

Side-by-Side Comparison of Provisions of H.187 as Passed by House and the Senate’s Proposal of Amendment

February 15, 2016

Damien Leonard, Esq., Office of Legislative Council

21 V.S.A. § 481. Definitions

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
(1) <u>“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.</u>	(2) <u>“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.</u>	<ul style="list-style-type: none"> • Unchanged.
(2) <u>“Commissioner” means the Commissioner of Labor.</u>	(3) <u>“Commissioner” means the Commissioner of Labor.</u>	<ul style="list-style-type: none"> • Unchanged.
(3) <u>“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.</u>	N/A	<ul style="list-style-type: none"> • Deleted in Senate’s Proposal of Amendment.
(4) <u>“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</u>	(4) <u>“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</u>	<ul style="list-style-type: none"> • Unchanged.

<p><u>subdivisions 483(a)(1)–(5) of this subchapter.</u></p> <p><u>(5) “Employee” has the same meaning as set forth in section 341 of this title. However, the term “employee” shall not include:</u></p> <p><u>(A) An individual who is employed by the federal government.</u></p> <p><u>(B) An individual who is employed by an employer:</u></p> <p><u>(i) for 20 weeks or fewer in a calendar year;</u></p> <p><u>(ii) in a job scheduled to last 20 weeks or fewer; and</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(D) An employee of a health care facility as defined in 18 V.S.A. § 9432(8) if the employee:</u></p> <p><u>(i) is under no obligation to work a regular schedule;</u></p> <p><u>(ii) works only when he or she indicates that he or she is available to</u></p>	<p><u>subdivisions 483(a)(1)–(5) of this subchapter.</u></p> <p><u>(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:</u></p> <p><u>(A) An individual who is employed by the federal government.</u></p> <p><u>(B) An individual who is employed by an employer:</u></p> <p><u>(i) for 20 weeks or fewer in a 12-month period; and</u></p> <p><u>(ii) in a job scheduled to last 20 weeks or fewer.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(E) An employee of a school district, supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that:</u></p> <p><u>(i) is employed pursuant to a school</u></p>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment uses language similar to the definition of “employee” in Vermont’s Parental and Family Leave Act and adds the requirement that an employee work 18 or more hours per week to be covered by the earned sick time requirement. <ul style="list-style-type: none"> ○ The functional difference is the Senate’s requirement that an individual be employed for an average of at least 18 hours per week during a year. • Senate’s Proposal of Amendment eliminates third part of test for seasonal/temporary workers regarding the purpose of the work, and clarifies language in (5)(B)(i) from “calendar year” to “12-month period,” which takes into account jobs that extend from one calendar year to the next. • Senate’s Proposal of Amendment modifies exclusion for State employees that are exempt from classified service so that it does not apply to State temporary employees under 3 V.S.A. § 331. • Senate’s Proposal of Amendment modifies exclusion for per diem health
--	--	---

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.

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

care workers so that it extends to workers in long-term care facilities and by replacing the three-part test in the House version with a requirement that an individual “works on a per diem or intermittent basis.”

- Senate’s Proposal of Amendment adds an exclusion for individuals under 18 years of age.
- Senate’s Proposal of Amendment eliminates the House version’s exclusion for guest workers employed pursuant to a federal work visa program.
- Senate’s Proposal of Amendment adds an exclusion for 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.

<p>§ 212.1(b). <u>(G) an individual that is either:</u> <u>(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</u> <u>(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.</u></p>	<p>work; <u>(iii) is under no obligation to work for the employer offering the work; and</u> <u>(iv) has no expectation of continuing employment with the employer.</u></p>	
<p><u>(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.</u></p>	<p><u>(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.</u></p>	<ul style="list-style-type: none"> • Redesignated as subdivision (1).
<p><u>(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:</u> <u>(A) annual leave;</u> <u>(B) combined time off;</u> <u>(C) vacation leave;</u> <u>(D) personal leave;</u></p>	<p><u>(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:</u> <u>(A) annual leave;</u> <u>(B) combined time off;</u> <u>(C) vacation leave;</u> <u>(D) personal leave;</u></p>	<ul style="list-style-type: none"> • Unchanged.

