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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 ~~(D) 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 ~~(D) 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.~~

Sec. 1. FINDINGS

The General Assembly finds:

~~(1) According to the Vermont Department of Labor's 2013 Fringe Benefits Study, roughly one-half of all private sector employers provide some form of paid leave to their employees.~~

~~(2) Based on information provided by the 2013 Fringe Benefits Study, it is estimated that slightly less than 50 percent of private sector workers employed by companies with fewer than 20 workers have access to paid leave, while approximately 78 percent of workers employed by larger companies have access to paid leave time.~~

~~(3) Based on information provided by the 2013 Fringe Benefits Study, it is estimated that more than 60,000 working Vermonters lack access to paid leave.~~

Sec. 2. *PURPOSE*

~~The purpose of this act is to promote a healthier environment at work, school, and in public by ensuring that employees are provided with paid leave time for purposes of health care and safety.~~

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

§ 384. *EMPLOYMENT; WAGES*

* * *

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

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

Subchapter 4B. Earned Sick Time

§ 481. DEFINITIONS

As used in this subchapter:

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

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

(3) “Differential” means compensation paid in addition to the usual compensation paid to an employee of a health care facility as defined in 18 V.S.A. § 9432(8) who does not work on a regular schedule and who 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.

(4) “Earned sick time” means discretionary time earned and accrued under the provisions of this subchapter and used by an employee to take time off from work for the purposes listed in subdivisions 483(a)(1)–(5) of this subchapter.

(5) “Employee” has the same meaning as set forth in section 341 of this title. However, the term “employee” shall not include:

(A) An individual who is employed by the federal government.

(B) An individual who is employed by an employer:

(i) for 20 weeks or fewer in a calendar year;

(ii) in a job scheduled to last 20 weeks or fewer; and

(iii) for the purpose of supporting or supplementing the employer's workforce in certain situations, including employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(C) An individual who is employed by the State and is exempt or excluded from the State classified service pursuant to 3 V.S.A. § 311.

(D) An employee of a health care facility as defined in 18 V.S.A. § 9432(8) if the employee:

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

(ii) 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

(iii) receives higher pay in the form of a differential as defined in subdivision (3) of this section, or some other increased compensation than that paid to an employee of a health care facility performing the same job on a regular schedule.

(E) An employee of a school district, supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that:

~~(i) is employed pursuant to a school district or supervisory union policy on substitute educators as required by the Vermont Standards Board for Professional Educators Rule 5381;~~

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

~~(iii) 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.~~

~~(F) An individual who is a guest worker employed pursuant to a federal work visa program, including guest workers who are exempt from the visa issuance process pursuant to 8 C.F.R. § 212.1(b).~~

~~(G) an individual that is either:~~

~~(i) a sole proprietor or partner owner of an unincorporated business who is excluded from the provisions of chapter 9 of this title pursuant to subdivision 601(14)(F) of this title; or~~

~~(ii) an executive officer, manager, or member of a corporation or a limited liability company for whom the Commissioner has approved an exclusion from the provisions of chapter 9 of this title pursuant to subdivision 601(14)(H) of this title.~~

~~(6) "Employer" means an individual, organization, or governmental body, partnership, association, corporation, legal representative, trustee,~~

~~receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,
air, or express company doing business in or operating within this State.~~

~~(7) “Paid time off policy” means any policy under which the employer
provides paid time off from work to the employee that includes a combination
of one or more of the following:~~

~~(A) annual leave;~~

~~(B) combined time off;~~

~~(C) vacation leave;~~

~~(D) personal leave;~~

~~(E) sick leave; or~~

~~(F) any similar type of leave.~~

~~§ 482. EARNED SICK TIME~~

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

~~(b) An employer may require a waiting period for new hires. During this
waiting period, an employee shall accrue earned sick time pursuant to this
section but cannot use the earned sick time until after he or she has worked for
the employer for one year or 1,400 hours, whichever occurs first.~~

~~(c) An employer may:~~

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

~~(A) from January 1, 2016, until December 31, 2017, a maximum of 24 hours in a 12-month period; and~~

~~(B) after December 31, 2017, a maximum of 40 hours in a 12-month period; or~~

~~(2) limit to 40 hours the number of hours in each 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 earned sick time pursuant to this section.~~

