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H.612

Introduced by Representatives Chesnut-Tangerman of Middletown Springs
and Szott of Barnard

Referred to Committee on

Date:

Subject: Labor; employment practices; family and medical leave insurance;
parental and family leave; leave for victims of domestic and sexual
violence

Statement of purpose of bill as introduced: This bill proposes to create a Paid
Family and Medical Leave Insurance Program within the Departments of
Labor and of Taxes that will be funded by contributions from employers and
employees. The bill also proposes to amend Vermont's existing Parental and
Family Leave Act to make it applicable to additional employers and to clarify
certain provisions, as well as to provide up to eight weeks of leave from
employment for a victim of domestic or sexual violence.

An act relating to creating a State-operated family and medical leave
insurance program

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

2 Sec. 1. 21 V.S.A. chapter 5, subchapter 13 is added to read:

3 Subchapter 13. Family and Medical Leave Insurance

4 § 571. DEFINITIONS

5 As used in this subchapter:

6 (1) “Average weekly wage” means the employee’s total wages from his
7 or her two highest-earning quarters in the last four completed calendar quarters
8 divided by 26.

9 (2) “Bonding leave” means a leave of absence from employment by an
10 employee for:

11 (A) the employee’s pregnancy;

12 (B) the birth of the employee’s child; or

13 (C) the initial placement of a child 18 years of age or younger with
14 the employee for the purpose of adoption or foster care.

15 (3) “Covered wages” means all wages paid to an employee up to the
16 amount of the maximum Social Security Taxable Wage.

17 (4) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.

18 (5) “Employee” means an individual who receives payments with
19 respect to services performed for an employer from which the employer is
20 required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151,
21 subchapter 4.

1 (6) “Employer” means any of the following who employ one or more
2 individuals to perform services in Vermont:

3 (A) a person;

4 (B) the receiver, trustee, trustee in bankruptcy, or successor of a
5 person; or

6 (C) the administrator or executor of the estate of a deceased
7 individual.

8 (7) “Family member” means the employee’s:

9 (A) child or foster child;

10 (B) stepchild or ward who lives with the employee;

11 (C) spouse, domestic partner, or civil union partner;

12 (D) parent or the parent of the employee’s spouse, domestic partner,
13 or civil union partner;

14 (E) grandchild;

15 (F) grandparent; or

16 (G) a child for whom the employee stands in loco parentis or an
17 individual who stood in loco parentis for the employee when he or she was a
18 child.

19 (8) “In loco parentis” means a child for whom the employee has day-to-
20 day responsibilities to care for and financially support or, in the case of the

1 employee, an individual who had such responsibility for the employee when he
2 or she was a child.

3 (9) “Medical leave” means a leave of absence from employment by an
4 employee for:

5 (A) his or her own serious illness, provided he or she is not eligible to
6 receive workers’ compensation pursuant to 21 V.S.A. chapter 9 for the serious
7 illness; or

8 (B) a serious illness of the employee’s family member.

9 (10) “Qualified employee” means an employee who has:

10 (A) earned wages in at least six months during the last four
11 completed calendar quarters; and

12 (B) earned wages during the last four completed calendar quarters in
13 an amount that is equal to or greater than 1,040 hours at the minimum wage
14 established pursuant to section 384 of this chapter.

15 (11) “Safe leave” means a leave of absence from employment by an
16 employee for one of the reasons set forth in section 472d of this title.

17 (12) “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 (13) “Vermont’s weekly livable wage” means a 40-hour workweek paid
4 at the rate of the livable wage determined by the Joint Fiscal Office pursuant to
5 2 V.S.A. § 505.

6 (14) “Wages” means payments that are included in the definition of
7 wages set forth in 26 U.S.C. § 3401.

8 § 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;

9 ADMINISTRATION

10 (a) The Family and Medical Leave Insurance Program is established in the
11 Department of Labor and the Department of Taxes for the provision of Family
12 and Medical Leave Insurance benefits to eligible employees pursuant to the
13 provisions of this subchapter.

14 (b)(1)(A) The Commissioner of Taxes shall administer the collection of
15 contributions and quarterly wage information for each employee.

16 (B) The quarterly wage information for each employee shall be
17 entered into a database that is accessible by the Commissioner of Labor for
18 purposes of determining an employee’s eligibility for benefits.

19 (2) The Commissioner of Labor shall administer the processing of
20 benefits applications, the determination of eligibility for benefits, the payment

1 of benefits, the collection of overpaid benefits, and any other aspect of the
2 Program that is not administered by the Commissioner of Taxes.

