

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on General, Housing and Military Affairs to which was
3 referred House Bill No. 187 entitled “An act relating to absence from work for
4 health care and safety” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The General Assembly finds:

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

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

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

1 Sec. 2. PURPOSE

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

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

6 § 384. EMPLOYMENT; WAGES

7 * * *

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

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

11 Subchapter 4B. Earned Sick Time

12 § 481. DEFINITIONS

13 As used in this subchapter:

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

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

19 (3) “Differential” means compensation paid in addition to the usual
20 compensation paid to an employee of a health care facility as defined in
21 18 V.S.A. § 9432(8) who does not work on a regular schedule and who works

1 only when he or she indicates that he or she is available to work and has no
2 obligation to work when he or she does not indicate availability.

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

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

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

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

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

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

13 (iii) for the purpose of supporting or supplementing the

14 employer’s workforce in certain situations, including employee absences,
15 temporary skill shortages, seasonal workloads, and special assignments and
16 projects.

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

19 (D) An employee of a health care facility as defined in 18 V.S.A.
20 § 9432(8) if the employee:

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

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

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

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

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

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

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

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

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

4 (A) annual leave;

5 (B) combined time off;

6 (C) vacation leave;

7 (D) personal leave;

8 (E) sick leave; or

9 (F) any similar type of leave.

10 § 482. EARNED SICK TIME

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

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

17 (c) An employer may:

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

20 (A) from January 1, 2016, until December 31, 2017, a maximum of
21 24 hours in a 12-month period; and

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

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

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

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

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

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

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

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

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

3 § 483. USE OF EARNED SICK TIME

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

6 (1) The employee is ill or injured.

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

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

14 (4) The employee is arranging for social or legal services or obtaining
15 medical care or counseling for the employee or for the employee's parent,
16 grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster
17 child, person residing with the employee, or family member for whom the
18 employee is primarily responsible to arrange or provide care for, who is a
19 victim of domestic violence, sexual assault, or stalking or who is relocating as
20 the result of domestic violence, sexual assault, or stalking. As used in this

1 section, “domestic violence,” “sexual assault,” and “stalking” shall have the
2 same meaning as in 15 V.S.A. § 1151.

3 (5) The employee cares for a parent, grandparent, spouse, child, brother,
4 sister, parent-in-law, grandchild, foster child, person residing with the
5 employee, or family member for whom the employee is primarily responsible
6 to arrange or provide care for, because the school or business where that
7 individual is normally located during the employee’s workday is closed for
8 public health or safety reasons.

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

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

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

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

20 (d)(1) Except as otherwise provided in subsection 484(a) of this
21 subchapter, earned sick time that remains unused at the end of an annual period

1 shall be carried over to the next annual period and the employee has the right
2 to earn the balance between the unused portion and the maximum allowed.

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

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

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

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

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

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

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

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

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

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

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

1 (k) An employee who uses earned sick time accrued pursuant to section
2 482 of this subchapter shall not diminish his or her rights under sections 472
3 and 472a of this title.

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

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

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

10 § 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT

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

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

16 (A) he or she may use for all of the reasons set forth in subsection
17 483(a) of this subchapter; and

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

20 (2) The employer offers a paid time off policy or is a party to a
21 collective bargaining agreement that provides the employee with at least the

1 full amount of paid time off from work required pursuant to sections 482 and
2 483 of this subchapter at the beginning of each annual period and the employee
3 may use it at any time during the annual period for the reasons set forth in
4 subsection 483(a) of this subchapter. If the employer provides an employee
5 with the full amount of paid time off at the beginning of each annual period,
6 the paid time off shall not carry over from one annual period to the next as
7 provided in subdivision 483(d)(1) of this subchapter.

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

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

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

18 § 485. SEVERABILITY OF PROVISIONS

19 If any provision of this subchapter or the application of such provision to
20 any person or circumstances shall be held invalid, the remainder of the

1 subchapter and the application of such provisions to persons or circumstances
2 other than those as to which it is held invalid shall not be affected thereby.

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

4 § 345. NONPAYMENT OF WAGES AND BENEFITS

5 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and
6 483 of this title shall be fined not more than \$5,000.00. Where the employer is
7 a corporation, the president or other officers who have control of the payment
8 operations of the corporation shall be considered employers and liable to the
9 employee for actual wages due when the officer has willfully and without good
10 cause participated in knowing violations of this chapter.

11 * * *

12 Sec. 6. DEPARTMENT OF LABOR REPORT

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

20 Sec. 7. EFFECTIVE DATE

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

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3 (Committee vote: _____)

4

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Representative _____

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FOR THE COMMITTEE