

SENATE PROPOSAL OF AMENDMENT

H. 187

An act relating to absence from work for health care and safety

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds:

(1) According to the Vermont Department of Labor's 2013 Fringe Benefits Study, roughly one-half of all private sector employers provide some form of paid leave to their employees.

(2) Based on information provided by the 2013 Fringe Benefits Study, it is estimated that slightly less than 50 percent of private sector workers employed by companies with fewer than 20 workers have access to paid leave, while approximately 78 percent of workers employed by larger companies have access to paid leave time.

(3) Based on information provided by the 2013 Fringe Benefits Study, it is estimated that more than 60,000 working Vermonters lack access to paid leave.

Sec. 2. PURPOSE

(a) The purpose of this act is to promote a healthier environment at work, school, and in public by ensuring that employees are provided with paid leave time for purposes of health care and safety.

(b) It is the intent of the General Assembly that:

(1) all employers doing business in or operating in the State of Vermont shall be required to provide earned sick time to their employees as provided by this act; and

(2) all employers that currently offer any type of paid time off from work that may, at a minimum, be used by the employer's employees in the amounts and for the purposes required pursuant to this act shall not be required to change their paid time off policy or offer additional paid leave.

Sec. 3. 21 V.S.A. § 384 is amended to read:

§ 384. EMPLOYMENT; WAGES

* * *

(d) For the purposes of earned sick time, an employer shall comply with the provisions required under subchapter 4B of this chapter.

Sec. 4. 21 V.S.A. chapter 5, subchapter 4B is added to read:

Subchapter 4B. Earned Sick Time

§ 481. DEFINITIONS

As used in this subchapter:

(1) “Employer” means any individual, organization, or governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within this State.

(2) “Combined time off” means a policy wherein the employer provides time off from work for vacation, sickness, or personal reasons, and the employee has the option to use all of the leave for whatever purpose he or she chooses.

(3) “Commissioner” means the Commissioner of Labor.

(4) “Earned sick time” means discretionary time earned and accrued under the provisions of this subchapter and used by an employee to take time off from work for the purposes listed in subdivisions 483(a)(1)–(5) of this subchapter.

(5) “Employee” means a person who, in consideration of direct or indirect gain or profit, is employed by an employer for an average of no less than 18 hours per week during a year. However, the term “employee” shall not include:

(A) An individual who is employed by the federal government.

(B) An individual who is employed by an employer:

(i) for 20 weeks or fewer in a 12-month period; and

(ii) in a job scheduled to last 20 weeks or fewer.

(C) An individual that is employed by the State and is exempt or excluded from the State classified service pursuant to 3 V.S.A. § 311, but not an individual that is employed by the State in a temporary capacity pursuant to 3 V.S.A. § 331.

(D) An employee of a health care facility as defined in 18 V.S.A. § 9432(8) or a facility as defined in 33 V.S.A. § 7102(2) if the employee only works on a per diem or intermittent basis.

(E) An employee of a school district, supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that:

(i) is employed pursuant to a school district or supervisory union policy on substitute educators as required by the Vermont Standards Board for Professional Educators Rule 5381;

(ii) is under no obligation to work a regular schedule; and

(iii) is not under contract or written agreement to provide at least one period of long-term substitute coverage which is defined as 30 or more consecutive school days in the same assignment.

(F) An individual who is under 18 years of age.

(G) An individual that is either:

(i) a sole proprietor or partner owner of an unincorporated business who is excluded from the provisions of chapter 9 of this title pursuant to subdivision 601(14)(F) of this title; or

(ii) an executive officer, manager, or member of a corporation or a limited liability company for whom the Commissioner has approved an exclusion from the provisions of chapter 9 of this title pursuant to subdivision 601(14)(H) of this title.

(H) An individual that:

(i) works on a per diem or intermittent basis;

(ii) works only when he or she indicates that he or she is available to work;

(iii) is under no obligation to work for the employer offering the work; and

(iv) has no expectation of continuing employment with the employer.

(6) "Paid time off policy" means any policy under which the employer provides paid time off from work to the employee that includes a combination of one or more of the following:

(A) annual leave;

(B) combined time off;

(C) vacation leave;

(D) personal leave;

(E) sick leave; or

(F) any similar type of leave.