3 (c) The Commissioners of Labor and of Taxes may contract with one or
4 more third-party administrators to provide actuarial support and fund
5 administration, process benefits claims and payments, and make initial
6 determinations of appeals.

7 § 573. CONTRIBUTIONS

8 (a) An employer that does not elect to meet its obligations under this
9 subchapter as provided pursuant to section 577 of this subchapter shall remit
10 the contributions required by subsection (b) of this section to the
11 Commissioner of Taxes on a quarterly basis beginning with the calendar
12 quarter that starts on April 1, 2021.

13 (b)(1) Contributions shall be equal to 0.55 percent of each employee's
14 covered wages.

15 (2) An employer shall have the option of paying some or all of the
16 contributions due for an employee's covered wages or may deduct and
17 withhold the full amount of the contribution due from the employee's covered
18 wages.

19 (c)(1) The General Assembly shall annually review and, if necessary,
20 adjust the rate of contribution established pursuant to subsection (b) of this
21 section for the next fiscal year. The rate shall equal the amount necessary to

1 provide Family and Medical Leave Insurance benefits pursuant to this
2 subchapter, to maintain a reserve equal to at least nine months of the projected
3 benefit payments for the next fiscal year, and to administer the Program during
4 the next fiscal year, adjusted by any balance in the Fund from the prior fiscal
5 year.

6 (2) On or before February 1 of each year, the Commissioner of Labor, in
7 consultation with the Commissioner of Taxes, shall report to the General
8 Assembly the rate of contribution necessary to provide Family and Medical
9 Leave Insurance benefits pursuant to this subchapter, to maintain a reserve
10 equal to at least nine months of the projected benefit payments for the next
11 fiscal year, and to administer the Program during the next fiscal year, adjusted
12 by any balance in the Fund from the prior fiscal year.

13 § 574. COLLECTION OF CONTRIBUTIONS; QUARTERLY REPORTS

14 (a) The Commissioner of Taxes shall collect all contributions required
15 pursuant to section 573 of this subchapter and deposit them into the Family
16 and Medical Leave Insurance Special Fund.

17 (b)(1) The Commissioner of Taxes shall require the withholding of the
18 contributions required pursuant to section 573 of this subchapter from wages
19 paid by any employer, as if the contributions were an additional Vermont
20 income tax subject to the withholding requirements of 32 V.S.A. § 5841(a).
21 The administrative and enforcement provisions of 32 V.S.A. chapter 151,

1 subchapter 4 shall apply to the withholding requirement under this section as if
2 the contributions withheld were a Vermont income tax.

3 (2) An employer that has received approval from the Commissioner of
4 Financial Regulation for an alternative insurance or benefit plan pursuant to the
5 provisions of section 577 of this subchapter shall not be required to withhold
6 contributions pursuant to this section.

7 (c)(1) The Commissioner of Taxes shall require each employer to submit
8 the following information for all employees from whom the employer
9 withholds and remits contributions pursuant to this section:

10 (A) the employee's name;

11 (B) the employee's Social Security number;

12 (C) the amount of covered wages paid to the employee during that
13 calendar quarter and that calendar year; and

14 (D) any other information that the Commissioner of Taxes, in
15 consultation with the Commissioner of Labor, determines is necessary for the
16 administration of this subchapter.

17 (2) The information required pursuant to this subsection shall be
18 submitted in a form specified by the Commissioner of Taxes.

1 § 575. BENEFITS

2 (a) A qualified employee shall be permitted to receive a total of not more
3 than 12 weeks of Family and Medical Leave Insurance benefits in a calendar
4 year, which may include:

5 (1) up to 12 weeks of benefits for bonding leave taken by the employee;

6 (2) up to eight weeks of benefits for medical leave taken by the
7 employee; and

8 (3) up to eight weeks of benefits for safe leave taken by the employee.

9 (b)(1) A qualified employee awarded Family and Medical Leave Insurance
10 benefits under this section shall receive a weekly benefit amount equal to:

11 (A) if he or she earns an average weekly wage that is not more than
12 Vermont's weekly livable wage, 90 percent of his or her average weekly wage;

13 (B) if he or she earns an average weekly wage that is greater than
14 Vermont's weekly livable wage, 90 percent of Vermont's weekly livable wage
15 plus 50 percent of the amount by which his or her average weekly wage
16 exceeds Vermont's weekly livable wage.

17 (2) Notwithstanding subdivision (1) of this subsection, no qualified
18 employee may receive Parental and Family Leave Insurance benefits that
19 exceed two-and-one-half times Vermont's weekly livable wage for any single
20 week.

