

# Vermont Legislative Council

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## MEMORANDUM

To: House Committee General, Housing and Military Affairs

From: David Huber

Date: January 28, 2014

Subject: S.255; paid absence from work for health care and safety

The following is a section-by-section summary of S.255. S.255 is based on a previous bill, H.208, which was introduced in 2013.

Sec. 1 is the findings section. It stresses the importance of paid absence from work for health care and safety. H.208 had 12 findings and S.255 has 11 findings.

Sec. 2 is the definitions section.

- S.255 incorporates some of H.208's definitions, but adds definitions for "Commissioner" and "Differential"
- "Employee" retains the same meaning as it did in H.208
- "Employer" is now a simpler definition compared to H.208. An employer must have at least 1 employee. H.208 required an employer to have 10 employees in order for an employee to use parental leave, and 15 employees in order for an employee to use family leave

Sec. 3 adds a new section 402 to Title 21 (Labor), which sets up a process for a paid health care time plan (PHCT).

§ 402 is called Paid Health Care Time.

(a) An employee accrues 1 hour of paid health care time for every 30 hours worked. However, in the absence of a more generous PHCT plan or collective bargaining agreement, an employer can:

- (1) limit the amount of PHCT to 56 hours per 12 month period;

(2) limit to 40 hours the number of hours in the 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 paid health care time; or

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

(b) PHCT is compensated at the same hourly rate and with the same benefits as the employee normally earns. Service and tipped employees will be compensated at no less than the minimum wage for service and tipped employees pursuant to 21 V.S.A. § 384 (Employment; wages).

(c) An employee can use PHCT:

- (1) if the employee is ill or injured;
- (2) in order to obtain professional or routine health care;
- (3) in order to care for a sick or injured family member;

(4) in order to arrange for social or legal or obtain medical care for a family member who is a victim of domestic violence, sexual assault, or stalking, which are defined in 15 V.S.A. § 1151 (Definitions).

(d) Unless the employer and the employee agree to paid time provisions more favorable to the employee:

(1) an employee shall use PHCT in the smallest time increment that the employer's payroll system uses to account for other absences, when the employee's absence is shorter than a normal workday;

(2) PHCT that is accrued can be carried over to the next year, but an employee cannot use more than 56 hours of PHCT in any one year unless the employer provides a more generous PHCT package;

**REPRESENTATIVE KROWINSKI'S AMENDMENT: If, at an employer's discretion, an employer pays an employee for unused paid health care time at the end of an annual period, then the amount for which the employee was compensated does not carry over to the next year.**

(3) upon separation from employment, an employee shall not be entitled to payment for unused paid health care time unless agreed upon by the employer; or

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

(e) If the employer provides a more generous PHCT policy, then the employer does not have to apply the S.255 PHCT plan to the employee.

(f) The employer will not require an employee to find a replacement worker for the employee while the employee is using PHCT.

**REPRESENTATIVE KROWINSKI'S AMENDMENT: However, an employer may require an employee to make reasonable efforts to find a replacement for previously planned absences.**

(g) An employer may require an employee planning to use PHCT to:

(1) try to schedule routine and preventative appointments outside the scope of the normal workday hours.

(2) notify the employer as soon as practicable of the employee's intent to take PHCT and the expected duration of the leave.

(h) The employer will post notice of the PHCT provisions in a conspicuous place in the workplace and the employer will notify the employee at the time of the employee's hiring of the PHCT provisions.

(i) The S.255 PHCT provisions do not apply to an employee of a health care facility (as defined in 18 V.S.A. § 9432(8) (Definitions)) if the employee:

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

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

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

(j) This section shall not apply to an employee of a school district, supervisory district, or supervisory union as defined in 16 V.S.A. § 11 (Classifications and definitions) that:

(1) is employed pursuant to a school district or supervisory union policy on substitute educators as required by the State Board of Education Rule 5381 (Substitute Educators: Qualifications); and

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

(3) 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 calendar days in the same assignment.

(k) An employee who uses PHCT does not lose their rights to leave under § 472 (PFLA) and § 472a (Short-term family leave).

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

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

(n) This section does not interfere with the enforcement of or require a change in a collective bargaining agreement that is comparable or more generous than the PHCT provided under this section.

(o) The Commissioner shall enforce this section in accordance with the procedures established in section 342a (Investigation of complaints of unpaid wages) of this title.

Sec. 4 amends § 345 (Nonpayment of wages and benefits) to include § 402. If an employer violates § 402, then the employer may be fined up to \$5,000.00.

Sec. 5 is the Effective Date section. All sections are effective on July 1, 2014.

**REPRESENTATIVE KROWINSKI'S AMENDMENT: This act shall take effect on January 1, 2015.**