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H.187

Introduced by Representatives Toleno of Brattleboro, Bartholomew of
Hartland, Burke of Brattleboro, Chesnut-Tangerman of
Middletown Springs, Christie of Hartford, Cole of Burlington,
Davis of Washington, Donovan of Burlington, Fields of
Bennington, Frank of Underhill, French of Randolph, Gonzalez
of Winooski, Hooper of Montpelier, Klein of East Montpelier,
Lenes of Shelburne, Long of Newfane, Lucke of Hartford,
Macaig of Williston, Masland of Thetford, McCormack of
Burlington, McCullough of Williston, Mrowicki of Putney,
Nuovo of Middlebury, O’Sullivan of Burlington, Patt of
Worcester, Pearson of Burlington, Ryerson of Randolph,
Stevens of Waterbury, Stuart of Brattleboro, Townsend of
South Burlington, Troiano of Stannard, Walz of Barre City,
Woodward of Johnson, and Zagar of Barnard

Referred to Committee on

Date:

Subject: Labor; employment practices; paid absence from work

Statement of purpose of bill as introduced: This bill proposes to ensure that
employees accrue a minimum number of hours of paid sick time annually and

1 prohibits employers from penalizing employees who use their accrued sick
2 time.

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

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

5 Sec. 1. FINDINGS

6 The General Assembly finds:

7 (1) According to the Vermont Department of Labor's 2013 Fringe
8 Benefits study, roughly one-half of all private sector employers provide some
9 form of paid leave to their employees. Less than 50 percent of private sector
10 workers employed by companies with under 20 workers have access to paid
11 leave, while only approximately 78 percent of workers employed by larger
12 companies have access to paid leave time.

13 (2) In total, more than 60,000 working Vermonters lack access to paid
14 leave.

15 Sec. 2. PURPOSE

16 The purpose of this act is to promote a healthy work environment by
17 ensuring that employees are provided with paid sick leave time and that
18 employers do not penalize employees who use paid sick leave benefits.

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

2 § 384. EMPLOYMENT; WAGES

3 * * *

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

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

7 Subchapter 4B. Earned Sick Time

8 § 481. DEFINITIONS

9 As used in this subchapter:

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

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

14 (3) “Differential” means compensation paid in addition to the usual
15 compensation paid to an employee of a health care facility as defined in
16 18 V.S.A. § 9432(8) who does not work on a regular schedule and who works
17 only when he or she indicates that he or she is available to work and has no
18 obligation to work when he or she does not indicate availability.

19 (4) “Earned sick time” means discretionary time earned and accrued
20 under the provisions of this subchapter and used for the purposes listed in
21 subdivisions 483(a)(1)–(5) of this subchapter.

1 (5) “Employee” has the same meaning as set forth in section 341 of this
2 title, except that it shall not include employees of the federal government.

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

7 (7) “Seasonal employee” has the same meaning as set forth in
8 subdivision 2002(4) of this title.

9 § 482. EARNED SICK TIME

10 (a) An employee shall accrue not less than one hour of earned sick time for
11 every 40 hours worked.

12 (b) An employer may require a waiting period for new hires.

13 (1) During this waiting period, an employee shall accrue earned sick
14 time pursuant to this section but cannot use the earned sick time until after he
15 or she has worked for the employer for 90 days or 500 hours, whichever occurs
16 later.

17 (2) An employer may elect not to count an employee’s time worked as a
18 part-time, summer seasonal employee, or short-term temporary employee in
19 determining the end date of the employee’s waiting period.

20 (c) In the absence of a more generous paid time policy or collective
21 bargaining agreement provision, an employer may:

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

3 (A) from July 1, 2015, until June 30, 2017, a maximum of 24 hours
4 in a 12-month period; and

5 (B) after June 30, 2017, a maximum of 40 hours in a 12-month
6 period; or

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

11 (d) Earned sick time accrued pursuant to this section shall be compensated
12 at the same hourly rate and with the same benefits, including health care
13 benefits, as the employee normally earns for hours worked.

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

17 (f) An employer with a paid time policy that is comparable to or more
18 generous than the earned sick time provided under this section is not required
19 to provide additional earned sick time.

1 (g) If an employer offers combined time off that does not specifically
2 include sick time, an employee may use all or a portion of that time for the
3 purposes listed in subdivisions 483(a)(1)–(5) of this title.

4 (h) Nothing in this section shall be construed to interfere with the
5 enforcement of or require a change in a collective bargaining agreement that is
6 comparable to or more generous than the earned sick time provided under this
7 section.

8 (i) An employer may calculate the amount of earned sick time that an
9 employee has accrued pursuant to this section on a quarterly basis, provided
10 that an employee may use earned sick time as he or she accrues it during that
11 quarter.

12 § 483. USE OF EARNED SICK TIME

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

15 (1) The employee is ill or injured.

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

18 (3) The employee cares for a sick or injured parent, grandparent, spouse,
19 child, brother, sister, parent-in-law, grandchild, foster child, person residing
20 with the employee, or family member for whom the employee is primarily

1 responsible to arrange or provide care for, including helping that individual
2 obtain diagnostic, preventive, routine, or therapeutic health treatment.

