

H.196

An act relating to paid family leave

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

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~~

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

~~(4) "Parental leave" means a leave of absence from employment by an employee who works for an employer which employs 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:~~

(C) the employee's pregnancy;

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

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

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

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

\* \* \*

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

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

§ 472. FAMILY LEAVE

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

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

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

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

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

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

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

(b) During the leave, at the employee's option, the employee may use accrued sick leave ~~or~~, vacation leave ~~or~~, any other accrued paid leave, ~~not to exceed six weeks~~ Parental and Family Leave Insurance benefits pursuant to subchapter 13 of this chapter, or short-term disability insurance or other insurance benefits. Utilization Use of accrued paid leave, Parental and Family

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

\* \* \*

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

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

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

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

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

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

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

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

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

Subchapter 13. Parental and Family Leave Insurance

§ 571. DEFINITIONS

As used in this subchapter:

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

(2) “Employer” means an individual, organization, 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.

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

(4) “Family leave” means 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, grandchild, parent, grandparent, sibling, spouse, or parent of the employee’s spouse.

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

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

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

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

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

(7) “Serious illness” means an accident, disease, or physical or mental condition that:

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

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

(8) "Wages" has the same meaning as in subdivision 1301(12) of this title.

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

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

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

(c)(1)(A) The Fund shall consist of contributions equal to 0.141 percent of each employee's covered wages, which an employer shall deduct and withhold from each of its employee's wages.

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

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

(2)(A) Notwithstanding subdivision (1) of this subsection (c), the General Assembly shall annually establish the rate of contribution for the next fiscal year. The rate shall equal the amount necessary to provide Parental and Family Leave Insurance benefits pursuant to this subchapter, to maintain a reserve equal to at least 100 percent of the projected benefit payments for the next fiscal year, and to administer the Parental and Family Leave Insurance Program during the next fiscal year, adjusted by any balance in the Fund from the prior fiscal year.

(B) On or before February 1 of each year, the Commissioner shall report to the General Assembly the rate of contribution necessary to provide Parental and Family Leave Insurance benefits pursuant to this subchapter, to maintain a reserve equal to at least 100 percent of the projected benefit payments for the next fiscal year, and to administer the Program during the next fiscal year, adjusted by any balance in the Fund from the prior fiscal year.

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



§ 573. BENEFITS

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

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

§ 574. APPLICATION FOR BENEFITS; PAYMENT; TAX

WITHHOLDING

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

- (1) The purposes for which the claim is made are documented.
- (2) The qualified employee satisfies the eligibility requirements for the requested leave.

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

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

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

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

§ 575. FALSE STATEMENT OR REPRESENTATION; PENALTY

A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment or to avoid payment of any

required contributions under the provisions of this section, either for himself or herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00 and shall forfeit all or a portion of any right to compensation under the provisions of this section, as determined to be appropriate by the Commissioner after a determination by the Commissioner that the person has willfully made a false statement or representation of a material fact.

§ 576. RULEMAKING

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

Sec. 4. ADOPTION OF RULES

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

Sec. 5. EDUCATION AND OUTREACH

On or before January 1, 2018, the Commissioner of Labor shall develop and make available on the Department of Labor's website information and materials to educate and inform employers and employees about the Parental and Family Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

Sec. 6. ESTABLISHMENT OF PARENTAL AND FAMILY LEAVE  
INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL  
FUND

Beginning on July 1, 2017, the Commissioner of Finance and Management may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from the Parental and Family Leave Insurance Special Fund necessary to establish the Parental and Family Leave Insurance Program in anticipation of the receipt on or after July 1, 2018 of contributions submitted pursuant to 21 V.S.A. § 572.

Sec. 7. ADEQUACY OF RESERVES; REPORT

Annually, on or before January 15, 2020, 2021, and 2022, the Commissioner of Labor, in consultation with the Commissioners of Finance and Management and of Financial Regulation, shall submit a written report to the House Committees on Appropriations, on General, Housing and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance regarding the amount and adequacy of the reserves in the Parental and Family Leave Insurance Special Fund and any recommendations for legislative action necessary to ensure that an adequate reserve is maintained in the Fund.

Sec. 8. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

(5) For any week with respect to which the individual is receiving or has received remuneration in the form of:

\* \* \*

(F) Parental and Family Leave Insurance benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

\* \* \*

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 3, 4, 5, 6, and 7 shall take effect on July 1, 2017.

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

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