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H.196

Representative Baser of Bristol moves that the report of the Committee on General, Housing and Military Affairs be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 471 is amended to read:

§ 471. DEFINITIONS

As used in this subchapter:

(1) “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 within this State ~~which for the purposes of parental leave, that~~ employs 10 or more individuals who are employed for an average of at least 30 hours per week during a year ~~and for the purposes of family leave, employs 15 or more individuals for an average of at least 30 hours per week during a year.~~

(2) “Employee” means a person who, in consideration of direct or indirect gain or profit, ~~has been continuously employed by the same employer for a period of one year for an average of at least 30 hours per week is~~ employed by an employer and has been employed in Vermont for the previous 12 months. **[ALTERNATIVE: *has been continuously employed by the same employer for a period of one year*]**

1 (3) “Family leave” means a leave of absence from employment by an
2 employee ~~who works for an employer which employs 15 or more individuals~~
3 ~~who are employed for an average of at least 30 hours per week during the year~~
4 for one of the following reasons:

5 (A) the serious illness of the employee; ~~or~~

6 (B) the serious illness of the employee’s child, stepchild or ward who
7 lives with the employee, foster child, parent, grandparent, sibling, spouse₂ or
8 parent of the employee’s spouse;

9 ~~(4) “Parental leave” means a leave of absence from employment by an~~
10 ~~employee who works for an employer which employs 10 or more individuals~~
11 ~~who are employed for an average of at least 30 hours per week during the year~~
12 ~~for one of the following reasons:~~

13 (C) the employee’s pregnancy;

14 ~~(A)~~(D) the birth of the employee’s child; or

15 ~~(B)~~(E) the initial placement of a child 16 years of age or younger
16 with the employee for the purpose of adoption or foster care.

17 ~~(5)~~(4) “Serious illness” means an accident, disease₂ or physical or
18 mental condition that:

19 (A) poses imminent danger of death;

20 (B) requires inpatient care in a hospital; or

1 (C) requires continuing in-home care under the direction of a
2 physician.

3 (5) “Commissioner” means the Commissioner of Labor.

4 Sec. 2. 21 V.S.A. § 472 is amended to read:

5 § 472. FAMILY LEAVE

6 (a) During any 12-month period, an employee shall be entitled to take
7 unpaid leave for a period not to exceed 12 weeks for the following reasons:

8 (1) for parental leave, during the employee’s pregnancy and;

9 (2) following the birth of ~~an~~ the employee’s child ~~or;~~

10 (3) within a year following the initial placement of a child 16 years of
11 age or younger with the employee for the purpose of adoption ~~or foster care;~~

12 ~~(2)(4) for family leave, for the serious illness of the employee; or~~

13 (5) the serious illness of the employee’s child, stepchild or ward of the
14 employee who lives with the employee, foster child, parent, grandparent,
15 sibling, spouse, or parent of the employee’s spouse.

16 (b) During the leave, at the employee’s option, the employee may use
17 accrued sick leave ~~or,~~ vacation leave ~~or,~~ any other accrued paid leave, ~~not to~~

18 ~~exceed six weeks~~ Parental and Family Leave Insurance benefits pursuant to

19 subchapter 13 of this chapter, or short-term disability insurance or other

20 insurance benefits. ~~Utilization~~ Use of accrued paid leave, Parental and Family

1 Leave Insurance benefits, or insurance benefits shall not extend the leave
2 provided ~~herein~~ by this section.

3 (c) The employer shall continue employment benefits for the duration of
4 the family leave at the level and under the conditions coverage would be
5 provided if the employee continued in employment continuously for the
6 duration of the leave. The employer may require that the employee contribute
7 to the cost of the benefits during the leave at the employee's existing rate of
8 employee contribution.

9 (d) The employer shall post and maintain in a conspicuous place in and
10 about each of ~~his or her~~ its places of business printed notices of the provisions
11 of this subchapter on forms provided by the Commissioner of Labor.

12 (e)(1) An employee shall give his or her employer reasonable written
13 notice of intent to take family leave under this subchapter. Notice shall include
14 the date the leave is expected to commence and the estimated duration of the
15 leave.

