

## Side-by-Side Comparison of Significant Provisions of S.15 and H.187

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Differences in **BOLD**

### Definition of Employee

H.187, as passed the House	S.15, As introduced	Comments:
<p>§ 481(5)  “Employee” has the same meaning as set forth in section 341 of this title. <b>However, the term “employee” shall not include:</b>  <b>(A) An individual who is employed by the federal government.</b>  <b>(B) An individual who is employed by an employer:</b>  <b>(i) for 20 weeks or fewer in a calendar year;</b>  <b>(ii) in a job scheduled to last 20 weeks or fewer; and</b>  <b>(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.</b>  <b>(C) An individual who is employed by the State and is exempt or excluded from the State classified service</b></p>	<p>§ 481(5)  “Employee” has the same meaning as set forth in section 341 of this title, <b>except that it shall not include employees of the federal government.</b></p>	<ul style="list-style-type: none"> <li>• Both bills exclude federal employees.</li> <li>• H.187 also excludes: <ul style="list-style-type: none"> <li>○ Seasonal and temporary employees.</li> <li>○ State employees that are not part of the classified service.</li> <li>○ Health care workers that work on a per diem basis.</li> <li>○ Substitute teachers that are not on an assignment lasting 30 or more calendar days.</li> <li>○ Guest workers employed under a federal work visa program.</li> <li>○ Sole proprietors and partner owners that are excluded from the provisions of the workers’ compensation law.</li> <li>○ Officers, managers, or members of a corporation or L.L.C. that are excluded from the provisions of the workers’ compensation law.</li> </ul> </li> </ul>

**pursuant to 3 V.S.A § 311.**

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

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

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

- (i) is employed pursuant to a school district or supervisory union policy on substitute educators as required by the Vermont Standards Board for Professional Educators Rule 5381;**
- (ii) is under no obligation to work a regular schedule; and**
- (iii) is not under contract or written agreement to provide at least one period of long-term substitute coverage which is defined as 30 or more consecutive**

<p>calendar days in the same assignment.  <b>(F) An individual who is a guest worker employed pursuant to a federal work visa program, including guest workers who are exempt from the visa issuance process pursuant to 8 C.F.R. § 212.1(b).</b>  <b>(G) an individual that is either:</b>  <b>(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</b>  <b>(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.</b></p>		
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**Rate at Which Earned Sick Time Accrues**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
<p>§ 482(a)  An employee shall accrue not less than <b>one hour of earned sick time for every 40</b> hours worked.</p>	<p>§ 482(a)  An employee shall accrue not less than <b>one hour of earned sick time for every 30</b> hours worked.</p>	

**Permitted Cap on Accrual and Use of Earned Sick Time**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
<p>Under §§ 482(c)(1) and § 483(c), an employer may limit the amount of earned sick time that an employee may accrue and use to:</p> <p><b>(A) from January 1, 2016, until December 31, 2017, 24 hours in a 12-month period; and</b></p> <p><b>(B) after December 31, 2017, 40 hours in a 12-month period.</b></p>	<p>Under §§ 482(c) and 483(c), an employer may limit the amount of earned sick time that an employee may accrue and use to <b>56 hours in a 12-month period.</b></p>	

**Permitted Waiting Period Before an Employee May Use Earned Sick Time**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
<p>§ 482(b) permits employers to require a <b>waiting period equal to one year or 1400 hours, whichever occurs first</b>, before an employee may use earned sick time.</p>	<p>§ 482(b) permits employers to require a <b>500 hour waiting period</b> before an employee may use earned sick time.</p>	<p>Under both bills, earned sick time accrues during the waiting period.</p>

**Permitted Uses for Earned Sick Time**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
<p>§ 483(a).</p> <p>(1) The employee is ill or injured.</p> <p>(2) The employee obtains professional diagnostic, preventive, routine, or therapeutic health care.</p> <p>(3) The employee cares for a sick or injured parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster child, <b>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</b>, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment.</p> <p>(4) The employee is arranging for social or legal services or obtaining medical care or counseling for the employee or for the employee’s parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster child, <b>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</b>, who is a victim of domestic violence,</p>	<p>§ 483(a).</p> <p>(1) The employee is ill or injured.</p> <p>(2) The employee obtains professional diagnostic, preventive, routine, or therapeutic health care.</p> <p>(3) The employee cares for a sick or injured parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster child, <b>person residing with the employee, or family member for whom the employee is primarily responsible to arrange or provide care for</b>, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment.</p> <p>(4) The employee is arranging for social or legal services or obtaining medical care or counseling for the employee or for the employee’s parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster child, <b>person residing with the employee, or family member for whom the employee is primarily responsible to arrange or provide care for</b>, who is a victim of domestic violence, sexual assault, or stalking or who is relocating as the result of domestic</p>	<ul style="list-style-type: none"> <li>• Changes to subdivisions 483(a)(3), (a)(4), and (a)(5) in H.187 prevent the use of earned sick time by an employee to care for a person residing with the employee for whom the employee is not primarily responsible to arrange and provide care for.</li> </ul>

