

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

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.

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 (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~~ up to six weeks of paid
8 family leave using Family Leave Insurance benefits pursuant to section 472c of
9 this subchapter and up to six weeks of unpaid family leave for the following
10 reasons:

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

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

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

15 (2)(4) ~~for family leave, for~~ the serious illness of the employee; or

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

19 (b) During the leave, at the employee’s option, the employee may use
20 accrued sick leave ~~or,~~ vacation leave ~~or,~~ any other accrued paid leave, ~~not to~~
21 ~~exceed six weeks~~ or short-term disability insurance or other insurance benefits.

1 ~~Utilization~~ Use of accrued paid leave or insurance benefits shall not extend the
2 leave 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 Family Leave Insurance

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

3 Sec. 3. 21 V.S.A. § 472c is added to read:

4 § 472c. FAMILY LEAVE INSURANCE; SPECIAL FUND;

5 ADMINISTRATION

6 (a) As used in this section:

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

11 (2) “Employee” means an individual who performs services in
12 employment for an employer.

13 (3) “Employment” has the same meaning as in subdivision 1301(6) of
14 this chapter.

15 (4) “Qualified employee” means an employee who has been
16 continuously employed by an employer for the previous 12 months.

17 (b) The Family Leave Insurance Program is established in the Department
18 of Labor for the provision of Family Leave Insurance benefits to eligible
19 employees pursuant to this section.

20 (c) The Family Leave Insurance Special Fund is created pursuant to
21 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the

1 Commissioner for the administration of the Family Leave Insurance Program
2 and payment of Family Leave Insurance benefits provided pursuant to this
3 section.

4 (d)(1)(A) The Fund shall consist of contributions equal to 0.55 percent of
5 each employee's wages, which an employer shall deduct and withhold from
6 each of its employee's wages.

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

11 (2)(A) Notwithstanding subdivision (1) of this subsection (d), 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 Family Leave
14 Insurance benefits pursuant to subsection (g) of this section and to administer
15 the Family Leave Insurance Program during the next fiscal year, adjusted by
16 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 Family Leave Insurance benefits pursuant to subsection (g) of this section 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 0.75 percent of each employee's wages. If that
3 amount is insufficient to fund Family Leave Insurance benefits at the rate set
4 forth in subsection (g) of this section, the Commissioner's report shall include
5 a recommendation of the amount by which to reduce Family Leave Insurance
6 benefits in order to maintain the solvency of the Fund without increasing the
7 proposed rate of contribution above 0.75 percent.

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

10 (f) A qualified employee shall file an application for Family Leave
11 Insurance benefits with the Commissioner under this section on a form
12 provided by the Commissioner. The Commissioner shall determine whether
13 the qualified employee is eligible to receive Family Leave Insurance benefits
14 based on the following criteria:

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

16 (2) The qualified employee satisfies the eligibility requirements for the
17 requested leave.

18 (g)(1) Except as otherwise provided pursuant to subsection (c) of this
19 section, a qualified employee awarded Family Leave Insurance benefits under
20 this section shall receive 80 percent of his or her average weekly wage or an
21 amount equal to a 40-hour workweek paid at a rate double that of the livable

1 wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505,
2 whichever is less.

3 (2) A qualified employee shall be entitled to not more than six weeks of
4 Family Leave Insurance benefits in a 12-month period.

5 (3) A qualified employee shall only be permitted to receive Family
6 Leave Insurance benefits in relation to a family leave as defined in subdivision
7 471(3) of this subchapter.

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

16 (i)(1) A business that is not an employer as defined in subdivision 471(1)
17 of this subchapter may elect to enroll the individuals that it employs in the
18 Family Leave Insurance Program pursuant to this section for a period of three
19 years by filing a notice of the election with the Commissioner on a form
20 provided by the Commissioner.

1 (2) For purposes of this section, a business that enrolls the individuals
2 that it employs in the Family Leave Insurance Program pursuant to this
3 subsection shall be considered an employer and the individuals that it employs
4 shall be considered employees.

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

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

13 (j) A person who willfully makes a false statement or representation for the
14 purpose of obtaining any benefit or payment or to avoid payment of any
15 required contributions under the provisions of this section, either for himself or
16 herself or for any other person, after notice and opportunity for hearing, may
17 be assessed an administrative penalty of not more than \$20,000.00 and shall
18 forfeit all or a portion of any right to compensation under the provisions of this
19 section, as determined to be appropriate by the Commissioner after a
20 determination by the Commissioner that the person has willfully made a false
21 statement or representation of a material fact.

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

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

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

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

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

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

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

15 (l) The Commissioner may adopt rules as necessary to implement this
16 section.

17 Sec. 4. RULEMAKING

18 On or before January 1, 2018, the Commissioner of Labor shall adopt rules
19 necessary to implement the Paid Family Leave Program.

1 Sec. 5. EDUCATION AND OUTREACH

2 On or before January 1, 2018, the Commissioner of Labor shall develop and
3 make available on the Department of Labor’s website information and
4 materials to educate and inform employers and employees about the Family
5 Leave Insurance Program established pursuant to 21 V.S.A. § 472c.

6 Sec. 6. EFFECTIVE DATES

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

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

9 (c) Contributions from employers and employees shall begin being paid
10 pursuant to 21 V.S.A. § 472c(d) and (e) on July 1, 2018, and, beginning on
11 July 1, 2019, employees and self-employed persons may begin to receive
12 benefits pursuant to 21 V.S.A. § 472c.