<u>(E) sick leave; or</u> <u>(F) any similar type of leave.</u>	<u>(E) sick leave; or</u> <u>(F) any similar type of leave.</u>	
--	--	--

21 V.S.A. § 482. Earned Sick Time

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment::
<u>(a) An employee shall accrue not less than one hour of earned sick time for every 40 hours worked.</u>	<u>(a) An employee shall accrue not less than one hour of earned sick time for every 52 hours worked.</u>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment reduces rate of accrual from 1 hour for every 40 hours worked to 1 hour for every 52 hours worked.
<u>(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.</u>	<u>(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.</u>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment changes maximum permitted waiting period from 1400 hours or one year, whichever occurs sooner, to one year.
<u>(c) An employer may:</u> <u>(1) limit the amount of earned sick time accrued pursuant to this section to:</u> <u>(A) from January 1, 2016, until December 31, 2017, a maximum of 24 hours in a 12-month period; and</u> <u>(B) after December 31, 2017, a maximum of 40 hours in a 12-month period; or</u> <u>(2) limit to 40 hours the number of</u>	<u>(c) An employer may:</u> <u>(1) limit the amount of earned sick time accrued pursuant to this section to:</u> <u>(A) from January 1, 2017 until December 31, 2018, a maximum of 24 hours in a 12-month period; and</u> <u>(B) after December 31, 2018, a maximum of 40 hours in a 12-month period; or</u> <u>(2) limit to 40 hours the number of hours in each workweek for which full-</u>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment changes the dates to correspond with the effective date being moved from January 1, 2016 to January 1, 2017.

<p><u>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.</u></p>	<p><u>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.</u></p>	
<p><u>(d)(1) Earned sick time shall be compensated at a rate that is equal to the greater of either:</u></p> <p><u>(A) the normal hourly wage rate of the employee; or</u> <u>(B) the minimum wage rate for an employee pursuant to section 384 of this title.</u></p> <p><u>(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.</u></p>	<p><u>(d)(1) Earned sick time shall be compensated at a rate that is equal to the greater of either:</u></p> <p><u>(A) the normal hourly wage rate of the employee; or</u> <u>(B) the minimum wage rate for an employee pursuant to section 384 of this title.</u></p> <p><u>(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.</u></p>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment substitutes the words “group insurance benefits” for “employment benefits” in subdivision (2).
<p><u>(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:</u></p> <p><u>(1) as it accrues during each pay period; or</u></p>	<p><u>(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:</u></p> <p><u>(1) as it accrues during each pay period; or</u></p>	<ul style="list-style-type: none"> • Unchanged.

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

21 V.S.A. § 483. Use of Earned Sick Time

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
<p><u>(a) An employee may use earned sick time accrued pursuant to section 482 of this subchapter for any of the following reasons:</u></p> <p><u>(1) The employee is ill or injured.</u></p> <p><u>(2) The employee obtains professional diagnostic, preventive, routine, or therapeutic health care.</u></p> <p><u>(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.</u></p> <p><u>(4) The employee is arranging for</u></p>	<p><u>(a) An employee may use earned sick time accrued pursuant to section 482 of this subchapter for any of the following reasons:</u></p> <p><u>(1) The employee is ill or injured.</u></p> <p><u>(2) The employee obtains professional diagnostic, preventive, routine, or therapeutic health care.</u></p> <p><u>(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.</u></p> <p><u>(4) The employee is arranging for social or legal services or obtaining</u></p>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment deletes the words “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” from subdivisions (3), (4), or (5). • Senate’s Proposal of Amendment adds coverage for “accompanying the employee’s parent, grandparent, spouse, or parent-in-law to an appointment related to his or her long-term care” in subdivision (3).

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.

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.

<p><u>(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.</u></p>	<p><u>(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.</u></p>	<ul style="list-style-type: none"> • Under Senate’s Proposal of Amendment, an employee whose absence is shorter than a normal workday shall use earned sick time in smallest increments used by the employer’s payroll system to account for other absences or the smallest time increments that the employer’s paid time off policy permits. • Under Senate’s Proposal of Amendment, an employer is not required to permit an employee to use earned sick time in increments that are shorter than one hour.
<p><u>(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:</u> <u>(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</u> <u>(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.</u></p>	<p><u>(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:</u> <u>(1) from January 1, 2017 until December 31, 2018, no more than 24 hours in a 12-month period; and</u> <u>(2) after December 31, 2018, no more than 40 hours in a 12-month period.</u></p>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment changes the dates to correspond with the effective date being moved from January 1, 2016 to January 1, 2017. • Senate’s Proposal of Amendment deletes repetition of “earned sick time accrued pursuant to section 482 of this subchapter” in subdivisions (1) and (2) because that reference already exists in the introductory language of subsection (c).
<p><u>(d)(1) Except as otherwise provided in subsection 484(a) of this subchapter, earned sick time that remains unused at the</u></p>	<p><u>(d)(1) Except as otherwise provided in subsection 484(a) of this subchapter, earned sick time that remains unused at the</u></p>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment deletes “and the employee has the right to earn the balance between the unused