3 (4) The employee is arranging for social or legal services or obtaining
4 medical care or counseling for the employee or for the employee's parent,
5 grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster
6 child, person residing with the employee, or family member for whom the
7 employee is primarily responsible to arrange or provide care for, who is a
8 victim of domestic violence, sexual assault, or stalking or who is relocating as
9 the result of domestic violence, sexual assault, or stalking. As used in this
10 section, "domestic violence," "sexual assault," and "stalking" shall have the
11 same meaning as in 15 V.S.A. § 1151.

12 (5) The employee cares for a parent, grandparent, spouse, child, brother,
13 sister, parent-in-law, grandchild, foster child, person residing with the
14 employee, or family member for whom the employee is primarily responsible
15 to arrange or provide care for, because the school or business where that
16 individual is normally located during the employee's work day is closed for
17 public health or safety reasons.

18 (b) An employee shall use earned sick time accrued pursuant to section 482
19 of this title in the smallest time increments that the employer's payroll system
20 uses to account for other absences when the employee's absence is shorter than
21 a normal workday.

1 (c)(1) In the absence of a more generous paid time policy or collective
2 bargaining agreement provision, an employee may use:

3 (A) from July 1, 2015, until June 30, 2017, no more than 24 hours of
4 earned sick time accrued pursuant to section 482 of this title in any one
5 year; and

6 (B) after June 30, 2017, no more than 40 hours of earned sick time
7 accrued pursuant to section 482 of this title in any one year.

8 (2) Unused hours shall be carried over to the next year and the employee
9 has the right to earn the balance between the unused portion and the maximum
10 allowed.

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

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

18 (f) An employee who is rehired within 12 months after a separation from
19 employment shall retain earned sick time accrued pursuant to section 482 of
20 this title that was unused at the time of separation, unless the employee was
21 compensated for this earned sick time at the time of separation from

1 employment. An employer shall retain a record of the earned sick time
2 accrued by an employee for at least 12 months after the employee's separation
3 from employment.

4 (g) An employer may require an employee to make reasonable efforts to
5 find a replacement for planned absences, including absences for professional
6 diagnostic, preventive, routine, or therapeutic health care.

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

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

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

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

18 (j)(1) This section shall not apply to an employee of a health care facility as
19 defined in 18 V.S.A. § 9432(8) if the employee:

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

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

4 (C) receives higher pay in the form of a differential as defined in
5 section 481 of this title, or some other increased compensation than that paid to
6 an employee of a health care facility performing the same job on a regular
7 schedule.

8 (2) An employer may agree to provide earned sick time to an employee
9 covered by this subsection.

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

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

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

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

19 (l) A seasonal employee shall not accrue earned sick time pursuant to
20 section 482 of this title during his or her first year of employment. However, a
21 seasonal employee that returns for a second year of employment shall, upon

1 commencing his or her second year of employment, immediately accrue one
2 hour of earned sick time for every 40 hours worked during his or her first year
3 of employment, provided that:

4 (1) the seasonal employee returns after the separation from employment
5 within 12 months as provided by subsection (f) of this section; and

6 (2) the seasonal employee is employed by the same employer as he or
7 she was for the previous season.

8 (m) An employee who uses earned sick time accrued pursuant to section
9 482 of this title shall not forfeit his or her rights to leave under sections 472
10 and 472a of this title.

11 (n) It shall be unlawful for an employer, employment agency, or labor
12 organization to:

13 (1) have an absence control policy that treats an employee's use of
14 earned sick time in accordance with this subchapter or the employer's earned
15 sick time policy as an absence that could lead to or result in the employee's
16 discharge, demotion, suspension, or other adverse employment action; or

17 (2) discipline, discharge, demote, suspend, penalize, or otherwise
18 discriminate against an employee that:

19 (A) requests or uses earned sick time in accordance with this
20 subchapter or the employer's earned sick time policy; or

1 (B) has lodged a complaint with the Commissioner alleging that the
2 employer has violated the provisions of this subchapter.

3 (o) An employer may adopt an earned sick time policy more generous than
4 the earned sick time provided by this subchapter. Nothing in this subchapter
5 shall be construed to diminish an employer's obligation to comply with any
6 collective bargaining agreement or any employment benefit program or plan
7 that provides greater sick time rights than the rights provided by this
8 subchapter. A collective bargaining agreement or employment benefit
9 program or plan may not diminish rights provided by this subchapter.

10 (p) An employer who violates this section shall be subject to the penalty
11 provisions of section 345 of this title.

12 (q) The Commissioner shall enforce this section in accordance with the
13 procedures established in section 342a of this title.

14 § 484. SEVERABILITY OF PROVISIONS

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

1 Sec. 5. 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, 482, and
4 483 of this title shall be fined not more than \$5,000.00. Where the employer is
5 a 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.

9 * * *

10 Sec. 6. DEPARTMENT OF LABOR SURVEY

11 The Department of Labor shall commission a survey to report the effects of
12 this act on employers and employees one year after implementation. Survey
13 topics shall include the health and economic effects on employees and
14 employers. The results of the survey shall be reported to the appropriate
15 committees.

16 Sec. 7. EFFECTIVE DATE

17 This act shall take effect on January 1, 2016.