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

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

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

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. Less than 50 percent of private sector workers employed by companies with under 20 workers have access to paid leave, while only approximately 78 percent of workers employed by larger companies have access to paid leave time.

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

Sec. 2. PURPOSE

The purpose of this act is to promote a healthy work environment by ensuring that employees are provided with paid sick leave time and that employers do not penalize employees who use paid sick leave benefits.
Sec. 3. 21 V.S.A. § 384 is amended to read:

§ 384. EMPLOYMENT; WAGES

* * *

(d) For the purposes of earned sick time, an employer must 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 for vacation, sickness, personal reasons, or holidays, 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 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, except that it shall not include employees of the federal government.

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

§ 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.

(1) 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 90 days or 500 hours, whichever occurs later.

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

(c) In the absence of a more generous paid time policy or collective bargaining agreement provision, an employer may:
(1) limit the amount of earned sick time accrued pursuant to this section to:

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

(B) after June 30, 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) Earned sick time accrued pursuant to this section shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns for hours worked.

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

(f) An employer with a paid time policy that is comparable to or more generous than the earned sick time provided under this section is not required to provide additional earned sick time.
(g) If an employer offers combined time off that does not specifically include sick time, an employee may use all or a portion of that time for the purposes listed in subdivisions 483(a)(1)–(5) of this title.

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

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

§ 483. USE OF EARNED SICK TIME

(a) An employee may use earned sick time accrued pursuant to section 482 of this title 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, person residing with the employee, or family member for whom the employee is primarily
responsible to arrange or provide care for, 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, person residing with the employee, or family member for whom the employee is primarily responsible to arrange or provide care for, 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, person residing with the employee, or family member for whom the employee is primarily responsible to arrange or provide care for, because the school or business where that individual is normally located during the employee’s work day is closed for public health or safety reasons.

(b) An employee shall use earned sick time accrued pursuant to section 482 of this title in the smallest time increments that the employer’s payroll system uses to account for other absences when the employee’s absence is shorter than a normal workday.
In the absence of a more generous paid time policy or collective bargaining agreement provision, an employee may use:

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

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

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

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

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

(f) An employee who is rehired within 12 months after a separation from employment shall retain earned sick time accrued pursuant to section 482 of this title that was unused at the time of separation, unless the employee was compensated for this earned sick time at the time of separation from
employment. An employer shall retain a record of the earned sick time
accrued by an employee for at least 12 months after the employee’s separation
from employment.

(g) An employer may require an employee to make reasonable efforts to
find a replacement for planned 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 title 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 title and the expected
duration of the employee’s absence.

(i) 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.

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

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

(C) receives higher pay in the form of a differential as defined in section 481 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.

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

(k) 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 that:

(1) 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;

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

(l) A seasonal employee shall not accrue earned sick time pursuant to section 482 of this title during his or her first year of employment. However, a seasonal employee that returns for a second year of employment shall, upon return, have accrued earned sick time as if he or she had been employed for the full year under the provisions of section 481 of this title.

(2) An employee may agree to provide earned sick time to an employee covered by this subsection.
commencing his or her second year of employment, immediately accrue one hour of earned sick time for every 40 hours worked during his or her first year of employment, provided that:

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

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

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

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

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

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

(A) requests or uses earned sick time in accordance with this subchapter or the employer’s earned sick time policy; or
(B) has lodged a complaint with the Commissioner alleging that the employer has violated the provisions of this subchapter.

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

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

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

§ 484. 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, 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 SURVEY

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

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

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:
§ 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, 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.

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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.