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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, except that it shall not include:

21                (A) employees of the federal government; or

1           (B) individuals who are employed by an employer to support or  
2           supplement the employer’s workforce in certain situations, including employee  
3           absences, temporary skill shortages, seasonal workloads, and special  
4           assignments and projects.

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

9           § 482. EARNED SICK TIME

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

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

16           (c) In the absence of a more generous paid time policy or collective  
17           bargaining agreement provision, 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) Earned sick time accrued pursuant to this section shall be compensated  
8 at the same hourly rate and with the same benefits, including health care  
9 benefits, as the employee normally earns for hours worked.

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

13          (f) An employer with a paid time policy that is comparable to or more  
14 generous than the earned sick time provided under this section is not required  
15 to provide additional earned sick time.

16          (g) If an employer offers combined time off that does not specifically  
17 include sick time, an employee may use all or a portion of that time for the  
18 purposes listed in subdivisions 483(a)(1)–(5) of this title.

19          (h) Nothing in this section shall be construed to interfere with the  
20 enforcement of or require a change in a collective bargaining agreement that is

1 comparable to or more generous than the earned sick time provided under this  
2 section.

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

7 § 483. USE OF EARNED SICK TIME

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

10 (1) The employee is ill or injured.

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

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

18 (4) The employee is arranging for social or legal services or obtaining  
19 medical care or counseling for the employee or for the employee's parent,  
20 grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster  
21 child, person residing with the employee, or family member for whom the

1 employee is primarily responsible to arrange or provide care for, who is a  
2 victim of domestic violence, sexual assault, or stalking or who is relocating as  
3 the result of domestic violence, sexual assault, or stalking. As used in this  
4 section, “domestic violence,” “sexual assault,” and “stalking” shall have the  
5 same meaning as in 15 V.S.A. § 1151.

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

12 (b) An employee shall use earned sick time accrued pursuant to section 482  
13 of this title in the smallest time increments that the employer’s payroll system  
14 uses to account for other absences when the employee’s absence is shorter than  
15 a normal workday.

16 (c)(1) In the absence of a more generous paid time policy or collective  
17 bargaining agreement provision, an employee may use:

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

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

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

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

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

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

1       (g) An employer may require an employee to make reasonable efforts to  
2       find a replacement for planned absences, including absences for professional  
3       diagnostic, preventive, routine, or therapeutic health care.

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

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

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

11       (i) An employer shall post notice of the provisions of this section in a form  
12       provided by the Commissioner in a place conspicuous to employees at the  
13       employer’s place of business. An employer shall also notify an employee of  
14       the provisions of this section at the time of the employee’s hiring.

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

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

18           (B) works only when he or she indicates that he or she is available to  
19       work and has no obligation to work when he or she does not indicate  
20       availability; and



1           (C) receives higher pay in the form of a differential as defined in  
2           section 481 of this title, or some other increased compensation than that paid to  
3           an employee of a health care facility performing the same job on a regular  
4           schedule.

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

7           (k) This section shall not apply to an employee of a school district,  
8           supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that:

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

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

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

16          (l) An employee who uses earned sick time accrued pursuant to section 482  
17          of this title shall not forfeit his or her rights to leave under sections 472 and  
18          472a of this title.

19          (m) The provisions against retaliation set forth in section 348 of this title  
20          shall apply to this subchapter.

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

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

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

12       § 484. SEVERABILITY OF PROVISIONS

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

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

18       § 345. NONPAYMENT OF WAGES AND BENEFITS

19       (a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and  
20       483 of this title shall be fined not more than \$5,000.00. Where the employer is  
21       a corporation, the president or other officers who have control of the payment

1 operations of the corporation shall be considered employers and liable to the  
2 employee for actual wages due when the officer has willfully and without good  
3 cause participated in knowing violations of this chapter.

4 \* \* \*

5 Sec. 6. DEPARTMENT OF LABOR SURVEY

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

11 Sec. 7. EFFECTIVE DATE

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