

1 S.255

2 Representative Krowinski of Burlington moves that the House propose to  
3 the Senate that the bill be amended by striking out all after the enacting clause  
4 and inserting in lieu thereof the following:

5 Sec. 1. FINDINGS

6 The General Assembly finds:

7 (1) Nearly all employees need to take time off from work because the  
8 employee is sick or injured; needs to care for a sick or injured family member;  
9 or needs to attend or accompany a family member to scheduled preventive,  
10 routine, or therapeutic health care appointments.

11 (2) According to the VT Department of Labor 2011 Fringe benefits  
12 study, roughly 75 percent of all private sector employers provide some form of  
13 paid time off and 43 percent provide paid time that is specifically permitted for  
14 use as sick time. An estimated 38 percent of all private sector workers in the  
15 State do not have access to specifically designated paid sick time and an  
16 estimated 20 percent of all Vermont workers do not have access to any paid  
17 time off.

18 (3) Low-income employees are less likely to have paid time off from  
19 work and therefore are more likely to work when sick or injured to avoid  
20 losing income. The majority of low-income workers are clustered in service  
21 sector jobs such as food services, retail sales, and child care, that require

1 substantial contact with the public. When these service employees work when  
2 sick, they jeopardize not only their own health, but also the health of  
3 coworkers and the public, thereby creating health and financial implications  
4 that extend well beyond the workplace.

5 (4) Routine, preventive health care contributes to the prevention of  
6 illness or injury, minimizing recovery time, and reducing the need for more  
7 costly medical or emergency treatment.

8 (5) When parents care for their sick children, the children tend to  
9 recover more quickly and experience improved mental and physical health.  
10 Sick children who are sent to school and child care because a parent cannot  
11 afford to leave work to care for them infect other children and adults and  
12 increase time lost from school or work.

13 (6) For decades the State has developed programs to help older  
14 Vermonters and Vermonters with a disability live at home, avoiding some of  
15 the financial and social costs of institutional care. It is crucial for the success  
16 of these programs that relatives are available to provide care or assist  
17 caregivers.

18 (7) When employees have paid time off from work and are able to care  
19 for their own health and the health of close family members without sacrificing  
20 income, stress and anxiety are greatly reduced. The employer benefits by  
21 gaining a more stable, productive, loyal, and satisfied workforce.

1           (8) Employers also receive direct financial benefits from providing  
2           employees with paid time off to care for their own health or the health of a  
3           close family member. Studies show that “presenteeism,” the circumstance in  
4           which an employee goes to work sick, causes far more costly productivity and  
5           financial losses than any losses associated with absenteeism.

6           (9) Employers who provide paid time off for health care generally report  
7           that their employees do not overuse or abuse the time off. The typical use of  
8           paid time off for health care is between three and five days annually, even  
9           when the amount of paid time available is greater.

10           (10) Nationally, at least **one-third** of all women report having suffered  
11           physical or sexual abuse by an intimate partner. One in seven men report  
12           **severe** physical abuse by an intimate partner. One in five women and one in  
13           71 men report having been raped during their lifetimes.

14           (11) Victims of domestic violence are **often** forced to be absent from  
15           work because of the abuse. The mean number of days lost from work by rape  
16           victims is 8.1, for victims of physical assault 7.2, and for stalking 10.1.  
17           **Women experiencing physical intimate partner violence victimization reported**  
18           **an average of 7.2 days of work-related lost productivity.** Without paid time off  
19           from work, these victims are in danger of losing their jobs. Victims of  
20           domestic violence, who frequently need the economic security to ensure their  
21           health and safety, can be particularly devastated by loss of employment.

1 About one in eight employed stalking victims lost time from work because of  
2 fear for their safety or because they needed to get a restraining order or testify  
3 in court. More than one-half of these victims lost five days or more of work.  
4 In 2000, 36 percent of rape or sexual assault victims lost more than 10 days of  
5 work after their victimization.

6 Sec. 2. 21 V.S.A. § 401 is added to read:

7 § 401. DEFINITIONS

8 As used in this title:

9 (1) “Commissioner” means the Commissioner of Labor.

10 (2) “Differential” means compensation paid in addition to the usual  
11 compensation to an employee of a health care facility as defined in 18 V.S.A.  
12 § 9432(8) who does not work on a regular schedule and who works only when  
13 he or she indicates that he or she is available to work and has no obligation to  
14 work when he or she does not indicate availability.

15 (3) “Employee” has the same meaning as set forth in section 341 of this  
16 title.

17 (4) “Employer” means an individual, organization, or governmental  
18 body, partnership, association, corporation, legal representative, trustee,  
19 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,  
20 air, or express company doing business in or operating within this State  
21 employing one or more individuals.

1 Sec. 3. 21 V.S.A. § 402 is added to read:

2 § 402. PAID HEALTH CARE TIME

3 (a) An employee shall accrue not less than one hour of paid health care  
4 time for every 30 hours worked. In the absence of a more generous paid time  
5 plan or collective bargaining agreement provision, an employer may:

6 (1) limit the amount of paid health care time accrued to a maximum of  
7 56 hours in a 12-month period;

8 (2) limit to 40 hours the number of hours in the workweek for which  
9 full-time employees not subject to the overtime provisions of the Federal Fair  
10 Labor Standards Act (29 U.S.C. § 213(a)(1)) may accrue paid health care  
11 time; or

12 (3) incorporate paid health care time within a complement of paid time  
13 for its employees that provides no less than the minimum required by this  
14 subsection with regard to the amount of time available and the uses permitted.