~~(d)(1) Earned sick time shall be compensated at a rate that is equal to the greater of either:~~

~~(A) the normal hourly wage rate of the employee; or~~

~~(B) the minimum wage rate for an employee pursuant to section 384 of this title.~~

~~(2) Employment benefits shall continue during an employee's use of earned sick time at the same level and conditions that coverage would be provided as for normal work hours. The employer may require that the employee contribute to the cost of the benefits during the use of earned sick time at the existing rate of employee contribution.~~

~~(e) Except as otherwise provided by subsection 484(a) of this subchapter, an employer shall calculate the amount of earned sick time that an employee has accrued pursuant to this section:~~

~~(1) as it accrues during each pay period; or~~

~~(2) on a quarterly basis, provided that an employee may use earned sick time as he or she accrues it during each quarter.~~

~~§ 483. USE OF EARNED SICK TIME~~

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

~~(1) The employee is ill or injured.~~

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

~~(3) The employee cares for a sick or injured parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster child, or a person for whom the employee is primarily responsible to arrange or provide care for who is either a family member of the employee or resides with the employee, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment.~~

~~(4) The employee is arranging for social or legal services or obtaining medical care or counseling for the employee or for the employee's parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster child, or a person for whom the employee is primarily responsible to arrange or provide care for who is either a family member of the employee or resides with the employee, who is a victim of domestic violence, sexual assault, or~~

~~stalking or who is relocating as the result of domestic violence, sexual assault,
or stalking. As used in this section, "domestic violence," "sexual assault,"
and "stalking" shall have the same meaning as in 15 V.S.A. § 1151.~~

~~(5) The employee cares for a parent, grandparent, spouse, child,
brother, sister, parent-in-law, grandchild, foster child, or a person for whom
the employee is primarily responsible to arrange or provide care for who is
either a family member of the employee or resides with the employee, because
the school or business where that individual is normally located during the
employee's workday is closed for public health or safety reasons.~~

~~(b) If an employee's absence is shorter than a normal workday, the
employee shall use earned sick time accrued pursuant to section 482 of this
subchapter in the smallest time increments that the employer's payroll system
uses to account for other absences.~~

~~(c) An employer may limit the amount of earned sick time accrued pursuant
to section 482 of this subchapter that an employee may use to:~~

~~(1) from January 1, 2016, until December 31, 2017, no more than 24
hours of earned sick time accrued pursuant to section 482 of this subchapter in
a 12-month period; and~~

~~(2) after December 31, 2017, no more than 40 hours of earned sick time
accrued pursuant to section 482 of this subchapter in a 12-month period.~~

~~(d)(1) Except as otherwise provided in subsection 484(a) of this subchapter, earned sick time that remains unused at the end of an annual period shall be carried over to the next annual period and the employee has the right to earn the balance between the unused portion and the maximum allowed.~~

~~(2) If, at an employer's discretion, an employer pays an employee for unused earned sick time accrued pursuant to section 482 of this subchapter at the end of an annual period, then the amount for which the employee was compensated does not carry over to the next annual period.~~

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

~~(f) An employee who is rehired by the same employer within 12 months after separation from employment shall begin to accrue and may use earned sick time without any waiting period, but shall not be entitled to retain any unused earned sick time that had accrued pursuant to section 482 of this subchapter before the time of separation unless agreed upon by the employer.~~

~~(g) An employer shall not require an employee to find a replacement for absences, including absences for professional diagnostic, preventive, routine, or therapeutic health care.~~

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

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

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

~~(i) If an employee is absent from work for one of the reasons listed in subsection (a) of this section, the employee shall not be required to use earned sick time accrued pursuant to section 482 of this subchapter and the employer will not be required to pay for the time that the employee was absent if the employer and the employee mutually agree that either:~~

~~(1) the employee will work an equivalent number of hours as the number of hours for which the employee is absent during the same pay period; or~~

~~(2) the employee will trade hours with a second employee so that the second employee works during the hours for which the employee is absent and the employee works an equivalent number of hours in place of the second employee during the same pay period.~~

~~(j) An employer shall post notice of the provisions of this section in a form provided by the Commissioner in a place conspicuous to employees at the~~

~~employer's place of business. An employer shall also notify an employee of the provisions of this section at the time of the employee's hiring.~~

