

Illinois Amended Victim's Economic Security and Safety Act for Greater Employee Protections

By Jody Kahn Mason

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Meet the Authors



Jody Kahn Mason

Principal

312-803-2535

Jody.Mason@jacksonlewis.com

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The Illinois Victim's Economic Security and Safety Act (VESSA) has been amended to expand the list of reasons for which job-protected leave is available, among other provisions. The amendments, passed on August 20, 2021, will go into effect on January 1, 2022.

Covered Reasons for Leave

Under VESSA, an employee who is a victim of domestic, sexual, or gender violence, or who has a family or household member who is a victim of domestic, sexual, or gender violence, may take up to 12 workweeks of job-protected leave during any 12-month period to address the domestic, sexual, or gender violence. The maximum amount of leave to which an employee is entitled decreases for employers with fewer than 50 employees.

Amended VESSA allows employees to take leave if they or a covered family or household member is a victim of any "crime of violence." That term is defined to include "any conduct proscribed by Articles 9, 11, 12, 26.5, 29D, and 33A of the Criminal Code of 2012 or a similar provision of the Criminal Code of 1961." The sections of the Criminal Code referenced relate to homicide, sex offenses, bodily harm, harassing and obscene communications, terrorism, and armed violence. The amendments to the statute expressly define "sexual violence" as "sexual assault."

The statute also has been amended to expand the definition of "family or household member" to include a party to a civil union, grandparent, child, grandchild, sibling, or any other person related by blood or by present or prior marriage or civil union, or any other person who shares a relationship through a child, or any other individual whose close association with the employee is the equivalent of a family relationship as determined by the employee. Spouses and parents, as well as persons jointly residing in the same household, continue to be covered under the statute.

Documentation

The provisions of the statute relating to documentation of the need for leave have been amended. Under the statute, an employer may require the employee to provide certification that the employee or the employee's family or household member is a victim of domestic violence, sexual violence, gender violence, or any other crime of violence, and that the leave requested is for one of those purposes. VESSA provides that the certification requirement can be satisfied by the employee providing a sworn statement to the employer, along with one of the following:

- A. Documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or the employee's family or household member has sought assistance in addressing domestic violence, sexual violence, gender violence, or any other crime of violence and the effects of the violence;
- B. A police or court record; or

C. Other corroborating evidence.

However, under amended VESSA, such documentation must be provided “if the employee has possession of such document.” Also, it makes clear that the employee can choose which document to submit and the employer cannot request or require more than one document to be submitted during the same 12-month period leave is requested or taken if the leave is related to the same incident(s) of violence or the same perpetrator(s) of the violence. Similarly, if an employee is unable to return to work for a reason related to the need for leave, the employer is entitled to request certification from the employee. Again, the employee can choose which document to submit and the employer cannot require or request that more than one document be submitted.

Non-Discrimination

The non-discrimination provisions of VESSA have been expanded to protect applicants and employees who are perceived to be victims of domestic violence, sexual violence, gender violence, or any other crime of violence.

Confidentiality

Finally, amended VESSA includes a confidentiality provision requiring all information provided to the employer pursuant to VESSA, including a statement of the employee or any other documentation, record, or corroborating evidence, as well as the fact that the employee has requested or obtained an accommodation under VESSA, “be retained in the strictest confidence” by the employer. Such information may be disclosed only when requested or consented to in writing by the employee, or as otherwise required by applicable federal or state law.

Jackson Lewis attorneys are available to answer inquiries regarding this new law and assist employers in updating policies and training to achieve compliance with its requirements.

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