

SUMMARY OF H.187 AS PASSED THE HOUSE:

AN ACT RELATING TO ABSENCE FROM WORK FOR HEALTH CARE AND SAFETY

Section 1: Findings

Section 2: Purpose

Section 3: Amends 21 V.S.A. § 384 – Employment; Wages

- Adds new subsection (d) to provide that an employer that provides earned sick time must comply with the new subchapter 4B created by this bill.

Section 4: Adds a New Subchapter 4B – Earned Sick Time

21 V.S.A. § 481 – Definitions

- “Combined time off” means time off for vacation, sickness, personal reasons, or holidays, and the employee has the option to use all of the leave for whatever purpose he or she chooses.
- “Earned sick time” is time off earned under subchapter 4B that may be used for one of the purposes identified in § 483(a).
- “Employee” does not include:
 - an individual that the employer can demonstrate is an independent contractor;
 - an individual that is employed by the federal government;
 - an individual that is employed as a temporary or seasonal employee;
 - State employees that are exempt or excluded from State classified service under 3 V.S.A. § 311;
 - certain health care workers that work on a per diem basis;
 - certain substitute teachers that are not on a long-term assignment of 30 or more calendar days;
 - guest workers employed pursuant to a federal work visa program;
 - sole proprietors or partner owners of an unincorporated business who are excluded from coverage under the workers’ compensation law pursuant to 21 V.S.A. § 601(14)(F); and
 - officers, managers, or members of a corporation or L.L.C. for whom the Commissioner of Labor has approved an exclusion from workers’ compensation law pursuant to 21 V.S.A. § 601(14)(H).
- “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 in Vermont.

- “Paid time off policy” means any policy that provides time off from work and includes some combination of:
 - annual leave;
 - combined time off;
 - vacation leave;
 - personal leave;
 - sick leave; or
 - any similar type of leave.

21 V.S.A. § 482 – Earned Sick Time

- Employees accrue at least 1 hour of sick time for every 40 hours worked.
- Employers may require a waiting period for new hires of 1 year or 1400 hours, whichever occurs first.
- Employers may limit the accrual of paid sick time to
 - 24 hours in a 12-month period from 1/1/16 to 12/31/17; and
 - 40 hours in a 12-month period after 12/31/17.
 - For a full-time employee that is not subject to the Fair Labor Standards Act (i.e. an executive or professional employee), employers may limit the number of work hours per week during which the employee may accrue earned sick time to 40.
- Earned sick time is compensated at same rate of pay and benefits as normal hours worked.
 - Service and tipped employees must be compensated for earned sick time at the minimum wage for nonservice/nontipped employees under 21 V.S.A. § 384.
- Employers shall calculate amount of earned sick time for each employee:
 - as it accrues during each pay period, or
 - on a quarterly basis, provided an employee may use it as it accrues during the quarter.

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

- An employee may use earned sick time for five reasons:
 - Their own injury or illness;
 - To obtain health care for themselves;
 - To care for a sick or injured family member or person residing with the employee;
 - To arrange for social or legal services, or obtain medical care or counseling for a family member or person residing with the employee that is a victim of domestic violence, sexual assault, or stalking.

- To care for a family member or person residing with the employee 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.”
- Employee shall use earned sick time in smallest increments permitted by employer’s payroll system for absences of less than one workday.
- Employer may limit use of earned sick time under § 482 to:
 - 24 hours in a 12-month period from 1/1/16 to 12/31/17; and
 - 40 hours in a 12-month period after 12/31/17.
- Unused hours will carry over from one annual period to the next, and employees may earn additional time equal to the balance between unused portion and maximum hours allowed.
 - An employer may pay employees for unused earned sick time at the end of each annual period, in which case the hours will not carry over.
- An employer may agree to pay an employee for unused sick time when the employee leaves his or her job.
- An employer may elect to pay an employee for unused sick time at the end of each year in lieu of the employee carrying over unused sick time into the next year.
- An employee that is rehired by the same employer within 12 months shall immediately begin to accrue earned sick time, and may use it without any waiting period.
 - However, the employee does not retain unused earned sick time that accrued prior to the separation from the employer unless permitted by the employer.
- An employer cannot require an employee to find a replacement for absences.
- An employer may require employees to make a reasonable effort to avoid scheduling routine care during work hours and to notify the employer of a planned absence as soon as practicable.
- In lieu of using earned sick time, an employer and an employee may agree to allow the employee to swap shifts with another employee or to make up the hours missed due to illness.
- Employers are required to provide notice of law at hiring and to post notice on a form provided by the Commissioner.
- Use of earned sick time does not diminish an employee’s rights to parental and family leave or short-term family leave provided under Vermont’s laws.
- Makes the existing enforcement and anti-retaliation provisions of Vermont’s wage and hour laws applicable:
 - The anti-retaliation provision and right of action from 21 V.S.A. § 397:
 - Employer may not discharge or retaliate against an employee because:
 - 1 Employee lodged a complaint of a violation;
 - 2 Employee cooperated in investigation; or
 - 3 Employer believes employee may lodge a complaint or cooperate in an investigation.

- Employee that is retaliated against may bring a civil action in Superior Court.
- Violation of section is subject to penalty under 21 V.S.A. § 345 (Nonpayment of Wages and Benefits).
- Commissioner of Labor may enforce in the same manner as a complaint for unpaid wages under 21 V.S.A. § 342a.

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

- An employer will be in compliance with the earned sick time requirement if either:
 - If employer’s paid time off policy or the applicable collective bargaining agreement provides employees with paid time off that can be used for the reasons set out in § 483(a) and it accrues and may be used at the same or a greater rate than is required by statute; or
 - If employer’s paid time off policy or the applicable collective bargaining agreement provides employees with the required amount of paid time off at the beginning of each annual period, and the time off may be used during the period for the reasons in § 483(a).
 - An employer that elects to provide the required amount of time off at the beginning of each annual period is not required to carry over time off from one period to the next.
- An employer may provide a paid time off policy that is more generous than the earned sick time provided by the statute.
- Nothing in the subchapter will diminish an employer’s obligation to comply with a collective bargaining agreement or paid time off policy that provides greater earned sick time rights.
- A collective bargaining agreement or paid time off policy may not diminish the rights provided by the subchapter.

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

- If a provision of the subchapter or the application of a provision to a specific person or set of facts is found to be invalid, the remainder of the subchapter is unaffected.

Section 5: Amends 21 V.S.A. § 345 – Nonpayment of Wages and Benefits

- Makes a violation of §§ 482 or 483 punishable by a fine of up to \$5000.

Section 6: Department of Labor Survey

- On or before January 15, 2017, Department shall report to General Assembly regarding number of inquiries and complaints submitted to Department in relation to act and number of investigations and enforcement actions undertaken by Department in relation to act.

Section 7: Effective Date

- January 1, 2016.