

1 S.254

2 Introduced by Senators Sirotkin and Cummings

3 Referred to Committee on

4 Date:

5 Subject: Labor; employment practices; paid family leave

6 Statement of purpose of bill as introduced: This bill proposes to create a  
7 Family Leave Insurance Program within the Department of Labor that will  
8 provide employees with six weeks of paid family leave and that will be funded  
9 by contributions from employers and employees. This bill also proposes to  
10 amend Vermont's existing family leave law to make it applicable to all  
11 employers, to clarify certain provisions, and to create an exemption from the  
12 law's rehiring requirements for employers with four or fewer employees.

13 An act relating to paid family leave

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 21 V.S.A. § 471 is amended to read:

16 § 471. DEFINITIONS

17 As used in this subchapter:

18 (1) "Employer" means an individual, organization, or governmental  
19 body, partnership, association, corporation, legal representative, trustee,  
20 receiver, trustee in bankruptcy ~~and~~, or any common carrier by rail, motor,

1 water, air, or express company doing business in or operating within this state  
2 ~~which for the purposes of parental leave, employs 10 or more individuals who~~  
3 ~~are employed for an average of at least 30 hours per week during a year and for~~  
4 ~~the purposes of family leave, employs 15 or more individuals for an average of~~  
5 ~~at least 30 hours per week during a year~~ State.

6 (2) "Employee" means a person who, in consideration of direct or  
7 indirect gain or profit, has been continuously employed by the same employer  
8 for a period of one year for an average of at least 30 hours per week.

9 (3) "Family leave" means a leave of absence from employment by an  
10 employee ~~who works for an employer which employs 15 or more individuals~~  
11 ~~who are employed for an average of at least 30 hours per week during the year~~  
12 for one of the following reasons:

13 (A) ~~The~~ the serious illness of the employee;

14 (B) ~~The~~ the serious illness of the employee's child, stepchild or ward  
15 who lives with the employee, foster child, parent, spouse, or parent of the  
16 employee's spouse;

17 ~~(4) "Parental leave" means a leave of absence from employment by an~~  
18 ~~employee who works for an employer which employs 10 or more individuals~~  
19 ~~who are employed for an average of at least 30 hours per week during the year~~  
20 ~~for one of the following reasons:~~

21 ~~(A)~~(C) the employee's pregnancy;

1           (D) ~~The~~ the birth of the employee's child; ~~or~~  
2           ~~(B)~~(E) ~~The~~ the initial placement of a child 16 years of age or younger  
3 with the employee for the purpose of adoption.

4           ~~(5)~~(4) "Serious illness" means an accident, disease, or physical or  
5 mental condition that:

6           (A) poses imminent danger of death;

7           (B) requires inpatient care in a hospital; or

8           (C) requires continuing in-home care under the direction of a  
9 physician.

10           (5) "Commissioner" means the Commissioner of Labor.

11           Sec. 2. 21 V.S.A. § 472 is amended to read:

12           § 472. FAMILY LEAVE

13           (a) During any 12-month period, an employee shall be entitled to take  
14 ~~unpaid leave for a period not to exceed 12 weeks~~ up to six weeks of paid  
15 family leave utilizing Family Leave Insurance benefits pursuant to section  
16 472c of this subchapter and up to six weeks of unpaid family leave for the  
17 following reasons:

18           (1) ~~for parental leave, during the employee's pregnancy; and~~

19           (2) ~~following~~ the birth of an employee's child; ~~or~~

20           (3) ~~within a year following~~ the initial placement of a child 16 years of  
21 age or younger with the employee for the purpose of adoption;

1           ~~(2) for family leave, (4) for~~ the serious illness of the employee; or  
2           (5) the serious illness of the employee's child, stepchild, or ward of the  
3 employee who lives with the employee, foster child, parent, spouse, or parent  
4 of the employee's spouse.

5           (b) During the leave, at the employee's option, the employee may use  
6 accrued sick leave or vacation leave or any other accrued paid leave, not to  
7 exceed six weeks. Utilization of accrued paid leave shall not extend the leave  
8 provided herein.

9           (c) The employer shall continue employment benefits for the duration of  
10 the family leave at the level and under the conditions coverage would be  
11 provided if the employee continued in employment continuously for the  
12 duration of the leave. The employer may require that the employee contribute  
13 to the cost of the benefits during the leave at the employee's existing rate of  
14 ~~employee~~ contribution.

15           (d) The employer shall post and maintain in a conspicuous place in and  
16 about each of his or her places of business printed notices of the provisions of  
17 this subchapter on forms provided by the ~~commissioner of labor~~  
18 Commissioner.

19           (e) An employee shall give his or her employer reasonable written notice of  
20 intent to take family leave under this subchapter. Notice shall include the date  
21 the leave is expected to commence and the estimated duration of the leave. In

1 the case of the adoption or birth of a child, an employer shall not require that  
2 notice be given more than six weeks prior to the anticipated commencement of  
3 the leave. In the case of serious illness of the employee or a member of the  
4 employee's family, an employer may require certification from a physician to  
5 verify the condition and the amount and necessity for the leave requested. An  
6 employee may return from leave earlier than estimated upon approval of the  
7 employer. An employee shall provide reasonable notice to the employer of his  
8 or her need to extend the leave to the extent provided by this chapter.

