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POVERTY LAW PROJECT

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VERMONT POVERTY LAW FELLOWSHIP: EMPLOYMENT LAW THIRD QUARTER REPORT

April 1, 2021 – June 30, 2021

I. Introduction

Emily Kenyon's fellowship focuses on the legal problems encountered by low-wage workers. This quarter, Emily spent the majority of her time working on cases to deepen her understanding of the issues. Her case work spans several areas of employment law, including wage and hour, employment discrimination, and unemployment insurance benefits. She spent approximately 78% of her time on individual case work, approximately 10% of her time on legal and policy research and attending trainings, and approximately 12% of her time communicating with stakeholders.

II. Ongoing Projects & Community Consultations

Collateral Consequences

Emily continued exploring the structural barriers that justice-involved individuals confront when seeking employment. In particular, she investigated issues identified by stakeholders during her consultations and submitted Public Records Requests to allow her to assess the scope of one of the identified problems. She continued to research other states' initiatives to reduce barriers and limit employers' use of criminal records when making employment decisions. She also consulted with stakeholders at the following organizations in Vermont:

- Barre Community Justice Center
- Vermonters for Criminal Justice Reform
- Vermont Department of Corrections
- Prisoners' Rights Office
- Lamoille Restorative Center

Community Consultations & Presentations

To deepen her understanding of the issues facing low-wage workers more broadly in Vermont, and to increase awareness of her services, Emily met with stakeholders in the following locations:

- United Way of Lamoille County
- Vermont NEA

She created outreach materials for community partners. She presented about her services to Creative Workforce Solutions, a group of service providers focused on workforce development. She continues to attend the group's monthly meetings to learn more about evolving issues on the ground.

Emily also spoke to a class of undergraduate students at Champlain College about employees' rights and her fellowship experience.

Unemployment Insurance Benefits

Emily continues to work with colleagues at Vermont Legal Aid to research methods to improve the administration of unemployment benefits in Vermont. She also attended monthly meetings with legal service organizations around the country to discuss their efforts to protect claimants' rights in their respective states.

Participation in Trainings and Events

Emily attended the Vermont Association for Justice's Annual Conference. She attended several trainings, including trainings on implicit bias and harassment, and a webinar about fair chance licensing reforms enacted in several states.

Out-of-State Consultations

Emily continues to meet with legal services organizations in other states. During the third quarter, she met with an attorney at Rhode Island Legal Services to discuss her work. She also remains engaged with Maryland Legal Aid through an active listserv.

III. Legal Assistance & Representation

Statistics: During the second quarter, Emily worked as counsel for 35 clients, and co-counsel for 2 clients, providing advice, advocacy, or representation. 16 of the 37 cases were opened this quarter.

Issue	No. of 3rd Qtr. Cases
Unemployment	14
Wage & Hour	7
Fair Housing Rights (non-eviction cases)	1
Expungement	8
Employment Discrimination	7
Total	37

County	No. of 3rd Qtr. Cases
ADDISON	1
BENNINGTON	3
CALEDONIA	0
CHITTENDEN	13
ESSEX	0
FRANKLIN	1
GRAND ISLE	0
LAMOILLE	2
ORANGE	0
ORLEANS	3
RUTLAND	4
WASHINGTON	4
WINDHAM	3
WINDSOR	3
Total	37

Case Snapshot

Robert (pseudonym) was very excited when he was hired as a car salesman after he graduated from high school. His excitement was quickly extinguished once he started work—his boss ridiculed and belittled him daily. Due to the nature of the work, Robert could not avoid this harassment; he had to work with his boss to finalize each car sale. His boss routinely swore at Robert, told him that he was worthless, and implied that Robert had an intellectual disability. At one point, he intimated that Robert should take his own life. Robert brought the issue to management’s attention with the hope of remedying the problem, but this approach backfired and the mistreatment worsened.

At the same time, Robert’s employer stopped insuring him to drive its vehicles. As a result, he could not drive vehicles off the car lot and had to enlist co-workers to help him with the aspects of the sale that required driving the company’s vehicles. He often spent hours waiting for a co-worker to have the time to help him. This greatly hindered his ability to sell cars and, therefore, earn a living. Robert tried to explore the issue with management, but the company was unable to explain why it could no longer insure him or if the issue would ever be remedied.

Faced with limited earnings prospects and relentless verbal abuse, Robert felt he had no choice but to leave his job. After enduring months of verbal harassment, his self-esteem had plummeted. He knew he had to leave before his mental health deteriorated any further. He began taking college classes and looking for another job. In the interim, he sold his belongings to earn money.

Unable to find another job during the pandemic, Robert applied for and received unemployment benefits. After he had been receiving benefits for several months, the Department of Labor

informed Robert that he was ineligible to receive benefits because he “voluntarily quit” his job. It determined that he was required to repay over \$12,000 in benefits and penalties. Robert timely appealed this determination, but the Department of Labor took approximately six months to schedule Robert’s appeal hearing—a clear violation of its statutory mandate to hear appeals within thirty days after the appeal is filed. 21 V.S.A. § 1348(a). During those months, Robert worried constantly about how he would repay the Department of Labor. He found “as needed” sporadic employment, but he struggled to pay his bills without a steady paycheck.

Emily represented Robert at his appeal hearing before an Administrative Law Judge (“ALJ”) and argued that Robert was eligible to receive unemployment benefits because he had good cause to leave his employment due to his boss’s mistreatment of him and the company’s failure to insure him. The employer conceded that Robert’s boss was later fired for mistreating employees. Robert’s testimony, combined with the employer’s admission, convinced the ALJ that Robert had good cause to leave his employment due to his reduced earnings and the constant harassment he endured. Accordingly, she reversed the claim adjudicator’s determination and held that Robert was not required to repay any benefits because he was eligible to receive benefits. Robert has since found new employment and can move forward with his life without being saddled with over \$12,000 in debt.

IV. Take-Aways and Anticipated Work for Next Quarter

Over the last three quarters, among other things, Emily has identified a need for stronger legal protections for employees and meaningful mechanisms to enforce those rights, as well as increased education about existing rights.

Over the next quarter, Emily will continue focusing primarily on casework. She believes that on-the-ground experience with clients is the best way to identify problems and develop meaningful solutions. She will continue to try to identify new intake streams and community partners.

Emily also plans to conduct Know Your Rights trainings for employees and case managers. Emily hopes that these trainings will help employees navigate complicated situations at work and assert their rights. These trainings will also increase awareness about her services.

Finally, Emily will continue to explore methods to remove barriers to employment for justice-involved individuals. She also plans to continue conducting factual and legal research into the areas of Vermont state law that could be strengthened to provide greater protection to employees.