§ 482. EARNED SICK TIME

(a) An employee shall accrue not less than one hour of earned sick time for every 52 hours worked.

(b) An employer may require a waiting period for newly hired employees of up to one year. During this waiting period, an employee shall accrue earned sick time pursuant to this subchapter, but shall not be permitted to use the earned sick time until after he or she has completed the waiting period.

(c) An employer may:

(1) limit the amount of earned sick time accrued pursuant to this section to:

(A) from January 1, 2017 until December 31, 2018, a maximum of 24 hours in a 12-month period; and

(B) after December 31, 2018, a maximum of 40 hours in a 12-month period; or

(2) limit to 40 hours the number of hours in each workweek for which full-time employees not subject to the overtime provisions of the Federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), may accrue earned sick time pursuant to this section.

(d)(1) Earned sick time shall be compensated at a rate that is equal to the greater of either:

(A) the normal hourly wage rate of the employee; or

(B) the minimum wage rate for an employee pursuant to section 384 of this title.

(2) Group insurance benefits shall continue during an employee's use of earned sick time at the same level and conditions that coverage would be provided as for normal work hours. The employer may require that the employee contribute to the cost of the benefits during the use of earned sick time at the existing rate of employee contribution.

(e) Except as otherwise provided by subsection 484(a) of this subchapter, an employer shall calculate the amount of earned sick time that an employee has accrued pursuant to this section:

(1) as it accrues during each pay period; or

(2) on a quarterly basis, provided that an employee may use earned sick time as he or she accrues it during each quarter.

§ 483. USE OF EARNED SICK TIME

(a) An employee may use earned sick time accrued pursuant to section 482 of this subchapter for any of the following reasons:

(1) The employee is ill or injured.

(2) The employee obtains professional diagnostic, preventive, routine, or therapeutic health care.

(3) The employee cares for a sick or injured parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, including helping that individual obtain diagnostic, preventive, routine, or therapeutic

health treatment, or accompanying the employee's parent, grandparent, spouse, or parent-in-law to an appointment related to his or her long-term care.

(4) The employee is arranging for social or legal services or obtaining medical care or counseling for the employee or for the employee's parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, who is a victim of domestic violence, sexual assault, or stalking or who is relocating as the result of domestic violence, sexual assault, or stalking. As used in this section, "domestic violence," "sexual assault," and "stalking" shall have the same meanings as in 15 V.S.A. § 1151.

(5) The employee cares for a parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, because the school or business where that individual is normally located during the employee's workday is closed for public health or safety reasons.

(b) If an employee's absence is shorter than a normal workday, the employee shall use earned sick time accrued pursuant to section 482 of this subchapter in the smallest time increments that the employer's payroll system uses to account for other absences or that the employer's paid time off policy permits. Nothing in this subsection shall be construed to require an employer to permit an employee to use earned sick time in increments that are shorter than one hour.

(c) An employer may limit the amount of earned sick time accrued pursuant to section 482 of this subchapter that an employee may use to:

(1) from January 1, 2017 until December 31, 2018, no more than 24 hours in a 12-month period; and

(2) after December 31, 2018, no more than 40 hours in a 12-month period.

(d)(1) Except as otherwise provided in subsection 484(a) of this subchapter, earned sick time that remains unused at the end of an annual period shall be carried over to the next annual period and the employee shall continue to accrue earned sick time as provided pursuant to section 482 of this subchapter. However, nothing in this subdivision shall be construed to permit an employee to use more earned sick time during an annual period than any limit on the use of earned sick time that is established by his or her employer pursuant to subsection (c) of this section.

(2) If, at an employer's discretion, an employer pays an employee for unused earned sick time accrued pursuant to section 482 of this subchapter at the end of an annual period, then the amount for which the employee was compensated does not carry over to the next annual period.

(e) Upon separation from employment, an employee shall not be entitled to payment for unused earned sick time accrued pursuant to section 482 of this subchapter unless agreed upon by the employer.