~~(k) An employee who uses earned sick time accrued pursuant to section 482 of this subchapter shall not diminish his or her rights under sections 472 and 472a of this title.~~

~~(l) The provisions against retaliation set forth in section 397 of this title shall apply to this subchapter.~~

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

~~(n) The Commissioner shall enforce this section in accordance with the procedures established in section 342a of this title.~~

~~§ 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT~~

~~(a) An employer shall be in compliance with this subchapter if either of the following occurs:~~

~~(1) The employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with paid time off from work that:~~

~~(A) he or she may use for all of the reasons set forth in subsection 483(a) of this subchapter; and~~

~~(B) accrues and may be used at a rate that is equal to or greater than the rate set forth in sections 482 and 483 of this subchapter.~~

~~(2) The employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with at least the full amount of paid time off from work required pursuant to sections 482 and 483 of this subchapter at the beginning of each annual period and the employee may use it at any time during the annual period for the reasons set forth in subsection 483(a) of this subchapter. If the employer provides an employee with the full amount of paid time off at the beginning of each annual period, the paid time off shall not carry over from one annual period to the next as provided in subdivision 483(d)(1) of this subchapter.~~

~~(b) Nothing in this subchapter shall be construed to prevent an employer from providing a paid time off policy or agreeing to a collective bargaining agreement that provides a paid time off policy that is more generous than the earned sick time provided by this subchapter.~~

~~(c) Nothing in this subchapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or paid time off policy that provides greater earned sick time rights than the rights provided by this subchapter.~~

~~(d) A collective bargaining agreement or paid time off policy may not diminish the rights provided by this subchapter.~~

§ 485. SEVERABILITY OF PROVISIONS

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

~~Sec. 5. 21 V.S.A. § 345 is amended to read:~~

~~§ 345. NONPAYMENT OF WAGES AND BENEFITS~~

~~(a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and 483 of this title shall be fined not more than \$5,000.00. Where the employer is a corporation, the president or other officers who have control of the payment operations of the corporation shall be considered employers and liable to the employee for actual wages due when the officer has willfully and without good cause participated in knowing violations of this chapter.~~

~~* * *~~

~~Sec. 6. DEPARTMENT OF LABOR REPORT~~

~~The Department of Labor shall, on or before January 15, 2017, report to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the number of inquiries and complaints submitted to the Department in relation to this act and the number of investigations and enforcement actions undertaken by the Department in relation to this act during the first year after its effective date.~~

~~Sec. 7. EFFECTIVE DATE~~

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

Sec. 1. FINDINGS

The General Assembly finds:

(1) According to the Vermont Department of Labor's 2013 Fringe Benefits Study, roughly one-half of all private sector employers provide some form of paid leave to their employees.

(2) Based on information provided by the 2013 Fringe Benefits Study, it is estimated that slightly less than 50 percent of private sector workers employed by companies with fewer than 20 workers have access to paid leave, while approximately 78 percent of workers employed by larger companies have access to paid leave time.

(3) Based on information provided by the 2013 Fringe Benefits Study, it is estimated that more than 60,000 working Vermonters lack access to paid leave.

Sec. 2. PURPOSE

(a) The purpose of this act is to promote a healthier environment at work, school, and in public by ensuring that employees are provided with paid leave time for purposes of health care and safety.

(b) It is the intent of the General Assembly that:

(1) all employers doing business in or operating in the State of Vermont shall be required to provide earned sick time to their employees as provided by this act; and

(2) all employers that currently offer any type of paid time off from work that may, at a minimum, be used by the employer's employees in the amounts and for the purposes required pursuant to this act shall not be required to change their paid time off policy or offer additional paid leave.

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

§ 384. EMPLOYMENT; WAGES

* * *

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

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

Subchapter 4B. Earned Sick Time

§ 481. DEFINITIONS

As used in this subchapter:

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

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

(3) “Commissioner” means the Commissioner of Labor.

(4) “Earned sick time” means discretionary time earned and accrued under the provisions of this subchapter and used by an employee to take time off from work for the purposes listed in subdivisions 483(a)(1)–(5) of this subchapter.

(5) “Employee” means a person who, in consideration of direct or indirect gain or profit, is employed by an employer for an average of no less than 18 hours per week during a year. However, the term “employee” shall not include:

(A) An individual who is employed by the federal government.