<p><u>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.</u></p> <p><u>(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.</u></p>	<p><u>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.</u></p> <p><u>(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.</u></p>	<p>portion and the maximum allowed” from subdivision (1).</p> <ul style="list-style-type: none"> • The Senate’s Proposal of Amendment replaces the deleted language with new language in subdivision (1) that provides: <ul style="list-style-type: none"> ○ “the employee shall continue to accrue earned sick time as provided pursuant to section 482 of this subchapter”; and ○ “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.”
<p><u>(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.</u></p>	<p><u>(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.</u></p>	<ul style="list-style-type: none"> • Unchanged.
<p><u>(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</u></p>	<p><u>(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</u></p>	<ul style="list-style-type: none"> • The Senate’s Proposal of Amendment deletes House provision permitting an employee that is rehired by the same employer within 12 months to accrue and use earned sick time without a waiting period.

<p><u>section 482 of this subchapter before the time of separation unless agreed upon by the employer.</u></p>	<p><u>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.</u></p> <p><u>(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.</u></p>	<ul style="list-style-type: none"> • The Senate’s Proposal of Amendment’s new language provides that an employee that is discharged by an employer after he or she completes the waiting period and is rehired within 12 months of the discharge may accrue and use earned sick time without a waiting period. <ul style="list-style-type: none"> ○ However, an employee that voluntarily separates from an employer after completing the waiting period and is rehired within 12 months is not entitled to accrue and use earned sick time without a new waiting period unless agreed to by the employer. • Both the House and Senate versions allow an employer to agree to permit an employee to retain earned sick time that accrued prior to his or her discharge or separation from employment.
<p><u>(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.</u></p>	<p><u>(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.</u></p>	<ul style="list-style-type: none"> • Unchanged.
<p><u>(h) An employer may require an employee planning to take earned sick time accrued pursuant to section 482 of this subchapter to:</u></p>	<p><u>(h) An employer may require an employee planning to take earned sick time accrued pursuant to section 482 of this subchapter to:</u></p>	<ul style="list-style-type: none"> • Unchanged.

<p><u>(1) make reasonable efforts to avoid scheduling routine or preventive health care during regular work hours; or</u> <u>(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.</u></p>	<p><u>(1) make reasonable efforts to avoid scheduling routine or preventive health care during regular work hours; or</u> <u>(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.</u></p>	
<p><u>(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:</u> <u>(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</u> <u>(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.</u></p>	<p><u>(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:</u> <u>(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</u> <u>(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.</u></p>	<ul style="list-style-type: none"> • Senate's Proposal of Amendment renumbers the subsection, and adds subdivision (2), which expressly provides that an employer may adopt a policy requiring employees to use accrued earned sick time for an absence from work for one of the reasons that earned sick time may be used for under H.187.

	<u>(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.</u>	
<u>(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.</u>	<u>(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.</u>	<ul style="list-style-type: none"> • Unchanged.
<u>(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.</u>	<u>(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.</u>	<ul style="list-style-type: none"> • Unchanged.
<u>(l) The provisions against retaliation set forth in section 397 of this title shall apply to this subchapter.</u>	<u>(l) The provisions against retaliation set forth in section 397 of this title shall apply to this subchapter.</u>	<ul style="list-style-type: none"> • Unchanged.
<u>(m) An employer who violates this section shall be subject to the penalty provisions of section 345 of this title.</u>	<u>(m) An employer who violates this subchapter shall be subject to the penalty provisions of section 345 of this title.</u>	<ul style="list-style-type: none"> • Unchanged.
<u>(n) The Commissioner shall enforce this section in accordance with the procedures established in section 342a of this title.</u>	<u>(n) The Commissioner shall enforce this subchapter in accordance with the procedures established in section 342a of</u>	<ul style="list-style-type: none"> • Senate's Proposal of Amendment provides for the same enforcement process up to and including an appeal

	<p><u>this title. However, the appeal provision of subsection 342a(f) shall not apply to any enforcement action brought pursuant to this subsection.</u></p>	<p>to a departmental administrative law judge from a determination of whether earned sick time is due to an employee.</p> <ul style="list-style-type: none"> • However, the Senate’s Proposal of Amendment does not provide for subsequent appeals to the Employment Security Board and Vermont Supreme Court under 342a(f).
--	--	---

21 V.S.A. § 484. Compliance with Earned Sick Time Requirement

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
<p><u>(a) An employer shall be in compliance with this subchapter if either of the following occurs:</u></p> <p><u>(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:</u></p> <p><u>(A) he or she may use for all of the reasons set forth in subsection 483(a) of this subchapter; and</u></p> <p><u>(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.</u></p> <p><u>(2) The employer offers a paid time off policy or is a party to a collective</u></p>	<p><u>(a) An employer shall be in compliance with this subchapter if either of the following occurs:</u></p> <p><u>(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:</u></p> <p><u>(A) he or she may use for all of the reasons set forth in subsection 483(a) of this subchapter; and</u></p> <p><u>(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.</u></p> <p><u>(2) The employer offers a paid time off policy or is a party to a collective</u></p>	<ul style="list-style-type: none"> • Unchanged.

