes those costs would result in and be offset by the use of additional federal funding for those costs. Oversight will include the additional costs and funding in this fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE			
<u>Additional cost - Office of Administration</u> Computer programming in SAM II system for leave tracking	(Unknown)	\$0	\$0
<u>Additional cost - State Agencies</u> Administrative and overtime expenses	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
OTHER STATE FUNDS			
<u>Additional cost - State Agencies</u> Administrative and overtime expenses	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
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OTHER FEDERAL FUNDS

<u>Additional revenue</u> - State agencies Additional federal funding for overtime expense	Unknown	Unknown	Unknown
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<u>Additional cost</u> - State Agencies Overtime expenses	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON OTHER FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
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LOCAL GOVERNMENTS

<u>Additional cost</u> - Local Governments Administrative and overtime expenses	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

Small business would be required to provide unpaid leave for employees that are affected by domestic violence as defined in the proposal, and could have administrative and personnel costs to comply with the proposed requirements.

FISCAL DESCRIPTION

This proposal would allow any person employed by a public employer or private employer to unpaid leave in order to prepare for or participate in a civil or criminal legal proceeding relating to domestic violence if the person, or a family or household member, is a victim of the violence. For this proposal, define domestic violence would be defined as assault, battery, coercion, harassment, sexual assault, unlawful imprisonment, and stalking. An employee would be required to give 48 hours notice of the intent to take such leave and could be required to provide certification to the employer that such leave is necessary.

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

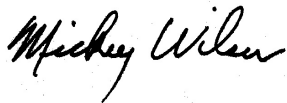
Employers and public agencies delivering public assistance would be barred from discriminating against individuals covered under the act, and such entities would be required to make reasonable accommodations for such individuals unless the accommodation would constitute an undue hardship. Reasonable accommodations would 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, implementation of a safety procedure, or assistance in documenting domestic violence that occurs at the workplace or in work-related settings.

The Attorney General would be 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

Department of Revenue
Attorney General's Office
Office of the State Courts Administrator
Department of Labor and Industrial Relations
Department of Transportation
Missouri Department of Conservation
Office of Administration
 Division of Budget and Planning
 Division of Accounting
 Division of Personnel
 Information Technology Services Division



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