(B) An individual who is employed by an employer:

(i) for 20 weeks or fewer in a 12-month period; and

(ii) in a job scheduled to last 20 weeks or fewer.

(C) An individual that is employed by the State and is exempt or excluded from the State classified service pursuant to 3 V.S.A. § 311, but not an individual that is employed by the State in a temporary capacity pursuant to 3 V.S.A. § 331.

(D) An employee of a health care facility as defined in 18 V.S.A. § 9432(8) or a facility as defined in 33 V.S.A. § 7102(2) if the employee only works on a per diem or intermittent basis.

(E) An employee of a school district, supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that:

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

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

(iii) 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 school days in the same assignment.

(F) An individual who is under 18 years of age.

(G) An individual that is either:

(i) a sole proprietor or partner owner of an unincorporated business who is excluded from the provisions of chapter 9 of this title pursuant to subdivision 601(14)(F) of this title; or

(ii) an executive officer, manager, or member of a corporation or a limited liability company for whom the Commissioner has approved an exclusion from the provisions of chapter 9 of this title pursuant to subdivision 601(14)(H) of this title.

(H) An individual that:

(i) works on a per diem or intermittent basis;

(ii) works only when he or she indicates that he or she is available to work;

(iii) is under no obligation to work for the employer offering the work; and

(iv) has no expectation of continuing employment with the employer.

(6) "Paid time off policy" means any policy under which the employer provides paid time off from work to the employee that includes a combination of one or more of the following:

(A) annual leave;

(B) combined time off;

(C) vacation leave;

(D) personal leave;

(E) sick leave; or

(F) any similar type of leave.

§ 482. EARNED SICK TIME

(a) An employee shall accrue not less than one hour of earned sick time for every 52 hours worked.

(b) An employer may require a waiting period for newly hired employees of up to one year. During this waiting period, an employee shall accrue earned sick time pursuant to this subchapter, but shall not be permitted to use the earned sick time until after he or she has completed the waiting period.

(c) An employer may:

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

(A) from January 1, 2017 until December 31, 2018, a maximum of 24 hours in a 12-month period; and

(B) after December 31, 2018, a maximum of 40 hours in a 12-month period; or

(2) limit to 40 hours the number of hours in each 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 earned sick time pursuant to this section.

(d)(1) Earned sick time shall be compensated at a rate that is equal to the greater of either:

(A) the normal hourly wage rate of the employee; or

(B) the minimum wage rate for an employee pursuant to section 384 of this title.

(2) Group insurance benefits shall continue during an employee's use of earned sick time at the same level and conditions that coverage would be provided as for normal work hours. The employer may require that the employee contribute to the cost of the benefits during the use of earned sick time at the existing rate of employee contribution.

(e) Except as otherwise provided by subsection 484(a) of this subchapter, an employer shall calculate the amount of earned sick time that an employee has accrued pursuant to this section:

(1) as it accrues during each pay period; or

(2) on a quarterly basis, provided that an employee may use earned sick time as he or she accrues it during each quarter.

§ 483. USE OF EARNED SICK TIME

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

(1) The employee is ill or injured.

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

(3) The employee cares for a sick or injured parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment, or accompanying the employee's parent, grandparent,

spouse, or parent-in-law to an appointment related to his or her long-term care.

(4) The employee is arranging for social or legal services or obtaining medical care or counseling for the employee or for the employee's parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, who is a victim of domestic violence, sexual assault, or stalking or who is relocating as the result of domestic violence, sexual assault, or stalking. As used in this section, "domestic violence," "sexual assault," and "stalking" shall have the same meanings as in 15 V.S.A. § 1151.

(5) The employee cares for a parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, because the school or business where that individual is normally located during the employee's workday is closed for public health or safety reasons.

(b) If an employee's absence is shorter than a normal workday, the employee shall use earned sick time accrued pursuant to section 482 of this subchapter in the smallest time increments that the employer's payroll system uses to account for other absences or that the employer's paid time off policy permits. Nothing in this subsection shall be construed to require an employer to permit an employee to use earned sick time in increments that are shorter than one hour.