16 (2) In the case of the adoption or birth of a child, an employer shall not
17 require that notice be given more than six weeks prior to the anticipated
18 commencement of the leave.

19 (3) In the case of an unanticipated serious illness or premature birth, the
20 employee shall give the employer notice of the commencement of the leave as
21 soon as practicable.

1 (4) In the case of serious illness of the employee or a member of the
2 employee's family, an employer may require certification from a physician to
3 verify the condition and the amount and necessity for the leave requested.

4 (5) An employee may return from leave earlier than estimated upon
5 approval of the employer.

6 (6) An employee shall provide reasonable notice to the employer of his
7 or her need to extend the leave to the extent provided by this chapter.

8 (f) ~~Upon return from leave taken under this subchapter, an employee shall~~
9 ~~be offered~~ An employer shall offer an employee who has been employed by
10 the employer for at least 12 months and is returning from family leave taken
11 under this subchapter the same or a comparable job at the same level of
12 compensation, employment benefits, seniority, or any other term or condition
13 of the employment existing on the day the family leave began. This
14 subchapter shall not apply if, prior to requesting leave, the employee had been
15 given notice or had given notice that the employment would terminate. This
16 subsection shall not apply if the employer can demonstrate by clear and
17 convincing evidence that:

18 (1) during the period of leave, the employee's job would have been
19 terminated or the employee laid off for reasons unrelated to the leave or the
20 condition for which the leave was granted; or

1 (2) the employee performed unique services and hiring a permanent
2 replacement during the leave, after giving reasonable notice to the employee of
3 intent to do so, was the only alternative available to the employer to prevent
4 substantial and grievous economic injury to the employer's operation.

5 (g) An employer may adopt a leave policy more generous than the leave
6 ~~policy~~ provided by this subchapter. Nothing in this subchapter shall be
7 construed to diminish an employer's obligation to comply with any collective
8 bargaining agreement or any employment benefit program or plan which
9 provides greater leave rights than the rights provided by this subchapter. A
10 collective bargaining agreement or employment benefit program or plan may
11 not diminish rights provided by this subchapter. Notwithstanding the
12 provisions of this subchapter, an employee may, at the time a need for ~~parental~~
13 ~~or~~ family leave arises, waive some or all the rights under this subchapter
14 provided the waiver is informed and voluntary and any changes in conditions
15 of employment related to any waiver shall be mutually agreed upon between
16 employer and employee.

17 (h) Except for serious illness of the employee, an employee who does not
18 return to employment with the employer who provided the family leave shall
19 return to the employer the value of any compensation paid to or on behalf of
20 the employee during the leave, except payments of Parental and Family Leave

1 Insurance benefits and payments for accrued sick leave or vacation leave. An
2 employer may elect to waive the rights provided pursuant to this subsection.

3 Sec. 3. 21 V.S.A. chapter 5, subchapter 13 is added to read:

4 Subchapter 13. Parental and Family Leave Insurance

5 § 571. DEFINITIONS

6 (a) As used in this subchapter:

7 (1) “Employee” means an individual who performs services in
8 employment for an employer.

9 (2) “Employer” has the same meaning as in section 471 of this chapter.

10 (3) “Employment” has the same meaning as in subdivision 1301(6) of
11 this title.

12 (4) “Family leave” means a leave of absence from employment by an
13 employee for the serious illness of the employee’s child, stepchild or ward who
14 lives with the employee, foster child, parent, grandparent, sibling, spouse, or
15 parent of the employee’s spouse.

16 (5) “Parental and bonding leave” means a leave of absence from
17 employment by an employee for:

18 (A) the birth of the employee’s child; or

19 (B) the initial placement of a child 16 years of age or younger with
20 the employee for the purpose of adoption or foster care.

1 (6) “Qualified employee” means an individual that has been an
2 employee during at least 12 of the previous 13 months.

3 (7) “Serious illness” shall have the same meaning as in section 471 of
4 this chapter.

5 (8) “Small business” means an individual, organization, 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 that
9 employs fewer than 10 individuals who are employed for an average of at least
10 30 hours per week during a year.

