

Floor Summary of H.196 as Recommended by Senate Economic Development and Finance

Sec.1. Amends 21 V.S.A. § 471. Definitions

- This section contains the definitions for Vermont’s unpaid parental and family leave law.
- Amends definition of “employer” to include employers that employ 10 or more employees who work an average of 30 hours per week during a year.
- Consolidates the definitions of “family leave” and “parental leave” into “family leave.”
 - Adds leave for the initial placement of a child for purposes of foster care.

Sec. 2. Amends 21 V.S.A. § 472. Family Leave

- This is Vermont’s unpaid Parental and Family Leave Act. The bill would make the following changes to the law:
 - Add leave for the initial placement of a child for purposes of foster care.
 - Permit an employee to elect to use up to 12 weeks of accrued paid leave, Parental and Family Leave Insurance benefits, or short-term disability insurance during some or all of his or her 12 weeks of leave in a 12-month period.
 - *Existing law only permits the use of up to six weeks of accrued paid leave.*
 - Add provision for notice in the case of an unanticipated serious illness or premature birth.
 - Add language permitting employer to waive right to recover compensation paid to employee during family leave if employee does not return to work for employer after leave.

Sec. 3. Adds 21 V.S.A. chapter 5, subchapter 13. Parental and Family Leave Insurance

§ 571. Definitions

- Definition of employee is based on Vermont’s income tax law, so an employee will make contributions to the Parental and Family Leave Insurance Program if his or her income would normally be subject to income tax withholding. **[Finance Amendment]**
- Includes all employers in the State.
- Defines family leave as “a leave of absence from employment by an employee for the serious illness of the employee’s child, stepchild or ward who lives with the employee, foster child, parent, spouse, or parent of the employee’s spouse.”
- Defines parental and bonding leave as leave for:
 - the birth of the employee’s child, or
 - the placement of a child no older than 16 for adoption or foster care.
- A qualified employee is an individual (*does not need to be currently employed*) who has earned at least \$10,710.00 in wages in Vermont during last 12 months.

- Serious illness has the same meaning as under the Parental and Family Leave law.

§ 572. Parental and Family Leave Insurance, Special Fund, Administration

- Creates a Parental and Family Leave Insurance Program and a Parental and Family Leave Insurance Special Fund administered by the Departments of Labor and Taxes.
 - Tax administers collection of contributions, determination of monetary eligibility, and payment of benefits.
 - Labor administers processing of benefit applications, determination of eligibility, collections of overpaid benefits, appeals from benefits determinations and collections, and any other aspect not administered by Tax.
- Program is funded by a 0.136% deduction from the first \$150,000 of each employee's wages, which an employer may elect to pay on behalf of its employees. **[Finance Amendment]**
 - Withholding and payment of contributions is handled in the same manner as the withholding and payment of income taxes on wages.
 - General Assembly will annually amend contribution rate based on recommendation by Commissioner of Labor, in consultation with Commissioner of Taxes, which takes into account the projected benefits and administrative costs for coming year, maintenance of a 9-month reserve, and balance of the Fund.
 - Base amount for covered wages will increase by percentage increase in CPI each year.

§ 573. Benefits

- Benefit amount equals 70% of an employee's average weekly wages or 2x the Vermont livable wage, whichever is less.
- Up to a combined total of 12 weeks of Parental and Family Leave Insurance benefits may be used in a 12-month period.
 - Includes up to 12 weeks of parental and bonding leave and up to 6 weeks of family care leave.

§ 574. Application for benefits; payment; withholding

- Labor will process applications for benefits based on:
 - documentation of reason for claim,
 - whether the employee meets eligibility requirements to receive benefits,
 - whether duration of leave is specified, and
 - whether benefits are in relation to family care or parental and bonding leave.
- Labor will decide each claim within 5 days, unless Commissioner extends time to obtain additional information or documentation.
- First benefit payment within 14 days of approval, payments biweekly thereafter.
- Benefits are subject to income tax withholding.
- Benefits not subject to assignment, creditor claims, or garnishment (per 21 V.S.A. § 1367).

§ 575. Reinstatement; Seniority and Benefits Protected

- Employer shall reinstate employee in first available if employee's leave does not exceed 12 weeks and:
 - employee had not given notice and would not have otherwise been fired or laid off; and
 - employee informs employer of desire to be reinstated following leave and of the expected duration of the leave.
- Only applicable for 2 years after the conclusion of the leave [Finance Amendment]

§ 576. Appeals

- Employer or individual harmed by decision on application for benefits or a determination that benefits have been overpaid may seek reconsideration within 30 days after decision.
- May appeal decision on reconsideration to an administrative law judge and then the State Supreme Court.

§ 577. False Statement or Representation; Penalty

- Provides a penalty of up to \$20,000 for a false statement to obtain benefits or avoid paying a contribution.

§ 578. Rulemaking

- Commissioners of Taxes and Labor shall adopt rules as necessary to implement the act.

§ 579. Confidentiality of Information

- Information obtained from employers and individuals in relation to administration of Parental and Family Leave Insurance program is confidential.

§ 580. Disqualifications [Finance Amendment]

- Individuals receiving workers' compensation for a temporary disability or unemployment compensation are disqualified from receiving Parental and Family Leave benefits

§ 581. Overpayment of Benefits; Collection [Finance Amendment]

- Permits Commissioner of Labor to collect benefits that were paid to individuals who were not eligible to receive benefits.
- Provides a 15% penalty for intentional misrepresentations to receive benefits, which is in addition to any other available penalties/remedies.
- Allows collection through court action or by deducting amounts due from future benefits.

Sec. 4. Adoption of Rules

- Directs Commissioners of Labor and Taxes to adopt rules necessary to implement the Program by April 1, 2019. [Finance Amendment]
 - Includes specific guidance regarding what the rules should include.

Sec. 5. Education and Outreach

- Directs Commissioner of Labor to create educational materials regarding the Program by June 1, 2018. [Finance Amendment]

Sec. 6. Establishment of Program; Expenditures from Special Fund

- Permits Commissioner of Finance and Management to authorize expenditures to establish the Program in anticipation of contributions, which will begin to be paid on July 1, 2019.

Sec.7. Adequacy of Reserves; Report

- Requires annual reports in 2021, 2022, and 2023 from the Commissioners of Labor and Taxes regarding the adequacy of the reserves in the Fund.

Sec. 8. Amends 21 V.S.A. § 1344 – Disqualifications

- Individuals receiving Parental and Family Leave benefits will not be eligible for UI benefits.

Sec.9. Effective Dates

- Program takes effect July 1, 2018, contributions begin to be collected July 1, 2019, and Parental and Family Leave Act is amended and benefits become available October 1, 2020.
- Changes to Parental and Family Leave Act and UI law take effect October 1, 2020.