(c) An employer may limit the amount of earned sick time accrued pursuant to section 482 of this subchapter that an employee may use to:

(1) from January 1, 2017 until December 31, 2018, no more than 24 hours in a 12-month period; and

(2) after December 31, 2018, no more than 40 hours in a 12-month period.

(d)(1) Except as otherwise provided in subsection 484(a) of this subchapter, earned sick time that remains unused at the end of an annual period shall be carried over to the next annual period and the employee shall continue to accrue earned sick time as provided pursuant to section 482 of this subchapter. However, nothing in this subdivision shall be construed to permit an employee to use more earned sick time during an annual period than any limit on the use of earned sick time that is established by his or her employer pursuant to subsection (c) of this section.

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

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

(f)(1) An employee who is discharged by his or her employer after he or she has completed a waiting period required pursuant to subsection 482(b) of this subchapter and is subsequently rehired by the same employer within 12 months after the discharge from employment shall begin to accrue and may use earned sick time without a waiting period. However, the employee shall not be entitled to retain any earned sick time that accrued before the time of his or her discharge unless agreed to by the employer.

(2) An employee that voluntarily separates from employment after he or she has completed a waiting period required pursuant to subsection 482(b) of this subchapter and is subsequently rehired by the same employer within 12 months after the separation from employment shall not be entitled to accrue and use earned sick time without a waiting period unless agreed to by the employer.

(g) An employer shall not require an employee to find a replacement for absences, including absences for professional diagnostic, preventive, routine, or therapeutic health care.

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

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

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

(i)(1) If an employee is absent from work for one of the reasons listed in subsection (a) of this section, the employee shall not be required to use earned sick time accrued pursuant to section 482 of this subchapter and the employer will not be required to pay for the time that the employee was absent if the employer and the employee mutually agree that either:

(A) the employee will work an equivalent number of hours as the number of hours for which the employee is absent during the same pay period; or

(B) the employee will trade hours with a second employee so that the second employee works during the hours for which the employee is absent and the employee works an equivalent number of hours in place of the second employee during the same pay period.

(2) Nothing in this subsection shall be construed to prevent an employer from adopting a policy that requires an employee to use earned sick time accrued pursuant to section 482 of this subchapter for an absence from work for one of the reasons set forth in subsection (a) of this section.

(j) An employer shall post notice of the provisions of this section in a form provided by the Commissioner in a place conspicuous to employees at the

employer's place of business. An employer shall also notify an employee of the provisions of this section at the time of the employee's hiring.

(k) An employee who uses earned sick time accrued pursuant to section 482 of this subchapter shall not diminish his or her rights under sections 472 and 472a of this title.

(l) The provisions against retaliation set forth in section 397 of this title shall apply to this subchapter.

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

(n) The Commissioner shall enforce this subchapter in accordance with the procedures established in section 342a of this title. However, the appeal provision of subsection 342a(f) shall not apply to any enforcement action brought pursuant to this subsection.

§ 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT

(a) An employer shall be in compliance with this subchapter if either of the following occurs:

(1) The employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with paid time off from work that:

(A) he or she may use for all of the reasons set forth in subsection 483(a) of this subchapter; and

(B) accrues and may be used at a rate that is equal to or greater than the rate set forth in sections 482 and 483 of this subchapter.

(2) The employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with at least the full amount of paid time off from work required pursuant to sections 482 and 483 of this subchapter at the beginning of each annual period and the employee may use it at any time during the annual period for the reasons set forth in subsection 483(a) of this subchapter. If the employer provides an employee with the full amount of paid time off at the beginning of each annual period, the paid time off shall not carry over from one annual period to the next as provided in subdivision 483(d)(1) of this subchapter.

(b) Nothing in this subchapter shall be construed to require an employer that satisfies the requirements of subsection (a) of this section to provide additional earned sick time to an employee that chooses to use paid time off that could be used for the reasons set forth in subdivisions 483(a)(1)–(5) of this subchapter for a different purpose.

(c) Nothing in this subchapter shall be construed to prevent an employer from providing a paid time off policy or agreeing to a collective bargaining agreement that provides a paid time off policy that is more generous than the earned sick time provided by this subchapter.

(d)(1) Nothing in this subchapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or paid time off policy that provides greater earned sick time rights than the rights provided by this subchapter.

(2) Nothing in this subchapter shall be construed to preempt or override the terms of a collective bargaining agreement that is in effect before January 1, 2017.

