

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on General, Housing and Military Affairs to which was
3 referred House Bill No. 208 entitled “An act relating to absence from work for
4 health care and safety” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The General Assembly finds:

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

16 (2) This figure represents nearly 60,000 working Vermonters, of which
17 approximately 2,000 are employed as temporary workers for the State of
18 Vermont.

19 Sec. 2. 21 V.S.A. § 384 is amended to read:

20 § 384. EMPLOYMENT; WAGES

21 * * *

1 (d) For the purposes of earned sick time, an employer must comply with
2 the provisions required under subchapter 3A of this title.

3 Sec. 3. 21 V.S.A. chapter 5, subchapter 3A is added to read:

4 Subchapter 3A. Earned Sick Time

5 § 401. DEFINITIONS

6 As used in this subchapter:

7 (1) “Combined time off” means a policy wherein the employer provides
8 time off for vacation, sickness, personal reasons, or holidays, the employee has
9 the option to use all of their leave for whatever purpose they choose.

10 (2) “Commissioner” means the Commissioner of Labor.

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

16 (4) “Earned sick time” means discretionary time earned and accrued
17 under the provisions of this subchapter, with a constant cap of 56 hours that
18 cannot accumulate or use annually an amount more than 56 hours, and used for
19 the purposes listed in subdivisions 403(a)(1)–(4) of this title.

20 (5) “Employee” has the same meaning as set forth in section 341 of this
21 title.

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

6 (7) “Full-time employee” means an employee who works more than 30
7 hours per week.

8 (8) “Seasonal employee” has the same meaning as set forth in
9 subdivisions 2002(4)(A)–(B) of this title.

10 § 402. EARNED SICK TIME

11 (a) An employee shall accrue not less than one hour of earned sick time for
12 every 30 hours worked.

13 (b) An employer shall require a probationary period for new hires. During
14 this probationary period, an employee shall accrue earned sick time pursuant to
15 section 402 of this title but cannot use this earned sick time for 60 calendar
16 days or 240 work hours, whichever is later.

17 (c) In the absence of a more generous paid time plan or collective
18 bargaining agreement provision, an employer may:

19 (1) limit the amount of earned sick time accrued pursuant to section 402
20 of this title to a maximum of 56 hours in a 12-month period; or

1 (2) limit to 40 hours the number of hours in the workweek for which
2 full-time employees not subject to the overtime provisions of the Federal Fair
3 Labor Standards Act (29 U.S.C. § 213(a)(1)) may accrue earned sick time
4 pursuant to section 402 of this title.

5 (d) Earned sick time accrued pursuant to section 402 of this title shall be
6 compensated at the same hourly rate and with the same benefits, including
7 health care benefits, as the employee normally earns for hours worked.

8 (e) Service or tipped employees shall be compensated at an amount that is
9 not less than the minimum wage required for nonservice or nontipped
10 employees pursuant to section 384 of this title.

11 (f) At the employer's discretion, an employee may borrow earned sick time
12 accrued pursuant to section 402 of this title before the time is actually accrued.

13 (g) An employer with a paid time policy that is comparable to or more
14 generous than the earned sick time provided under this section is not required
15 to provide additional earned sick time.

16 (h) If an employer offers combined time off that does not specifically
17 include paid sick time, an employee may use all or a portion of that time for
18 the purposes listed in subdivisions 403(a)(1)–(4) of this title.

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

1 § 403. USE OF EARNED SICK TIME

2 (a) An employee may use earned sick time accrued pursuant to section 402
3 of this title for any of the following reasons:

4 (1) The employee is ill or injured.

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

7 (3) The employee cares for a sick or injured child, parent, parent-in-law,
8 grandparent, grandparent-in-law, spouse, domestic partner, stepchild, foster
9 child, grandchild, or ward of the employee, including helping that individual
10 obtain diagnostic, preventive, routine, or therapeutic health treatment.

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

19 (b) An employee shall use earned sick time accrued pursuant to section 402
20 of this title in the smallest time increment that the employer’s payroll system

1 uses to account for other absences when the employee's absence is shorter than
2 a normal workday.

3 (c) Earned sick time that is accrued pursuant to section 402 of this title but
4 unused has no monetary value until used by the employee.

5 (d) An employee may use no more than 56 hours of earned sick time
6 accrued pursuant to section 402 of this title in any one year. Unused hours
7 shall be carried over to the next year and the employee has the right to earn the
8 balance between the unused portion and the maximum allowed.

9 (e) Upon separation from employment, an employee shall not be entitled to
10 payment for unused earned sick time accrued pursuant to section 402 of this
11 title unless agreed upon by the employer.

12 (f) If, at an employer's discretion, an employer pays an employee for
13 unused earned sick time accrued pursuant to section 402 of this title at the end
14 of an annual period, then the amount for which the employee was compensated
15 does not carry over to the next year.

16 (g) An employee who is rehired within 12 months after a separation from
17 employment shall retain earned sick time accrued pursuant to section 402 of
18 this title but unused at the time of separation, unless the employee was
19 compensated for this earned sick time at the time of separation from
20 employment.

1 (h) An employer may require an employee to make reasonable efforts to
2 find a replacement for planned absences.

3 (i) An employer may require an employee planning to take earned sick
4 time accrued pursuant to section 402 of this title to:

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

7 (2) notify the employer as soon as practicable of the intent to take
8 earned sick time accrued pursuant to section 402 of this title and the expected
9 duration of the employee's absence.

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

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

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

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

20 (3) receives higher pay in the form of a differential as defined in section
21 401 of this title, or some other increased compensation than that paid to an

1 employee of a health care facility performing the same job on a regular
2 schedule.

3 (4) An employer may agree to provide earned sick time to an employee
4 covered by this subsection.

5 (l) This section shall not apply to an employee of a school district,
6 supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that is
7 employed pursuant to a school district or supervisory union policy on
8 substitute educators as required by the State Board of Education Rule
9 5381; and

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

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

14 (m) A seasonal employee shall accrue earned sick time pursuant to section
15 402 of this title during his or her first year of employment but shall not use this
16 earned sick time until his or her second year of employment, provided that:

17 (1) the seasonal employee returns after the separation from employment
18 within 12 months as provided by subsection 402(g) of this title; and

19 (2) the seasonal employee is employed by the same employer as the
20 previous season.

1 (n) An employee who uses paid sick leave accrued pursuant to section 402
2 of this title shall not forfeit his or her rights to leave under sections 472 and
3 472a of this title.

4 (o) An employer, employment agency, or labor organization shall not
5 discharge or in any other manner discriminate against or penalize an employee
6 because the employee:

7 (1) requests or uses earned sick leave accrued pursuant to section 402 of
8 this title either in accordance with section 402 of this title or in accordance
9 with the employer's own paid sick leave policy, if any; or

10 (2) has lodged a complaint with the Commissioner alleging the
11 employer's violations of sections 402 and 403 of this title.

12 (p) An employer may adopt an earned sick time policy more generous than
13 the earned sick time policy provided by this subchapter. Nothing in this
14 subchapter shall be construed to diminish an employer's obligation to comply
15 with any collective bargaining agreement or any employment benefit program
16 or plan which provides greater sick time rights than the rights provided by this
17 subchapter. A collective bargaining agreement or employment benefit
18 program or plan may not diminish rights provided by this subchapter.

19 (q) An employer who violates this section shall be subject to the penalty
20 provisions of section 345 of this title.

1 (Committee vote: _____)

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Representative [surname]

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FOR THE COMMITTEE