11 § 572. PARENTAL AND FAMILY LEAVE INSURANCE; SPECIAL
12 FUND; ADMINISTRATION

13 (a) The Parental and Family Leave Insurance Program is established in the
14 Department of Labor for the provision of Parental and Family Leave Insurance
15 benefits to eligible employees pursuant to this section.

16 (b) The Parental and Family Leave Insurance Special Fund is created
17 pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by
18 the Commissioner for the administration of the Parental and Family Leave
19 Insurance Program and payment of Parental and Family Leave Insurance
20 benefits provided pursuant to this section.

1 (c)(1)(A) The Fund shall consist of contributions equal to ??? percent of
2 each employee’s wages, which an employer shall deduct and withhold from
3 each of its employee’s wages.

4 (B) In lieu of deducting and withholding the full amount of the
5 contribution pursuant to subdivision (1)(A) of this subsection, an employer
6 may elect to pay all or a portion of the contributions due from the employee’s
7 wages.

8 (C) As used in this subsection, the term “wages” does not include the
9 amount of wages paid to an employee after he or she has received wages equal
10 to \$??? from the employer.

11 (2)(A) Notwithstanding subdivision (1) of this subsection (c), the
12 General Assembly shall annually establish the rate of contribution for the next
13 fiscal year. The rate shall equal the amount necessary to provide Parental and
14 Family Leave Insurance benefits pursuant to this subchapter and to administer
15 the Parental and Family Leave Insurance Program during the next fiscal year,
16 adjusted by any balance in the Fund from the prior fiscal year.

17 (B)(i) On or before February 1 of each year, the Commissioner shall
18 report to the General Assembly the rate of contribution necessary to provide
19 Parental and Family Leave Insurance benefits pursuant to this subchapter and
20 to administer the Program during the next fiscal year, adjusted by any balance
21 in the Fund from the prior fiscal year.

1 (ii) The proposed rate of contribution determined by the
2 Commissioner shall not exceed ??? percent of each employee’s wages. If that
3 amount is insufficient to fund Parental and Family Leave Insurance benefits at
4 the rate set forth in section 573 of this subchapter, the Commissioner’s report
5 shall include a recommendation of the amount by which to reduce Parental and
6 Family Leave Insurance benefits in order to maintain the solvency of the Fund
7 without increasing the proposed rate of contribution above ??? percent.

8 (d) An employer shall submit these contributions to the Commissioner in a
9 form and at times determined by the Commissioner.

10 **§ 573. BENEFITS**

11 (a) Except as otherwise provided pursuant to section 572 of this subchapter,
12 a qualified employee awarded Parental and Family Leave Insurance benefits
13 under this section shall receive 80 percent of his or her average weekly wage
14 or an amount equal to a 40-hour workweek paid at a rate double that of the
15 livable wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A.
16 § 505, whichever is less.

17 **(b)(1) A qualified employee shall be permitted to receive not more than six**
18 **weeks of Parental and Family Leave Insurance benefits in a 12-month period**
19 **for family leave or parental and bonding leave, or both. [DIFFERENT**
20 **LEAVE LENGTHS FOR FAMILY CARE AND BONDING LEAVE CAN**
21 **BE ADDED HERE IF NECESSARY]**

1 (2) The minimum leave period for which benefits shall be awarded
2 pursuant to this section shall be one day.

3 § 574. APPLICATION FOR BENEFITS; PAYMENT; TAX WITHOLDING

4 (a) A qualified employee shall file an application for Parental and Family
5 Leave Insurance benefits with the Commissioner under this section on a form
6 provided by the Commissioner. The Commissioner shall determine whether
7 the qualified employee is eligible to receive Parental and Family Leave
8 Insurance benefits based on the following criteria:

9 (1) The purposes for which the claim is made are documented.

10 (2) The qualified employee satisfies the eligibility requirements for the
11 requested leave.

12 (3) The benefits are being requested in relation to a family leave or a
13 parental and bonding leave.

