



1       Referred to Committee on  
2       Date:  
3       Subject: Labor; employment practices; paid family leave  
4       Statement of purpose of bill as introduced: This bill proposes to create a  
5       Family Leave Insurance Program within the Department of Labor that will  
6       provide employees with 12 weeks of paid family leave and that will be funded  
7       by contributions from employers and employees. This bill also proposes to  
8       amend Vermont's existing family leave law to make it applicable to all  
9       employers, to clarify certain provisions.

10      An act relating to paid family leave

11      It is hereby enacted by the General Assembly of the State of Vermont:

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

13      § 471. DEFINITIONS

14      As used in this subchapter:

15           (1) "Employer" means an individual, organization or, governmental  
16       body, partnership, association, corporation, legal representative, trustee,  
17       receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,  
18       air or express company doing business in or operating within this State ~~which~~  
19       ~~for the purposes of parental leave, employs 10 or more individuals who are~~

1       employed for an average of at least 30 hours per week during a year and for the  
2       purposes of family leave, employs 15 or more individuals for an average of at  
3       least 30 hours per week during a year.

4               (2) "Employee" means a person who, in consideration of direct or  
5       indirect gain or profit, ~~has been continuously employed by the same employer~~  
6       for a period of one year for an average of at least 30 hours per week is  
7       employed by an employer and has been employed in Vermont for at least six  
8       of the previous 12 months.

9               (3) "Family leave" means a leave of absence from employment by an  
10      employee ~~who works for an employer which employs 15 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                       (A) the serious illness of the employee; or  
14                       (B) the serious illness of the employee's child, stepchild or ward who  
15       lives with the employee, foster child, parent, grandparent, sibling, spouse, or  
16       parent of the employee's spouse;

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

21                       (C) the employee's pregnancy;

1                   (D) the birth of the employee's child; or  
2                   (B)(E) the initial placement of a child 16 years of age or younger  
3                   with the employee for the purpose of adoption or foster care.

4                   (5)(4) "Serious illness" means an accident, disease, or physical or  
5                   mental condition that:

6                   (A) poses imminent danger of death;  
7                   (B) requires inpatient care in a hospital; or  
8                   (C) requires continuing in-home care under the direction of a  
9                   physician.

10                  (5) "Commissioner" means the Commissioner of Labor.

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

12                  § 472. FAMILY LEAVE

13                  (a) During any 12-month period, an employee shall be entitled to take  
14                  unpaid leave for a period not to exceed 12 weeks up to 12 weeks of paid family  
15                  leave using Family Leave Insurance benefits pursuant to section 472c of this  
16                  subchapter for the following reasons:

17                  (1) ~~for parental leave, during~~ the employee's pregnancy ~~and;~~  
18                  (2) following the birth of ~~an~~ the employee's child ~~or;~~  
19                  (3) within a year following the initial placement of a child 16 years of  
20                  age or younger with the employee for the purpose of adoption- or foster care;  
21                  (2)(4) ~~for family leave, for~~ the serious illness of the employee; or

1               (5) the serious illness of the employee's child, stepchild or ward of the  
2               employee who lives with the employee, foster child, parent, grandparent,  
3               sibling, spouse, or parent of the employee's spouse.

4               (b) During the leave, at the employee's option, the employee may use  
5               accrued sick leave or vacation leave or any other accrued paid leave, ~~not to~~  
6               ~~exceed six weeks~~. Utilization Use of accrued paid leave shall not extend the  
7               leave provided herein by this section.

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

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

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

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

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

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

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

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

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

1 subsection shall not apply if the employer can demonstrate by clear and  
2 convincing evidence that:

3                 (1) during the period of leave, the employee's job would have been  
4 terminated or the employee laid off for reasons unrelated to the leave or the  
5 condition for which the leave was granted; or  
6                 (2) the employee performed unique services and hiring a permanent  
7 replacement during the leave, after giving reasonable notice to the employee of  
8 intent to do so, was the only alternative available to the employer to prevent  
9 substantial and grievous economic injury to the employer's operation.

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

1                   (h) Except for serious illness of the employee, an employee who does not  
2                   return to employment with the employer who provided the family leave shall  
3                   return to the employer the value of any compensation paid to or on behalf of  
4                   the employee during the leave, except payments of Family Leave Insurance  
5                   benefits and payments for accrued sick leave or vacation leave. An employer  
6                   may elect to waive the rights provided pursuant to this subsection.

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

8                   § 472c. FAMILY LEAVE INSURANCE; SPECIAL FUND;

9                   ADMINISTRATION

10                  (a) The Family Leave Insurance Program is established in the Department  
11                  of Labor for the provision of Family Leave Insurance benefits to eligible  
12                  employees pursuant to this section.

13                  (b) The Family Leave Insurance Special Fund is created pursuant to  
14                  32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the  
15                  Commissioner for the administration of the Family Leave Insurance Program  
16                  and payment of Family Leave Insurance benefits provided pursuant to this  
17                  section.