(f)(1) An employee who is discharged by his or her employer after he or she has completed a waiting period required pursuant to subsection 482(b) of this subchapter and is subsequently rehired by the same employer within 12 months after the discharge from employment shall begin to accrue and may use earned sick time without a waiting period. However, the employee shall not be entitled to retain any earned sick time that accrued before the time of his or her discharge unless agreed to by the employer.

(2) An employee that voluntarily separates from employment after he or she has completed a waiting period required pursuant to subsection 482(b) of this subchapter and is subsequently rehired by the same employer within 12 months after the separation from employment shall not be entitled to accrue and use earned sick time without a waiting period unless agreed to by the employer.

(g) An employer shall not require an employee to find a replacement for absences, including absences for professional diagnostic, preventive, routine, or therapeutic health care.

(h) An employer may require an employee planning to take earned sick time accrued pursuant to section 482 of this subchapter to:

(1) make reasonable efforts to avoid scheduling routine or preventive health care during regular work hours; or

(2) notify the employer as soon as practicable of the intent to take earned sick time accrued pursuant to section 482 of this subchapter and the expected duration of the employee's absence.

(i)(1) If an employee is absent from work for one of the reasons listed in subsection (a) of this section, the employee shall not be required to use earned sick time accrued pursuant to section 482 of this subchapter and the employer will not be required to pay for the time that the employee was absent if the employer and the employee mutually agree that either:

(A) the employee will work an equivalent number of hours as the number of hours for which the employee is absent during the same pay period; or

(B) the employee will trade hours with a second employee so that the second employee works during the hours for which the employee is absent and the employee works an equivalent number of hours in place of the second employee during the same pay period.

(2) Nothing in this subsection shall be construed to prevent an employer from adopting a policy that requires an employee to use earned sick time

accrued pursuant to section 482 of this subchapter for an absence from work for one of the reasons set forth in subsection (a) of this section.

(j) An employer shall post notice of the provisions of this section in a form provided by the Commissioner in a place conspicuous to employees at the employer's place of business. An employer shall also notify an employee of the provisions of this section at the time of the employee's hiring.

(k) An employee who uses earned sick time accrued pursuant to section 482 of this subchapter shall not diminish his or her rights under sections 472 and 472a of this title.

(l) The provisions against retaliation set forth in section 397 of this title shall apply to this subchapter.

(m) An employer who violates this subchapter shall be subject to the penalty provisions of section 345 of this title.

(n) The Commissioner shall enforce this subchapter in accordance with the procedures established in section 342a of this title. However, the appeal provision of subsection 342a(f) shall not apply to any enforcement action brought pursuant to this subsection.

§ 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT

(a) An employer shall be in compliance with this subchapter if either of the following occurs:

(1) The employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with paid time off from work that:

(A) he or she may use for all of the reasons set forth in subsection 483(a) of this subchapter; and

(B) accrues and may be used at a rate that is equal to or greater than the rate set forth in sections 482 and 483 of this subchapter.

(2) The employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with at least the full amount of paid time off from work required pursuant to sections 482 and 483 of this subchapter at the beginning of each annual period and the employee may use it at any time during the annual period for the reasons set forth in subsection 483(a) of this subchapter. If the employer provides an employee with the full amount of paid time off at the beginning of each annual period, the paid time off shall not carry over from one annual period to the next as provided in subdivision 483(d)(1) of this subchapter.

(b) Nothing in this subchapter shall be construed to require an employer that satisfies the requirements of subsection (a) of this section to provide additional earned sick time to an employee that chooses to use paid time off

that could be used for the reasons set forth in subdivisions 483(a)(1)–(5) of this subchapter for a different purpose.

(c) Nothing in this subchapter shall be construed to prevent an employer from providing a paid time off policy or agreeing to a collective bargaining agreement that provides a paid time off policy that is more generous than the earned sick time provided by this subchapter.

(d)(1) Nothing in this subchapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or paid time off policy that provides greater earned sick time rights than the rights provided by this subchapter.

(2) Nothing in this subchapter shall be construed to preempt or override the terms of a collective bargaining agreement that is in effect before January 1, 2017.

(e) A collective bargaining agreement or paid time off policy may not diminish the rights provided by this subchapter.

