

# VERMONT LEGAL AID, INC.

## POVERTY LAW PROJECT

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## VERMONT POVERTY LAW FELLOWSHIP: EMPLOYMENT LAW SIXTH QUARTER REPORT

January 1, 2022 – March 31, 2022

### I. Introduction

Emily Kenyon’s fellowship focuses on the legal issues low-wage workers encounter at work. 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 74% of her time on individual case work, 18% of her time on reform projects, and 8% of her time conducting outreach and communicating with stakeholders.

### 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, focused on this issue because it was a persistent problem for VLA’s clients for over a year. In April of 2020, the unemployment rate in Vermont jumped to 14.7% from 2.7% the previous month. The number of calls VLA and its sister organization Legal Services Vermont received regarding unemployment benefits increased from 5 in March of 2020 to more than 120 in June of 2020.

The purpose of the 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 “First Level Appeals” within thirty days from the date the appeal is filed. For over a year the VDOL failed to comply with this statutory deadline in a large number of cases. 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.

The delays effectively denied claimants access to any unemployment benefits for up to half a year. The First Level Appeal is the claimant’s first opportunity to correct an adverse eligibility determination and unlock vital benefits. Due to the delays, claimants who were deemed ineligible at the time of their initial application spent five to six months without access to an income stream to which they may have been entitled. As one client said,

What the Department of Labor doesn't seem to understand is that some promise of receiving any benefits I am due in the future does not pay my rent or other bills right now. Getting a lump sum of benefits I was owed six months after I appeal is not that helpful if I am already homeless by the time I receive the benefits.

Similarly, due to the delays, claimants who were deemed ineligible after they already received benefits were forced to wait five to six months to fight this determination. This meant claimants spent months worrying about whether they would be required to repay thousands or tens of thousands of dollars in benefits that they used to survive during the pandemic. VLA's clients frequently obtain positive outcomes at their First Level Appeal hearings, but even a successful appeal cannot erase the impact that the stressful months spent waiting for the appeal to be heard had on a claimant's mental health.

After months of trying to solve the problem by meeting with the VDOL, VLA decided to seek court intervention. VLA filed a complaint on behalf of a class of Vermonters who applied for unemployment compensation benefits after March 1, 2020, who filed timely appeals of adverse eligibility determinations, who did not have their First Level Appeal hearings within thirty days, and who were still awaiting a hearing and final decision.

On December 9, 2021, the Court held a remote hearing. It directed the parties to discuss interim relief and issued a scheduling order. On December 20, 2021, VDOL filed its opposition to the motions for class certification and for a preliminary injunction. On December 30, 2021, VLA filed its reply memoranda in further support of its motions for class certification and for a preliminary injunction.

VLA and VDOL began discussing interim relief shortly thereafter. VDOL immediately began taking steps to reduce the backlog. By February 4, 2022, the number of First Level Appeals that had been pending for more than thirty days had been reduced by over 50%. 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.

### **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. 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 an "one-track" system of sealing,

among other things. VLA supports legislation that expands opportunities for record clearance and Emily is monitoring H.534’s progress in the legislature.

**Unemployment Insurance**

Emily continues to work on other projects to improve the administration of unemployment compensation benefits in Vermont.

**Labor and Employment Section Subcommittee**

In January, Steve Ellis, chair of the Labor and Employment Section of the Vermont Bar Association, created a subcommittee of the Labor and Employment Section to examine H.667. H.667 was introduced in the Vermont State House in January 2022. As introduced, H.667 restricted the use of non-competition, confidentiality, non-solicitation, and other clauses in employment agreements. Steve appointed Emily and several employment law practitioners to serve on the Subcommittee. The Subcommittee met several times and produced a report that summarized H.667’s provisions, discussed existing common law, and compiled comments about the proposed legislation from members of the Vermont bar.

**Speaking Engagements**

On March 25, 2022, Emily attended the VBA’s Mid-Year Meeting. She spoke at the Business Meeting about her fellowship, including the lawsuit against VDOL and her expungement work.

**IV. Legal Assistance & Representation**

**Statistics:** During the sixth quarter, Emily worked as counsel for 33 clients, and co-counsel for two clients, providing advice, advocacy, or representation. Nine of the cases were opened this quarter.

<b>Issue</b>	<b>No. of 6th Qtr. Cases</b>
Unemployment	19
Wage & Hour	2
Fair Housing Rights (non-eviction cases)	2
Expungement	8
Employment Discrimination	2
Misc.	2
<b>Total</b>	<b>35</b>

<b>County</b>	<b>No. of 6th Qtr. Cases</b>
ADDISON	4
BENNINGTON	1
CALEDONIA	1
CHITTENDEN	14

ESSEX	1
FRANKLIN	1
GRAND ISLE	0
LAMOILLE	2
ORANGE	0
ORLEANS	4
RUTLAND	2
WASHINGTON	1
WINDHAM	4
WINDSOR	0
<b>Total</b>	<b>35</b>

**V. Take-Aways and Anticipated Work for Next Quarter**

Over the next quarter, Emily plans to continue to focus on her individual casework and reform projects.