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H.187

Representative Toleno of Brattleboro moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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 fewer than 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

* * *

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

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

4 Subchapter 4B. Earned Sick Time

5 § 481. DEFINITIONS

6 As used in this subchapter:

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

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

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

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

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

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

1 (B) An individual who is employed by an employer:
2 (i) for 20 weeks or fewer in a calendar year;
3 (ii) in a job scheduled to last 20 weeks or fewer; and
4 (iii) for the purpose of supporting or supplementing the
5 employer’s workforce in certain situations, including employee absences,
6 temporary skill shortages, seasonal workloads, and special assignments and
7 projects.

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

10 (D) An employee of a health care facility as defined in 18 V.S.A.
11 § 9432(8) if the employee:

12 (i) is under no obligation to work a regular schedule;
13 (ii) works only when he or she indicates that he or she is available
14 to work and has no obligation to work when he or she does not indicate
15 availability; and
16 (iii) receives higher pay in the form of a differential as defined in
17 subdivision (3) of this section, or some other increased compensation than that
18 paid to an employee of a health care facility performing the same job on a
19 regular schedule.

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

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

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

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

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

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

15 (A) annual leave;

16 (B) combined time off;

17 (C) holiday leave;

18 (D) personal leave;

19 (E) sick leave; or

20 (F) vacation leave.

1 § 482. EARNED SICK TIME

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

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

8 (c) An employer may:

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

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

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

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

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

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

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

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

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

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

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

14 § 483. USE OF EARNED SICK TIME

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

17 (1) The employee is ill or injured.

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

20 (3) The employee cares for a sick or injured parent, grandparent, spouse,
21 child, brother, sister, parent-in-law, grandchild, foster child, person residing

1 with the employee, or family member for whom the employee is primarily
2 responsible to arrange or provide care for, including helping that individual
3 obtain diagnostic, preventive, routine, or therapeutic health treatment.

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

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

19 (b) If an employee’s absence is shorter than a normal workday, the
20 employee shall use earned sick time accrued pursuant to section 482 of this

1 title in the smallest time increments that the employer’s payroll system uses to
2 account for other absences.

3 (c) An employee may use:

4 (1) from January 1, 2016, until December 31, 2017, no more than 24
5 hours of earned sick time accrued pursuant to section 482 of this title in any
6 one year; and

7 (2) after December 31, 2017, no more than 40 hours of earned sick time
8 accrued pursuant to section 482 of this title in any one year.

9 (d)(1) Except as otherwise provided in subsection 484(a) of this title,
10 unused earned sick time shall be carried over to the next year and the employee
11 has the right to earn the balance between the unused portion and the maximum
12 allowed.

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

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

20 (f) An employee who is rehired by the same employer within 12 months
21 after separation from employment shall begin to accrue and may use earned

1 sick time without any waiting period, but shall not be entitled to retain any
2 unused earned sick time that had accrued pursuant to section 482 of this title
3 before the time of separation unless agreed upon by the employer.

4 (g) An employer shall not require an employee to find a replacement for
5 absences, including absences for professional diagnostic, preventive, routine,
6 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) If an employee is absent from work for one of the reasons listed in
15 subsection (a) of this section, the employee shall not be required to use earned
16 sick time accrued pursuant to section 482 of this title and the employer will not
17 be required to pay for the time that the employee was absent if the employer
18 and the employee mutually agree that either:

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

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

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

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

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

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

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

18 § 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT

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

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

4 (A) he or she may use for all of the reasons set forth in subsection
5 483(a) of this title; and

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

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

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

20 (c) Nothing in this subchapter shall be construed to diminish an employer's
21 obligation to comply with any collective bargaining agreement or paid time off

1 policy that provides greater earned sick time rights than the rights provided by
2 this subchapter.

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

5 § 485. SEVERABILITY OF PROVISIONS

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

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

11 § 345. NONPAYMENT OF WAGES AND BENEFITS

12 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and
13 483 of this title shall be fined not more than \$5,000.00. Where the employer is
14 a corporation, the president or other officers who have control of the payment
15 operations of the corporation shall be considered employers and liable to the
16 employee for actual wages due when the officer has willfully and without good
17 cause participated in knowing violations of this chapter.

18 * * *

19 Sec. 6. DEPARTMENT OF LABOR REPORT

20 The Department of Labor shall, on or before January 15, 2017, report to the
21 House Committee on General, Housing and Military Affairs and the Senate

1 Committee on Economic Development, Housing and General Affairs regarding
2 the number of inquiries and complaints submitted to the Department in relation
3 to this act and the number of investigations and enforcement actions
4 undertaken by the Department in relation to this act during the first year after
5 its effective date.

6 Sec. 7. EFFECTIVE DATE

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

DRAFT