§ 485. SEVERABILITY OF PROVISIONS

If any provision of this subchapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the subchapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

§ 486. NEW EMPLOYER EXEMPTION

(a) Notwithstanding any provision of this subchapter to the contrary, new employers shall not be subject to the provisions of this subchapter for a period of one year after the employer hires its first employee.

(b) For purposes of enforcement under subsections 483(l)–(n) of this subchapter, an employer shall be presumed to be subject to the provisions of this subchapter unless the employer proves that a period of no more than one year elapsed between the date on which the employer hired its first employee and the date on which the employer is alleged to have violated the provisions of this subchapter.

(c) No employer shall transfer an employee to a second employer with whom there is, at the time of the transfer, substantially common ownership, management, or control for the purposes of either employer claiming an exemption pursuant to subsection (a) of this section.

Sec. 5. 21 V.S.A. § 345 is amended to read:

§ 345. NONPAYMENT OF WAGES AND BENEFITS

(a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and 483 of this title shall be fined not more than \$5,000.00. Where the employer is

a corporation, the president or other officers who have control of the payment operations of the corporation shall be considered employers and liable to the employee for actual wages due when the officer has willfully and without good cause participated in knowing violations of this chapter.

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Sec. 6. DEPARTMENT OF LABOR REPORT

The Department of Labor shall, on or before January 15, 2019, report to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the number of inquiries and complaints submitted to the Department in relation to this act and the number of investigations and enforcement actions undertaken by the Department in relation to this act during the first two years after its effective date.

Sec. 6a. SMALL BUSINESS PLANNING AND IMPLEMENTATION ASSISTANCE

On or before November 15, 2017, the Commissioner of Labor and the Secretary of Commerce and Community Development shall develop and implement a program to provide employers that have five or fewer employees who are employed for an average of no less than 30 hours per week during a year with assistance related to the development of time off policies and business plans necessary to implement the requirements of this act.

Sec. 6b. COST TO SMALL EMPLOYERS; SURVEY; REPORT

(a) The Department of Labor and the Agency of Commerce and Community Development shall conduct a survey of Vermont employers with five or fewer employees regarding the following:

- (1) the number of employees employed by each employer;
- (2) the hourly wages paid by each employer to its employees; and

(3) whether each employer provides its employees with paid time off from work that satisfies the requirements of 21 V.S.A. § 482-484 as enacted pursuant to Sec. 4 of this act.

(b) The Department of Labor and the Agency of Commerce and Community Development shall, on or before January 15, 2017, report to the General Assembly regarding the results of the survey and an estimate of the total additional cost to employers with five or fewer employees of providing earned sick time pursuant to the requirements of this act.

Sec. 7. 29 V.S.A. § 161 is amended to read:

§ 161. REQUIREMENTS ON STATE CONSTRUCTION PROJECTS

- (a) Bids; selection.

* * *

(3) All bids on State projects shall be required to comply with all applicable provisions of Title 21.

Sec. 8. EFFECTIVE DATES

(a)(1) This section, Secs. 6a and 6b shall take effect on July 1, 2016.

(2) The remaining sections of this act shall take effect on January 1, 2017, except that an employer that has five or fewer employees who are employed for an average of no less than 30 hours per week shall not be subject to the provisions of 21 V.S.A. chapter 5, subchapter 4b until January 1, 2018.

(b)(1) An employer may require for its existing employees on January 1, 2017 a waiting period of up to one year. The waiting period pursuant to this subsection shall begin on January 1, 2017 and shall end on or before December 31, 2017. During this waiting period, an employee shall accrue earned sick time pursuant to 21 V.S.A. § 482, but shall not be permitted to use the earned sick time until after he or she has completed the waiting period.

(2) An employer that has five or fewer employees who are employed for an average of no less than 30 hours per week may require for its existing employees on January 1, 2018 a waiting period of up to one year. The waiting period pursuant to this subsection shall begin on January 1, 2018 and shall end on or before December 31, 2018. During this waiting period, an employee shall accrue earned sick time pursuant to 21 V.S.A. § 482, but shall not be permitted to use the earned sick time until after he or she has completed the waiting period.