

VERMONT LEGAL AID, INC.

POVERTY LAW PROJECT

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VERMONT POVERTY LAW FELLOWSHIP: EMPLOYMENT LAW SEVENTH QUARTER REPORT

April 1, 2022 – June 30, 2022

I. Introduction

Emily Kenyon’s fellowship focuses on the legal issues low-wage workers encounter at work. This quarter, Emily focused primarily on her case work. 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 80% of her time on individual case work, 10% of her time on reform projects, and 10% of her time conducting outreach and communicating with stakeholders.

II. Reform Project

As previously reported, 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. In the middle of February 2022, VLA and VDOL entered into an interim settlement agreement in which VDOL agreed to use best efforts to incrementally increase the number of First Level Appeals heard each week on a monthly basis. It projected that it would return to scheduling First Level Appeals to occur within thirty days from the date of appeal by May 1, 2022. VDOL also agreed to provide VLA with weekly data reports to allow VLA to monitor VDOL’s progress towards achieving the performance standards set out in the interim agreement.

VDOL has made great progress. On average, it issued approximately twenty additional decisions per week from February 2022 until May 2022 than in the previous four-month period. As of the week ending May 27, 2022, VDOL reported that there were 121 First Level Appeals that had been filed more than 30 days prior and had not been heard. 120 of those had been scheduled for a hearing.

On June 15, 2022, the parties filed an extended stipulated temporary order. It provides that VDOL will continue to share information about its performance with VLA for another sixty days. If VDOL’s progress towards meeting the performance standards laid out in the stipulated temporary order continues at the same rate, the parties anticipate that the matter will be dismissed at the end of the 60-day extension.

III. Other Projects

Criminal Record Clearance

Throughout her time as the fellow, Emily has helped many clients expunge or seal their criminal records to increase employment opportunities. Through that work, Emily has seen that expanding access to record clearance supports workforce development by reducing barriers to employment. H.534 was introduced in the Vermont State House this year. VLA supports legislation that expands opportunities for record clearance and Emily monitored H.534's progress in the legislature. As initially proposed, it expanded the list of crimes that are eligible for record clearance, reduced the amount of a time a person must wait to petition to seal certain records, and moved to a "one-track" system of sealing, among other things. The House and Senate passed a modified version of the original bill. Most notably, it expanded the list of crimes that are eligible for expungement. Governor Scott vetoed the bill on May 19, 2022.

Unemployment Insurance

Emily continues to work on other projects to improve the administration of unemployment compensation benefits in Vermont. For example, Emily and a team of Vermont Legal Aid attorneys urged the Vermont Department of Labor to utilize all available mechanisms to waive repayment of non-fraudulent overpayment of unemployment benefits, including exercising its discretion to do so as specified in Unemployment Insurance Program Letter No. 20-21. The team met with the Vermont Department of Labor in the seventh quarter to discuss this issue.

IV. Legal Assistance & Representation

Statistics: During the seventh quarter, Emily worked as counsel for 24 clients, and co-counsel for 1 client, providing advice, advocacy, or representation.

Issue	No. of 7th Qtr. Cases
Unemployment	9
Wage & Hour	2
Fair Housing Rights (non-eviction cases)	1
Expungement	11
Employment Discrimination	2
Total	25

County	No. of 7th Qtr. Cases
ADDISON	1
BENNINGTON	0
CALEDONIA	1
CHITTENDEN	10
ESSEX	1

FRANKLIN	0
GRAND ISLE	0
LAMOILLE	3
ORANGE	0
ORLEANS	4
RUTLAND	0
WASHINGTON	1
WINDHAM	3
WINDSOR	1
Total	25

V. Take-Aways and Anticipated Work for Next Quarter

Over the next quarter, Emily plans to wrap up her individual casework, assist colleagues with their case work, and memorialize the knowledge she accumulated over the past two years.