<p>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 <b>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</b>, 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>	<p>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, <b>person residing with the employee, or family member for whom the employee is primarily responsible to arrange or provide care for</b>, because the school or business where that individual is normally located during the employee’s work day is closed for public health or safety reasons.</p>	
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**Retention of Earned Sick Time Following Separation from Employment and Rehire**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
<p>§ 483(f)  <b>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</b></p>	<p>§ 483(f)  <b>An employee who is rehired within 12 months after a separation from employment shall retain earned sick time accrued pursuant to section 482 of this title that was unused at the time of separation, unless the employee was compensated for this earned sick time at</b></p>	

pursuant to section 482 of this subchapter before the time of separation unless agreed upon by the employer.	the time of separation from employment. An employer shall retain a record of the earned sick time accrued by an employee for at least 12 months after the employee's separation from employment.	
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**Replacements for Absences**

H.187, as passed the House	S.15, As introduced	Comments:
§ 483(g) <b>An employer shall not require an employee to find a replacement for absences</b> , including absences for professional diagnostic, preventive, routine, or therapeutic health care.	§ 483(g) <b>An employer may require an employee to make reasonable efforts to find a replacement for planned absences.</b>	<ul style="list-style-type: none"> <li>• Language in § 483(g) of H.187 avoids a potential conflict with the provisions of the federal Family and Medical Leave Act.</li> <li>• Under § 483(i)(2) of H.187, an employee can avoid using earned sick time for an absence if the employee and employer mutually agree that the employee will swap shifts with another employee during the same pay period.</li> </ul>

**Seasonal Employees**

H.187, as passed the House	S.15, As introduced	Comments:
Excluded from the definition of employee pursuant to § 481(5)(b).	§ 483(l) In the absence of a more generous paid time plan or collective bargaining agreement, a seasonal employee shall accrue earned sick time pursuant to section	

	<p>482 of this title during his or her first year of employment but shall not use this earned sick time until his or her second year of employment, provided that:</p> <ul style="list-style-type: none"> <li>(1) the seasonal employee returns after the separation from employment within 12 months as provided by subsection (f) of this section; and</li> <li>(2) the seasonal employee is employed by the same employer as the previous season.</li> </ul>	
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**Provisions Relating to Employer Compliance with the Earned Sick Time Requirement**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
<p>§ 484:            (a) An employer shall be in compliance with this subchapter if either of the following occurs:            (1) The employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with paid time off from work that:                (A) he or she may use for all of the reasons set forth in subsection 483(a) of this subchapter; and                (B) accrues and may be used at a rate that is equal to or greater than the rate set forth in sections 482</p>	<p>§ 482:            (f) An employer with a paid time policy that is comparable to or more generous than the earned sick time provided under this section is not required to provide additional earned sick time.            (g) If an employer offers combined time off that does not specifically include paid sick time, an employee may use all or a portion of that time for the purposes listed in subdivisions 483(a)(1)–(5) of this title.            (h) Nothing in this section shall be construed to interfere with the enforcement of or require a change in a collective bargaining agreement that is</p>	<p>§ 484(a) of H.187 expressly provides minimum criteria that need to be met for compliance with the subchapter, including that employers may comply by providing their employees with a fixed number of sick hours at the beginning of each annual period in lieu of allowing sick hours to accrue over time.</p>



and 483 of this subchapter.

(2) The employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with at least the full amount of paid time off from work required pursuant to sections 482 and 483 of this subchapter at the beginning of each annual period and the employee may use it at any time during the annual period for the reasons set forth in subsection 483(a) of this subchapter.

....

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

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

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

§ 483:

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

**Anti-Retaliation Provision**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
<p>§ 483(1)  <b>The provisions against retaliation set forth in section 397 of this title shall apply to this subchapter.</b></p>	<p>§ 483(n)  <b>It shall be unlawful for an employer, employment agency, or labor organization to:</b>  <b>(1) have an absence control policy that treats an employee’s use of earned sick leave in accordance with this subchapter or the employer’s earned sick time policy as an absence that could lead to or result in the employee’s discharge, demotion, suspension, or other adverse employment action; or</b>  <b>(2) discipline, discharge, demote, suspend, penalize, or otherwise discriminate against an employee that:</b>  <b>(A) requests or uses earned sick leave in accordance with this subchapter or the employer’s earned sick time policy; or</b>  <b>(B) has lodged a complaint with the Commissioner alleging that the employer has violated the provisions of this subchapter.</b></p>	<ul style="list-style-type: none"> <li>• 21 V.S.A. § 397 prohibits retaliation against an employee: <ul style="list-style-type: none"> <li>○ that lodged a complaint of a violation;</li> <li>○ that cooperated in an investigation; or</li> <li>○ whom the employer believes may lodge a complaint or cooperate in an investigation.</li> </ul> </li> </ul>

### **Penalty for a Violation**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
§ 483(m) An employer who violates this section shall be subject to the penalty provisions of section 345 of this title.	§ 483(p) An employer who violates this section shall be subject to the penalty provisions of section 345 of this title.	Both bills also amend 21 V.S.A. § 345(a) to read: (a) Each employer who violates sections <del>342 and 343</del> 342, 343, 482, and 483 of this title shall be fined not more than \$5,000.00. Where the employer is a corporation, the president or other officers who have control of the payment operations of the corporation shall be considered employers and liable to the employee for actual wages due when the officer has willfully and without good cause participated in knowing violations of this chapter.

### **Enforcement**

<b>H.187, as passed the House</b>	<b>S.15, As introduced</b>	<b>Comments:</b>
§ 483(n) The Commissioner shall enforce this section in accordance with the procedures established in section 342a of this title.	§ 483(q) The Commissioner shall enforce this section in accordance with the procedures established in section 342a of this title.	21 V.S.A. § 342a relates to investigations of unpaid wages and benefits.