14 (b) The Commissioner of Labor shall make a determination of each claim
15 not later than five days after the date the claim is filed, and Parental and
16 Family Leave Insurance benefits shall be paid from the Fund created pursuant
17 to this section. A person aggrieved by a decision of the Commissioner under
18 this subsection may file with the Commissioner a request for reconsideration
19 within 30 days after receipt of the Commissioner's decision. Thereafter, an
20 applicant denied reconsideration may file an appeal to the Civil Division of the
21 Superior Court in the county where the employment is located.

1 (c)(1) An individual filing a claim for benefits pursuant to this section
2 shall, at the time of filing, be advised that:

3 (A) Parental and Family Leave Insurance benefits may be subject to
4 income tax;

5 (B) requirements exist pertaining to estimated tax payments;

6 (C) the individual may elect to have income tax deducted and
7 withheld from the individual's benefits payment; and

8 (D) the individual may change a previously elected withholding
9 status.

10 (2) Amounts deducted and withheld from Parental and Family Leave
11 Insurance benefits shall remain in the Parental and Family Leave Insurance
12 Special Fund until transferred to the appropriate taxing authority as a payment
13 of income tax.

14 (3) The Commissioner shall follow all procedures specified by the
15 federal Internal Revenue Service pertaining to the deducting and withholding
16 of income tax.

17 [ALTERNATIVE](c)(1) An individual filing a claim for benefits pursuant
18 to this section shall, at the time of filing, be advised that Parental and Family
19 Leave Insurance benefits may be subject to income tax and that the
20 individual's benefits may be subject to withholding.

1 (2) The Commissioner shall follow all procedures specified by 26
2 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the
3 withholding of income tax.

4 § 575. FALSE STATEMENT OR REPRESENTATION; PENALTY

5 A person who willfully makes a false statement or representation for the
6 purpose of obtaining any benefit or payment or to avoid payment of any
7 required contributions under the provisions of this section, either for himself or
8 herself or for any other person, after notice and opportunity for hearing, may
9 be assessed an administrative penalty of not more than \$20,000.00 and shall
10 forfeit all or a portion of any right to compensation under the provisions of this
11 section, as determined to be appropriate by the Commissioner after a
12 determination by the Commissioner that the person has willfully made a false
13 statement or representation of a material fact.

14 § 576. ELECTION OF COVERAGE BY SMALL BUSINESS

15 (a) A small business may elect to enroll the individuals that it employs in
16 the Parental and Family Leave Insurance Program pursuant to this section for a
17 period of three years by filing a notice of the election with the Commissioner
18 on a form provided by the Commissioner.

19 (b) For purposes of this section, a small business that enrolls the
20 individuals that it employs in the Parental and Family Leave Insurance

1 Program pursuant to this subsection shall be considered an employer and the
2 individuals that it employs shall be considered employees.

3 (c)(1) At the conclusion of the initial three-year period, a business enrolled
4 pursuant to this subsection may elect to terminate its enrollment by providing
5 the Commissioner with written notice of the termination at least 30 days before
6 the end of the period.

7 (2) Following the initial three-year period, a business may terminate its
8 enrollment at the end of any succeeding annual period by providing the
9 Commissioner with written notice of the termination at least 30 days before the
10 end of the period.

11 **§ 577. RULEMAKING**

12 The Commissioner may adopt rules as necessary to implement this
13 subchapter.

14 **Sec. 4. RULEMAKING**

15 On or before January 1, 2018, the Commissioner of Labor shall adopt rules
16 necessary to implement 21 V.S.A. chapter 5, subchapter 13.

17 **Sec. 5. EDUCATION AND OUTREACH**

18 On or before January 1, 2018, the Commissioner of Labor shall develop and
19 make available on the Department of Labor's website information and
20 materials to educate and inform employers and employees about the Parental

1 and Family Leave Insurance Program established pursuant to 21 V.S.A.
2 chapter 5, subchapter 13.

3 Sec. 6. EFFECTIVE DATES

4 (a) This section and Secs. 3, 4, and 5 shall take effect on July 1, 2017.

5 (b) Secs. 1 and 2 shall take effect on July 1, 2019.

6 (c) Contributions from shall begin being paid pursuant to 21 V.S.A. § 572
7 on July 1, 2018, and, beginning on July 1, 2019, employees may begin to
8 receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

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