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H.196

Representative Donahue of Northfield moves that the report of the Committee on Ways on Means be substituted for 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.~~

* * *

(3) “Family leave” means a leave of absence from employment by an employee who works for an employer which employs ~~15~~ 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:

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

1 (B) the serious illness of the employee’s child, stepchild or ward who
2 lives with the employee, foster child, grandchild, parent, grandparent, sibling,
3 spouse, or parent of the employee’s spouse;

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

8 (C) the employee’s pregnancy;

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

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

12 (F) the birth of the employee’s grandchild if the employee is the
13 primary caregiver or guardian of the child and the child’s biological parents are
14 not taking a family leave for the birth pursuant to section 472 of this chapter.

15 ~~(5)~~(4) “Serious illness” means an accident, disease, or physical or
16 mental condition that:

17 * * *

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

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

20 § 472. FAMILY LEAVE

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

3 (1) ~~for parental leave, during the employee's pregnancy and;~~

4 (2) following the birth of ~~an~~ the employee's child ~~or;~~

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

7 (4) within a year following the birth of the employee's grandchild if the
8 employee is the primary caregiver or guardian of the child and the child's
9 biological parents are not taking a leave for the birth pursuant to this section;

10 (2)(5) ~~for family leave, for the serious illness of the employee; or~~

11 (6) the serious illness of the employee's child, stepchild or ward of the
12 employee who lives with the employee, foster child, grandchild, parent,
13 grandparent, sibling, spouse, or parent of the employee's spouse.

14 (b) During the leave, at the employee's option, the employee may use
15 accrued sick leave ~~or~~, vacation leave ~~or~~, any other accrued paid leave, ~~not to~~
16 ~~exceed six weeks~~ Parental and Family Leave Insurance benefits pursuant to
17 subchapter 13 of this chapter, or short-term disability insurance or other
18 insurance benefits. Utilization Use of accrued paid leave, Parental and Family
19 Leave Insurance benefits, or insurance benefits shall not extend the leave
20 provided herein by this section.

21 * * *

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

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

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

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

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

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

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

21 * * *

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 Parental and Family Leave
5 Insurance benefits and payments for accrued sick leave or vacation leave. An
6 employer may elect to waive the rights provided pursuant to this subsection.

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

8 Subchapter 13. Parental and Family Leave Insurance

9 § 571. DEFINITIONS

10 (a) As used in this subchapter:

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

13 (2) “Employer” means an individual, organization, governmental body,
14 partnership, association, corporation, legal representative, trustee, receiver,
15 trustee in bankruptcy, and any common carrier by rail, motor, water, air or
16 express company doing business in or operating within this State.

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

19 (4) “Enrolled employee” means an employee who has enrolled in the
20 Parental and Family Leave Insurance Program established pursuant to this
21 subchapter.

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

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

7 (A) the birth of the employee’s child;

8 (B) the initial placement of a child 16 years of age or younger with
9 the employee for the purpose of adoption or foster care; or

10 (C) the purpose of bonding with the employee’s grandchild if the
11 leave is taken within a year following the birth of the employee’s grandchild,
12 the employee is the primary caregiver or guardian of the child, and the child’s
13 biological parents are not using Parental and Family Leave Insurance Benefits
14 for parental and bonding leave in relation to the birth.

15 (7) “Qualified employee” means an enrolled employee who has made
16 contributions to the Program during at least 12 of the previous 13 months.

17 (8) “Serious illness” means an accident, disease, or physical or mental
18 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 § 572. PARENTAL AND FAMILY LEAVE INSURANCE; SPECIAL
4 FUND; ADMINISTRATION

5 (a) The Parental and Family Leave Insurance Program is established in the
6 Department of Labor for the provision of Parental and Family Leave Insurance
7 benefits to eligible employees pursuant to this subchapter.

8 (b) The Parental and Family Leave Insurance Special Fund is created
9 pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by
10 the Commissioner for the administration of the Parental and Family Leave
11 Insurance Program and payment of Parental and Family Leave Insurance
12 benefits provided pursuant to this subchapter.