15 (b) Paid health care time shall be compensated at the same hourly rate and  
16 with the same benefits, including health care benefits, as the employee  
17 normally earns for hours worked. Service or tipped employees shall be  
18 compensated at an amount that is not less than the minimum wage required for  
19 nonservice or nontipped employees pursuant to section 384 of this title.

20 (c) An employee may use paid health care time for any of the following  
21 reasons:

1           (1) The employee is ill or injured.

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

4           (3) The employee cares for a sick or injured child, parent, parent-in-law,  
5 grandparent, spouse, domestic partner, stepchild, foster child, or ward of the  
6 employee who lives with the employee, including helping that individual  
7 obtain diagnostic, preventive, routine, or therapeutic health treatment.

8           (4) The employee is arranging for social or legal services or obtaining  
9 medical care or counseling for the employee or for the employee's child,  
10 parent, parent-in-law, grandparent, spouse, stepchild, foster child, or ward of  
11 the employee who is a victim of domestic violence, sexual assault, or stalking  
12 or who is relocating as the result of domestic violence, sexual assault, or  
13 stalking. As used in this section, "domestic violence," "sexual assault," or  
14 "stalking" shall have the same meaning as in 15 V.S.A. § 1151.

15           (d) Unless an employer and its employees agree to paid time provisions  
16 more favorable to employees:

17           (1) An employee shall use paid health care time in the smallest time  
18 increment that the employer's payroll system uses to account for other  
19 absences, when the employee's absence is shorter than a normal workday.

20           (2) Paid health care time that is accrued but unused shall be carried over  
21 to the next year, but an employee may use no more than 56 hours of paid

1 health care in any one year, unless the employer provides a more generous  
2 allotment. If, at an employer's discretion, an employer pays an employee for  
3 unused paid health care time at the end of an annual period, then the amount  
4 for which the employee was compensated does not carry over to the next year.

5 (3) Upon separation from employment, an employee shall not be entitled  
6 to payment for unused paid health care time unless agreed upon by the  
7 employer.

8 (4) At the employer's discretion, an employee may borrow paid health  
9 care time before the time is actually accrued.

10 (5) An employee who is rehired within 12 months after a separation  
11 from employment shall retain paid health care time accrued but unused at the  
12 time of separation, unless the employee was compensated for the paid health  
13 care time at the time of separation from employment.

14 (e) An employer with a paid time policy that is comparable to or more  
15 generous than the paid health care time provided under this section is not  
16 required to provide additional paid health care time.

17 (f) An employer shall not require an employee to look for or provide a  
18 replacement worker for the time during which the employee uses or is  
19 expected to use paid health care time. However, an employer may require an  
20 employee to make reasonable efforts to find a replacement for previously  
21 planned absences.

1       (g) An employer may require an employee planning to take paid health care  
2       time to:

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

5           (2) notify the employer as soon as practicable of the intent to take paid  
6       health care time and the expected duration of the employee’s absence.

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

11       (i) This section shall not apply to an employee of a health care facility as  
12       defined in 18 V.S.A. § 9432(8) if the employee:

13           (1) is under no obligation to work a regular schedule;

14           (2) works only when he or she indicates that he or she is available to  
15       work and has no obligation to work when he or she does not indicate  
16       availability; and

17           (3) receives higher pay in the form of a differential as defined in section  
18       401 of this title, or some other increased compensation than that paid to an  
19       employee of a health care facility performing the same job on a regular  
20       schedule. An employer may agree to provide paid health care time to an  
21       employee covered by this subsection.



1        (j) This section shall not apply to an employee of a school district,  
2        supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that is  
3        employed pursuant to a school district or supervisory union policy on  
4        substitute educators as required by the State Board of Education Rule  
5        5381; and

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

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

10        (k) An employee who uses paid sick leave shall not forfeit his or her rights  
11        to leave under sections 472 and 472a of this title.

12        (l) An employee who violates this section may be denied payment for the  
13        amount of time misused.

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

16        (n) Nothing in this section shall be construed to interfere with the  
17        enforcement of or require a change in a collective bargaining agreement that is  
18        comparable or more generous than the paid time provided under this section.

19        (o) The Commissioner shall enforce this section in accordance with the  
20        procedures established in section 342a of this title.

1 Sec. 4. 21 V.S.A. § 345 is amended to read:

2 § 345. NONPAYMENT OF WAGES AND BENEFITS

3 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, and 402 of  
4 this title shall be fined not more than \$5,000.00. Where the employer is a  
5 corporation, the president or other officers who have control of the payment  
6 operations of the corporation shall be considered employers and liable to the  
7 employee for actual wages due when the officer has willfully and without good  
8 cause participated in knowing violations of this chapter.

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10 Sec. 5. EFFECTIVE DATE

11 This act shall take effect on January 1, 2015.