9 ~~(f)(1) Upon return from leave taken under this subchapter, an employee~~  
10 ~~shall be offered~~ An employer that employs five or more employees shall offer  
11 an employee returning from family leave taken under this subchapter the same  
12 or a comparable job at the same level of compensation, employment benefits,  
13 seniority, or any other term or condition of the employment existing on the day  
14 family leave began. This subchapter shall not apply if, prior to requesting  
15 leave, the employee had been given notice or had given notice that the  
16 employment would terminate. This subsection shall not apply if the employer  
17 can demonstrate by clear and convincing evidence that:

18 ~~(1)(A)~~ during the period of leave the employee's job would have been  
19 terminated or the employee laid off for reasons unrelated to the leave or the  
20 condition for which the leave was granted; or

1           ~~(2)(B)~~ the employee performed unique services and hiring a permanent  
2 replacement during the leave, after giving reasonable notice to the employee of  
3 intent to do so, was the only alternative available to the employer to prevent  
4 substantial and grievous economic injury to the employer's operation.

5           (2) Small business exemption. An employer that employs four or fewer  
6 employees shall grant a preference in hiring to any employee who takes family  
7 leave under this subchapter. To be eligible for a preference in hiring, the  
8 employee shall provide written notice to the employer in writing that he or she  
9 is available for work no later than 12 weeks after commencing his or her leave.  
10 The preference shall be limited to the same or any comparable job that  
11 becomes available within 12 months of the date on which the employee  
12 notifies the employer that he or she is available for work.

13           (g) An employer may adopt a leave policy more generous than the leave  
14 policy provided by this subchapter. Nothing in this subchapter shall be  
15 construed to diminish an employer's obligation to comply with any collective  
16 bargaining agreement or any employment benefit program or plan which  
17 provides greater leave rights than the rights provided by this subchapter. A  
18 collective bargaining agreement or employment benefit program or plan may  
19 not diminish rights provided by this subchapter. Notwithstanding the  
20 provisions of this subchapter, an employee may, at the time a need for ~~parental~~  
21 ~~or~~ family leave arises, waive some or all the rights under this subchapter

1 provided the waiver is informed and voluntary and any changes in conditions  
2 of employment related to any waiver shall be mutually agreed upon between  
3 employer and employee.

4 (h) Except for serious illness of the employee, an employee who does not  
5 return to employment with the employer who provided the family leave shall  
6 return to the employer the value of any compensation paid to or on behalf of  
7 the employee during the leave, except payments of Family Leave Insurance  
8 benefits and payments for accrued sick leave or vacation leave.

9 Sec. 3. 21 V.S.A. § 472c is added to read:

10 § 472c. FAMILY LEAVE INSURANCE; SPECIAL FUND;

11 ADMINISTRATION

12 (a) A Family Leave Insurance Program is established in the Department of  
13 Labor for the provision of Family Leave Insurance benefits to eligible  
14 employees pursuant to this section.

15 (b) The Family Leave Insurance Special Fund is created pursuant to  
16 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the  
17 Commissioner for the administration of the Family Leave Insurance program  
18 and payment of Family Leave Insurance benefits provided pursuant to this  
19 section.

1       (c) The Fund shall consist of contributions equal to 0.63 percent of each  
2       employee's wages, of which one-half shall be deducted from an employee's  
3       wages and one-half shall be paid by the employee's employer.

4       (d) The employer shall submit these contributions to the Commissioner in a  
5       form and at times determined by the Commissioner.

6       (e) An employee shall file an application for Family Leave Insurance  
7       benefits with the Commissioner under this section on a form provided by the  
8       Commissioner at least five days before the arrival of a child and as soon as  
9       practicable for an unanticipated premature birth or a serious health condition of  
10       the employee or a member of the employee's immediate family. The  
11       Commissioner shall determine eligibility of the employee based on the  
12       following criteria:

13               (1) The purposes for which the claim is made are documented.

14               (2) The employee provided his or her employer with reasonable  
15       advanced notice of the requested leave.

16       (f)(1) An employee awarded Family Leave Insurance benefits under this  
17       section shall receive the employee's average weekly wage or an amount equal  
18       to a 40-hour workweek paid at a rate double that of the minimum hourly wage,  
19       as set forth in section 384 of this chapter, whichever is less.

20               (2) An employee shall be entitled to no more than six weeks of Family  
21       Leave Insurance benefits in a 12-month period.

1       (g) The Commissioner of Labor shall make a determination of each claim  
2       no later than five days after the date the claim is filed, and Family Leave  
3       Insurance benefits shall be paid from the Fund created pursuant to this section.  
4       An employee or employer aggrieved by a decision of the Commissioner under  
5       this section may file with the Commissioner a request for reconsideration  
6       within 30 days after receipt of the Commissioner's decision. Thereafter, an  
7       applicant denied reconsideration may file an appeal to the Civil Division of the  
8       Superior Court in the county where the employment is located.

9       (h) A person who willfully makes a false statement or representation for the  
10       purpose of obtaining any benefit or payment under the provisions of this  
11       section, either for herself or himself or for any other person, after notice and  
12       opportunity for hearing, may be assessed an administrative penalty of not more  
13       than \$20,000.00 and shall forfeit all or a portion of any right to compensation  
14       under the provisions of this section, as determined to be appropriate by the  
15       Commissioner after a determination by the Commissioner that the person has  
16       willfully made a false statement or representation of a material fact.

17       (i) The Commissioner shall adopt rules necessary to implement this  
18       section.

19       Sec. 4. EFFECTIVE DATE

20       (a) This act shall take effect on January 1, 2017.

1        (b) Employers shall begin deducting taxes from employees' wages on  
2        July 1, 2017, and, beginning on January 1, 2018, employees may begin to  
3        receive benefits under this law.