18                  (c)(1) The Fund shall consist of contributions equal to 0.93 percent of each  
19                  employee's wages, or a different rate as determined by the Commissioner  
20                  pursuant to subdivision (2) of this subsection, of which one-half shall be

1       deducted from an employee's wages and one-half shall be paid by the  
2       employee's employer.

3           (2)(A) Notwithstanding subdivision (1) of this subsection, on or before  
4       February 1 of the first year of each legislative biennium, the Commissioner  
5       shall determine the rate of contribution necessary to provide Family Leave  
6       Insurance benefits for the next two years at the rate set forth in subsection (f)  
7       of this section. However, the rate of contribution determined by the  
8       Commissioner shall not exceed one percent of each employee's wages.

9           (B) The new rate of contribution determined by the Commissioner  
10      shall take effect on February 1 and shall remain in effect for two years.

11          (C) If the rate of contribution is equal to one percent of each  
12      employee's wages and is insufficient to fund Family Leave Insurance benefits  
13      at the rate set forth in subsection (f) of this section, the Commissioner shall  
14      reduce the rate of Family Leave Insurance benefits to the extent necessary to  
15      maintain the solvency of the Fund.

16          (d) The employer shall submit these contributions to the Commissioner in a  
17      form and at times determined by the Commissioner.

18          (e) An employee shall file an application for Family Leave Insurance  
19      benefits with the Commissioner under this section on a form provided by the  
20      Commissioner. The Commissioner shall determine eligibility of the employee  
21      based on the following criteria:

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

2                   (2) The employee provided his or her employer with reasonable  
3                   advanced notice of the requested leave.

4                   (f)(1) Except as otherwise provided pursuant to subsection (c) of this  
5                   section, an employee awarded Family Leave Insurance benefits under this  
6                   section shall receive the employee's average weekly wage or an amount equal  
7                   to a 40-hour workweek paid at a rate double that of the livable wage, as  
8                   determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is  
9                   less.

10                  (2) An employee shall be entitled to no more than 12 weeks of Family  
11                  Leave Insurance benefits in a 12-month period.

12                  (g) The Commissioner of Labor shall make a determination of each claim  
13                  no later than five days after the date the claim is filed, and Family Leave  
14                  Insurance benefits shall be paid from the Fund created pursuant to this section.  
15                  An employee or employer aggrieved by a decision of the Commissioner under  
16                  this subsection may file with the Commissioner a request for reconsideration  
17                  within 30 days after receipt of the Commissioner's decision. Thereafter, an  
18                  applicant denied reconsideration may file an appeal to the Civil Division of the  
19                  Superior Court in the county where the employment is located.

20                  (h)(1) A self-employed person, including a sole proprietor or partner owner  
21                  of an unincorporated business, may elect to obtain coverage under the Family

1       Leave Insurance Program pursuant to this section for a period of three years by  
2       filing a notice of his or her election with the Commissioner on a form provided  
3       by the Commissioner.

4           (2) A person who elects coverage pursuant to this subsection may file a  
5       claim for and receive Family Leave Insurance benefits pursuant to this section  
6       after making six months of contributions to the Fund.

7           (3) A person who elects to obtain coverage pursuant to this subsection  
8       shall:

9               (A) contribute a portion of his or her work income equal to the  
10       amount established pursuant to subsection (c) of this section at times  
11       determined by the Commissioner; and

12               (B) provide to the Commissioner any documentation of his or her  
13       income or related information that the Commissioner determines is necessary.

14           (4) A person who elects coverage pursuant to this subsection may  
15       terminate that coverage at the end of the three-year period by providing the  
16       Commissioner with written notice of the termination at least 30 days before the  
17       end of the period.

18               (i) A person who willfully makes a false statement or representation for the  
19       purpose of obtaining any benefit or payment under the provisions of this  
20       section, either for himself or herself or for any other person, after notice and  
21       opportunity for hearing, may be assessed an administrative penalty of not more

1       than \$20,000.00 and shall forfeit all or a portion of any right to compensation  
2       under the provisions of this section, as determined to be appropriate by the  
3       Commissioner after a determination by the Commissioner that the person has  
4       willfully made a false statement or representation of a material fact.

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

7            (A) Family Leave Insurance benefits may be subject to income tax;  
8            (B) requirements exist pertaining to estimated tax payments;  
9            (C) the individual may elect to have income tax deducted and  
10          withheld from the individual's benefits payment; and  
11          (D) the individual may change a previously elected withholding  
12          status.

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

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

19          (k) The Commissioner may adopt rules as necessary to implement this  
20          section.

1 Sec. 4. EFFECTIVE DATES

2 (a) This act shall take effect on January 1, 2018.

3 (b) Employers shall begin deducting taxes from employees' wages on  
4 July 1, 2018, and, beginning on January 1, 2019, employees may begin to  
5 receive benefits under this act.