(e) A collective bargaining agreement or paid time off policy may not diminish the rights provided by this subchapter.

§ 485. SEVERABILITY OF PROVISIONS

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

§ 486. NEW EMPLOYER EXEMPTION

(a) Notwithstanding any provision of this subchapter to the contrary, new employers shall not be subject to the provisions of this subchapter for a period of one year after the employer hires its first employee.

(b) For purposes of enforcement under subsections 483(l)–(n) of this subchapter, an employer shall be presumed to be subject to the provisions of this subchapter unless the employer proves that a period of no more than one

year elapsed between the date on which the employer hired its first employee and the date on which the employer is alleged to have violated the provisions of this subchapter.

(c) No employer shall transfer an employee to a second employer with whom there is, at the time of the transfer, substantially common ownership, management, or control for the purposes of either employer claiming an exemption pursuant to subsection (a) of this section.

Sec. 5. 21 V.S.A. § 345 is amended to read:

§ 345. NONPAYMENT OF WAGES AND BENEFITS

(a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and 483 of this title shall be fined not more than \$5,000.00. Where the employer is a corporation, the president or other officers who have control of the payment operations of the corporation shall be considered employers and liable to the employee for actual wages due when the officer has willfully and without good cause participated in knowing violations of this chapter.

* * *

Sec. 6. DEPARTMENT OF LABOR REPORT

The Department of Labor shall, on or before January 15, 2019, report to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the number of inquiries and complaints submitted to the Department in

relation to this act and the number of investigations and enforcement actions undertaken by the Department in relation to this act during the first two years after its effective date.

Sec. 6a. SMALL BUSINESS PLANNING AND IMPLEMENTATION

ASSISTANCE

On or before November 15, 2017, the Commissioner of Labor and the Secretary of Commerce and Community Development shall develop and implement a program to provide employers that have five or fewer employees who are employed for an average of no less than 30 hours per week during a year with assistance related to the development of time off policies and business plans necessary to implement the requirements of this act.

Sec. 6b. COST TO SMALL EMPLOYERS; SURVEY; REPORT

(a) The Department of Labor and the Agency of Commerce and Community Development shall conduct a survey of Vermont employers with five or fewer employees regarding the following:

- (1) the number of employees employed by each employer;
- (2) the hourly wages paid by each employer to its employees; and
- (3) whether each employer provides its employees with paid time off from work that satisfies the requirements of 21 V.S.A. §§ 482–484 as enacted pursuant to Sec. 4 of this act.

(b) The Department of Labor and the Agency of Commerce and Community Development shall, on or before January 15, 2017, report to the General Assembly regarding the results of the survey and an estimate of the total additional cost to employers with five or fewer employees of providing earned sick time pursuant to the requirements of this act.

Sec. 7. 29 V.S.A. § 161 is amended to read:

§ 161. REQUIREMENTS ON STATE CONSTRUCTION PROJECTS

(a) Bids; selection.

* * *

(3) All bids on State projects shall be required to comply with all applicable provisions of Title 21.

Sec. 8. EFFECTIVE DATES

(a)(1) This section and Secs. 6a and 6b shall take effect on July 1, 2016.

(2) The remaining sections of this act shall take effect on January 1, 2017, except that an employer that has five or fewer employees who are employed for an average of no less than 30 hours per week shall not be subject to the provisions of 21 V.S.A. chapter 5, subchapter 4b until January 1, 2018.

(b)(1) An employer may require for its existing employees on January 1, 2017 a waiting period of up to one year. The waiting period pursuant to this subsection shall begin on January 1, 2017 and shall end on or before December 31, 2017. During this waiting period, an employee shall accrue

earned sick time pursuant to 21 V.S.A. § 482, but shall not be permitted to use the earned sick time until after he or she has completed the waiting period.

(2) An employer that has five or fewer employees who are employed for an average of no less than 30 hours per week may require for its existing employees on January 1, 2018 a waiting period of up to one year. The waiting period pursuant to this subsection shall begin on January 1, 2018 and shall end on or before December 31, 2018. During this waiting period, an employee shall accrue earned sick time pursuant to 21 V.S.A. § 482, but shall not be permitted to use the earned sick time until after he or she has completed the waiting period.