

VERMONT LEGAL AID, INC.

POVERTY LAW PROJECT

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VERMONT POVERTY LAW FELLOWSHIP: EMPLOYMENT LAW FOURTH QUARTER REPORT

July 1, 2021 – September 30, 2021

I. Introduction

Emily Kenyon's fellowship focuses on the legal problems encountered by low-wage workers. This quarter, Emily continued to focus on casework with the hope of deepening her understanding of the issues. Her case work spans several areas of employment law, including wage and hour, employment discrimination, unemployment insurance benefits, and expungement/sealing of criminal records. She spent approximately 70% of her time on individual case work, approximately 15% of her time on legal and policy research and attending trainings, and approximately 15% 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 spoke with several employees at the Vermont Department of Corrections and the Division of Vocational Rehabilitation to hear their perspectives about the biggest barriers to employment for individuals upon their release from custody. Additionally, Emily spoke with staff at the Department of Corrections and the Burlington House Authority's Offender Re-Entry Program about one of the issues identified by stakeholders during her consultations.

To increase her understanding of other states' efforts to reduce employers' reliance on criminal records when making hiring decisions, Emily spoke with advocates around the country at the following organizations:

- Legal Action Center
- National Employment Law Project
- Legal Assistance of Western New York
- The Legal Aid Society

Community Consultations & Presentations

Emily presented about her services to a team of employees at the Vermont Association of Business Industry and Rehabilitation. She continues to attend monthly meetings hosted by Creative Workforce Solutions to hear about employment issues from job counselors.

She provided feedback about the legal aspects of an employment discrimination presentation. She also met with the new Community Outreach and Resource Planning Specialist at the U.S Department of Labor’s Wage & Hour Division to discuss the Department’s outreach efforts and complaint process.

Unemployment Insurance Benefits

Emily continues to work with colleagues at Vermont Legal Aid to improve the administration of unemployment benefits in Vermont. She attended meetings with the Vermont Department of Labor (“VDOL”) to discuss the problems and the VDOL’s efforts to remedy the situation. She also spent a lot of time researching mechanisms to remedy the issues with our unemployment benefit system.

She continues to attend 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 “Essential Workers, Essential Protections” training provided by the U.S. Department of Labor. This training explained how the Fair Labor Standards Act protects restaurant workers and how the Wage & Hour Division can help workers enforce those rights. Emily also attended numerous CLEs, including CLEs about mental health, civil practice, and employment discrimination law post-*Bostock*.

III. Legal Assistance & Representation

Statistics: During the fourth quarter, Emily worked as counsel for 40 clients, and co-counsel for 2 clients, providing advice, advocacy, or representation. 23 of the 40 cases were opened this quarter.

Issue	No. of 4th Qtr. Cases
Unemployment	16
Wage & Hour	6
Fair Housing Rights (non-eviction cases)	1
Expungement	10
Employment Discrimination	7
Total	40

County	No. of 3rd Qtr. Cases
ADDISON	3
BENNINGTON	2
CALEDONIA	1
CHITTENDEN	11
ESSEX	0
FRANKLIN	4
GRAND ISLE	0
LAMOILLE	2
ORANGE	0
ORLEANS	2
RUTLAND	5
WASHINGTON	2
WINDHAM	4
WINDSOR	4
Total	40

Case Snapshot

Jim was hired to work as a home health care worker. He loved his job and spending time with his client. After several weeks of unpaid work, he began to question why he had not been paid for his time. At first Jim believed his employer's explanation—there was an issue with the hiring paperwork that would be resolved soon. Jim continued to work without pay because he cared deeply about his client and believed that the problem would be remedied. After several more weeks, Jim again asked his employer about why he had not been paid. The employer was evasive but promised it would be fixed soon. Jim continued to call, text, and email his employer to try to resolve the situation. Each time his employer had a different excuse. Eventually his employer stopped responding to all forms of communication and the employment relationship ended.

At that point, Jim contacted the other entities involved in the home health care arrangement, but his efforts were to no avail. Each entity pushed the blame onto the other entities involved. Without this income, Jim fell behind on rent. He was able to find another job but the stress of worrying about his finances took its toll on his mental health.

Fed up, Jim contacted Legal Aid. Once Emily got involved the situation was quickly resolved and Jim was paid. This case is presented as an example of a recurring problem that Emily sees—home health care workers are often unpaid and cannot get to the bottom of the problem on their own.

IV. Take-Aways and Anticipated Work for Next Quarter

Over the last four quarters, different re-occurring problems have emerged from each area of Emily's case work. Broadly speaking, Emily has identified a need for greater legal protections for employees, increased enforcement of those rights, and education for employers and employees about employment law.

In her expungement work, Emily frequently sees that past mistakes prevent people from becoming gainfully employed. These are usually aberrational mistakes that occurred during a difficult period in someone's life and have no bearing on their ability to perform the job duties. Employers are extremely reluctant to hire individuals with criminal records. We need to educate employers, while also creating policies that incentivize employers to hire people with criminal records and reduce employers' reliance on criminal records as a proxy for a person's ability to perform a job.

In her wage and hour cases, Emily sees that employers often fail to issue a final paycheck. Low-wage workers struggle to find an attorney as the cost of recovering the wages often outweighs the value of the unpaid wages. However, one missed paycheck can completely upend a person's life if they are living paycheck to paycheck. Without that paycheck, people struggle to stay housed and feed their families. It is also difficult for individuals to find another job as they lack the funds to cover the expenses associated with the travel required to conduct a job search in a remote state.

Finally, Emily sees that the unemployment compensation benefit system in Vermont has failed countless unemployed workers during the pandemic. Unemployed workers have experienced substantial difficulties and delays receiving benefits. If a claimant hasn't received an appealable determination, his/her/their only recourse is to call the Claimant Assistance Line where he/she/they frequently receive contradictory information or are told to be patient. If they have received an appealable determination, and filed a timely appeal, he/she/they will have to wait approximately six months for the appeal to be heard and benefits are suspended during the pendency of the appeal.

Over the next quarter, Emily plans to continue her casework while also devoting substantial time to researching mechanisms to improve one or more of the identified issues. Emily would also like to conduct Know Your Rights trainings for employees and case managers. This has proven difficult during the pandemic, but Emily continues to try to arrange for these trainings.