<p><u>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.</u></p>	<p><u>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.</u></p>	
<p>N/A</p>	<p><u>(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.</u></p>	<ul style="list-style-type: none"> • New provision in Senate’s Proposal of Amendment.
<p><u>(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</u></p>	<p><u>(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</u></p>	<ul style="list-style-type: none"> • Renumbered, but otherwise unchanged.

<u>earned sick time provided by this subchapter.</u>	<u>earned sick time provided by this subchapter.</u>	
<u>(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.</u>	<u>(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.</u> <u>(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.</u>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment renumbers the subsection and adds subdivision (2), which provides that the new law will not preempt or override the terms of a collective bargaining agreement that is in effect before January 1, 2017.
<u>(d) A collective bargaining agreement or paid time off policy may not diminish the rights provided by this subchapter.</u>	<u>(e) A collective bargaining agreement or paid time off policy may not diminish the rights provided by this subchapter.</u>	<ul style="list-style-type: none"> • Renumbered, but otherwise unchanged.

21 V.S.A. § 485. Severability of Provisions

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
<u>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.</u>	<u>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.</u>	<ul style="list-style-type: none"> • Unchanged.

21 V.S.A. § 486. New Employer Exemption

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
N/A	<u>(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.</u>	New provision in Senate’s Proposal of Amendment.
N/A	<u>(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.</u>	New provision in Senate’s Proposal of Amendment.
N/A	<u>(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.</u>	New provision in Senate’s Proposal of Amendment.

Sec. 5. 21 V.S.A. § 345. Nonpayment of Wages and Benefits

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
<p>(a) Each employer who violates sections 342 and 343 <u>342, 343, 482, and 483</u> 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.</p> <p style="text-align: center;">* * *</p>	<p>(a) Each employer who violates sections 342 and 343 <u>342, 343, 482, and 483</u> 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.</p> <p style="text-align: center;">* * *</p>	<p>Unchanged.</p>

Sec. 6. Department of Labor Report

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
<p><u>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</u></p>	<p><u>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</u></p>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment revises the dates to correspond with the effective date being moved from January 1, 2016 to January 1, 2017, and to provide for an additional year of information gathering in light of the waiting period that employers may require for existing employees on the effective date of H.187.

<u>Department in relation to this act during the first year after its effective date.</u>	<u>Department in relation to this act during the first two years after its effective date.</u>	
---	--	--

Sec. 6a. Small Business Planning and Implementation Assistance

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
N/A	<u>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.</u>	New provision in Senate’s Proposal of Amendment.

Sec. 6b. Cost to Small Employers; Survey; Report

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
N/A	<u>(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</u>	<ul style="list-style-type: none"> • New provision in Senate’s Proposal of Amendment.

	<p><u>employed by each employer;</u> <u>(2) the hourly wages paid by each employer to its employees; and</u> <u>(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.</u></p> <p><u>(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.</u></p>	
--	--	--

Sec. 7. 29 V.S.A. § 161. Requirements on State Construction Projects

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
	<p>(a) Bids; selection.</p> <p style="text-align: center;">* * *</p> <p><u>(3) All bids on State projects shall be required to comply with all applicable provisions of Title 21.</u></p>	<ul style="list-style-type: none"> • New provision in Senate’s Proposal of Amendment.

Sec. 7/8. Effective Dates

H.187, as passed the House	Senate Proposal of Amendment to H.187	Changes from as Passed by House to the Senate Proposal of Amendment:
<p><u>This act shall take effect on January 1, 2016.</u></p>	<p><u>(a)(1) This section, Secs. 6a and 6b shall take effect on July 1, 2016.</u> <u>(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.</u></p>	<ul style="list-style-type: none"> • Senate’s Proposal of Amendment provides the following effective dates: <ul style="list-style-type: none"> ○ July 1, 2016 for sections regarding Small Business Assistance, and the survey and report regarding the Cost to Small Employers; ○ January 1, 2017 for implementation by employers with six or more employees who are employed for an average of no less than 30 hours per week; and ○ January 1, 2018 for implementation by employers with five or fewer employees who are employed for an average of no less than 30 hours per week.
<p>N/A</p>	<p><u>(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</u></p>	<ul style="list-style-type: none"> • New provision in Senate’s Proposal of Amendment.

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.