

VERMONT LEGAL AID, INC.

POVERTY LAW PROJECT

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VERMONT POVERTY LAW FELLOWSHIP: EMPLOYMENT LAW FIFTH QUARTER REPORT

October 1, 2021 – December 31, 2021

I. Introduction

Emily Kenyon's fellowship focuses on the legal problems encountered by low-wage workers. This quarter, Emily focused on her case work and her reform project. 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 40% of her time on individual case work, 45% of her time on her reform project, 5% of her time on research and training, and 10% of her time conducting outreach and communicating with stakeholders. Emily's work was highlighted in Seven Days in December 2021.

II. Reform Project

In early December 2021, Vermont Legal Aid, Inc., ("VLA"), filed a class action lawsuit against the Vermont Department of Labor ("VDOL") alleging that delays in hearing unemployment benefit appeals violates Vermont state law and claimants' due process rights. Along with its complaint, VLA filed a motion for a preliminary injunction and a motion for class certification with accompanying memoranda of law in support. Emily was one of the principal drafters of those documents.

Emily, and VLA, chose to focus on this issue because it has been a persistent problem for VLA's clients for over a year. The purpose of our unemployment benefit system is to provide a quick short-term wage replacement to unemployed workers to keep them afloat until they find new jobs. As a result, Vermont law requires the VDOL to hear appeals from decisions of claims adjudicators, also known as "First Level Appeals," within thirty days from the date the appeal is filed. The VDOL has largely failed to comply with that statutory deadline for over a year. As of the date the lawsuit was filed, there were approximately 600 claimants who had been waiting five or six months for their First Level Appeals to be heard. Claimants cannot access benefits unless and until the First Level Appeal is resolved in their favor. This means that many claimants spend months without access to an income stream to which they may be entitled. After months of trying to solve the problem informally, VLA decided that it was time to seek court intervention. VLA filed a complaint on behalf of anyone who applied for unemployment compensation benefits after March 1, 2020, filed a timely appeal of an adverse eligibility determination, did not have a First Level Appeal hearing within thirty days, and is still awaiting a hearing and final decision. After holding a remote hearing, the court directed the parties to discuss interim relief

and issued a scheduling order. The motions for a preliminary injunction and class certification are now fully briefed. The parties are discussing interim relief.

The case received significant publicity with stories in VTDigger, the Burlington Free Press, and the Times Argus.

III. Legal Assistance & Representation

Statistics: During the fifth quarter, Emily worked as counsel 38 for clients, and co-counsel for 2 clients, providing advice, advocacy, or representation. 15 of the 40 cases were opened this quarter.

Issue	No. of 5th Qtr. Cases
Unemployment	19
Wage & Hour	4
Fair Housing Rights (non-eviction cases)	1
Expungement	10
Employment Discrimination	6
Total	40

County	No. of 5th Qtr. Cases
ADDISON	1
BENNINGTON	1
CALEDONIA	0
CHITTENDEN	17
ESSEX	0
FRANKLIN	3
GRAND ISLE	0
LAMOILLE	1
ORANGE	0
ORLEANS	5
RUTLAND	5
WASHINGTON	3
WINDHAM	3
WINDSOR	1
Total	40

Case Snapshot

Bob (pseudonym) was a parent to four young children and worked full-time from home. To do so, he relied on a local daycare and his family to care for his children while he worked. Slowly

over time, he lost his childcare providers as a result of the Covid-19 pandemic. The local daycare closed temporarily and then permanently because of the pandemic. His family members lost flexibility due to changes in their work hours because of Covid-19. The stress of trying to work while simultaneously trying to parent four young children started to wear on his mental health.

Eventually he had to leave his job because he couldn't work and care for his children at the same time. He applied for unemployment benefits and was denied. Believing he was eligible under Act 91, he filed an appeal and called Legal Aid. He waited six months for his appeal to be heard. The judge ruled in his favor and held that he was eligible to receive benefits under Act 91 because he left to care for his children whose other childcare providers were not available due to Covid-19. Although he ultimately received back benefits for the months he spent waiting for his appeal to be heard, this did not erase the hardship he experienced during the months he did not have access to the benefits to which he was entitled. If VDOL had complied with its statutory obligation to hear appeals within thirty days from the date the appeal was filed, Bob would not have had to struggle to survive for months while his appeal was pending.

Emily, and other attorneys at VLA, frequently see clients like Bob who are struggling to manage their work responsibilities while caring for their children because access to childcare has been so limited during the Covid-19 pandemic.

IV. Take-Aways and Anticipated Work for Next Quarter

Over the next quarter, Emily plans to continue her individual casework as well as focusing on her reform project. Emily is also brainstorming methods to memorialize the knowledge she has accumulated since starting the fellowship and other mechanisms to alleviate some of the issues that she has identified.