13 (c)(1)(A) The Fund shall consist of contributions equal to 1.00 percent of
14 each enrolled employee's covered wages, which an employer shall deduct and
15 withhold from each of its enrolled employee's wages.

16 (B) In lieu of deducting and withholding the full amount of the
17 contribution pursuant to subdivision (1)(A) of this subsection, an employer
18 may elect to pay all or a portion of the contributions due from the enrolled
19 employee's covered wages.

1 (C) As used in this subsection, the term “covered wages” does not
2 include the amount of wages paid to an employee after he or she has received
3 wages equal to \$150,000.00.

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

10 (B) On or before February 1 of each year, the Commissioner shall
11 report to the General Assembly the rate of contribution necessary to provide
12 Parental and Family Leave Insurance benefits pursuant to this subchapter, to
13 maintain adequate reserves in the Fund, and to administer the Program during
14 the next fiscal year, adjusted by any balance in the Fund from the prior fiscal
15 year.

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

18 § 573. BENEFITS

19 (a) Except as otherwise provided pursuant to section 572 of this subchapter,
20 a qualified employee awarded Parental and Family Leave Insurance benefits
21 under this section shall receive 80 percent of his or her average weekly wage

1 or an amount equal to a 40-hour workweek paid at a rate double that of the
2 livable wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A.
3 § 505, whichever is less.

4 (b) A qualified employee shall be permitted to receive not more than 12
5 weeks of Parental and Family Leave Insurance benefits in a 12-month period
6 for family leave or parental and bonding leave, or both.

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

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

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

14 (2) The qualified employee satisfies the eligibility requirements for the
15 requested leave.

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

18 (b) The Commissioner of Labor shall make a determination of each claim
19 not later than five days after the date the claim is filed, and Parental and
20 Family Leave Insurance benefits shall be paid from the Fund created pursuant
21 to this section. A person aggrieved by a decision of the Commissioner under

1 this subsection may file with the Commissioner a request for reconsideration
2 within 30 days after receipt of the Commissioner’s decision. Thereafter, an
3 applicant denied reconsideration may file an appeal to the Civil Division of the
4 Superior Court in the county where the employment is located.

5 (c)(1) A qualified employee filing a claim for benefits pursuant to this
6 section shall, at the time of filing, be advised that Parental and Family Leave
7 Insurance benefits may be subject to income tax and that the individual’s
8 benefits may be subject to withholding.

9 (2) The Commissioner shall follow all procedures specified by
10 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the
11 withholding of income tax.

12 § 575. FALSE STATEMENT OR REPRESENTATION; PENALTY

13 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 § 576. ELECTION OF COVERAGE; APPLICATION

2 (a) An employee may elect to enroll in the Parental and Family Leave
3 Insurance Program by submitting to the Commissioner an application on a
4 form provided by the Commissioner. Not more than ten days after the
5 application is received, the Commissioner shall notify the employee's
6 employer of the application.

7 (b) Upon approval of the application, the Commissioner shall provide
8 written notice to the employer and employee that the application has been
9 approved and the date by which the employer shall begin deducting and
10 withholding contributions pursuant to section 572 of this section.

11 § 577. RULEMAKING

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

14 Sec. 4. ADOPTION OF RULES

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. IMPLEMENTATION OF PROGRAM

4 (a) Beginning on July 1, 2018:

5 (1) employees shall be permitted to enroll in the Parental and Family
6 Leave Insurance Program pursuant to 21 V.S.A. § 576; and

7 (2) contributions from each enrolled employee's covered wages shall
8 begin being paid pursuant to 21 V.S.A. § 572.

9 (b) Beginning on July 1, 2019, qualified employees may begin to receive
10 benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

11 Sec. 7. EFFECTIVE DATES

12 (a) This section and Secs. 3, 4, 5, and 6 shall take effect on July 1, 2017.

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