1 (c) A qualified employee may receive Family and Medical Leave Insurance
2 benefits for an intermittent leave or leave for a portion of a week. The benefit
3 amount for an intermittent leave or leave for a portion of a week shall be
4 calculated in increments of one full day or one fifth of the qualified employee's
5 weekly benefit amount.

6 (d) Family and Medical Leave Insurance benefits paid pursuant to this
7 subchapter may be used as wage replacement for a leave taken pursuant to
8 section 472 of this title or the federal Family and Medical Leave Act,
9 29 U.S.C. §§ 2611–2654. The receipt of benefits paid pursuant to this
10 subchapter shall not extend the leave provided pursuant to section 472 of this
11 title or the federal Family and Medical Leave Act.

12 (e)(1) A qualified employee shall not be permitted to receive Family and
13 Medical Leave Insurance benefits for any day for which he or she is receiving:

14 (A) wages;

15 (B) payment for the use of vacation leave, sick leave, or other
16 accrued paid leave;

17 (C) payment pursuant to a disability insurance plan;

18 (D) unemployment insurance benefits pursuant to 21 V.S.A. chapter
19 17 or the law of any other state; or

1 (E) compensation for temporary partial disability or temporary total
2 disability pursuant to chapter 9 of this title, the workers' compensation law of
3 any state, or any similar law of the United States.

4 (2) Notwithstanding subdivision (1) of this subsection, an employer may
5 provide its employees with additional income to supplement the amount of the
6 benefits provided pursuant to this section provided that the sum of the
7 additional income and the benefits provided pursuant to this section does not
8 exceed the employee's average weekly wage.

9 § 576. APPLICATION FOR BENEFITS; PAYMENT; TAX

10 WITHHOLDING

11 (a) A qualified employee, or his or her agent, shall file an application for
12 Family and Medical Leave Insurance benefits under this subchapter on a form
13 approved by the Commissioner of Labor. The determination of whether the
14 qualified employee is eligible to receive Family and Medical Leave Insurance
15 benefits shall be based on the following criteria:

16 (1) The claim is for a bonding leave, a medical leave, or a safe leave and
17 the need for the leave is adequately documented.

18 (2) The claimant satisfies the requirements to be a qualified employee as
19 defined pursuant to subdivision 571(10) of this subchapter.

20 (3) The claimant has specified the anticipated or actual start date and the
21 duration of the leave.

1 (b)(1) A determination shall be made in relation to each claim within not
2 more than five business days after the date the claim is filed. The time to make
3 a determination on a claim may be extended by not more than 15 business days
4 if necessary to obtain documents or information that are needed to make the
5 determination.

6 (2) An application for Family and Medical Leave Insurance benefits
7 may be filed:

8 (A) up to 60 days before an anticipated leave; or

9 (B) within 60 days after the leave begins in the event of:

10 (i) a premature birth;

11 (ii) an unanticipated serious illness; or

12 (iii) an emergency or other unforeseen event for which the
13 employee takes a safe leave.

14 (3)(A) Benefits shall be paid to a qualified employee for the time period
15 beginning on the day his or her leave began.

16 (B) The first benefit payment shall be sent to the qualified employee
17 within 14 days after his or her claim is approved, and subsequent payments
18 shall be sent biweekly.

19 (4) The provisions of sections 1367 and 1367a of this title shall apply to
20 Family and Medical Leave Insurance benefits.

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

5 (2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A.
6 chapter 151, subchapter 4 pertaining to the withholding of income tax shall be
7 followed in relation to the payment of Family and Medical Leave Insurance
8 benefits.

9 (d) As used in this section, "agent" means an individual who holds a valid
10 power of attorney for the employee or other legal authorization to act on the
11 employee's behalf that is acceptable to the Commissioner of Labor.

12 § 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR
13 BENEFITS

14 (a) As an alternative to and in lieu of participating in the Family and
15 Medical Leave Insurance Program, an employer may, upon approval by the
16 Commissioner of Labor, in consultation with the Commissioners of Financial
17 Regulation and of Taxes, comply with the requirements of this subchapter
18 through the use of an alternative insurance plan or benefit plan that provides to
19 all of its employees benefits for bonding leave, medical leave, and safe leave
20 that are equivalent to or more generous than the benefits provided pursuant to
21 this subchapter. An employer may elect to provide such benefits by:

1 (1) establishing and maintaining to the satisfaction of the Commissioner
2 of Financial Regulation self-insurance necessary to provide equivalent or
3 greater benefits;

4 (2) purchasing insurance coverage for the payment of equivalent or
5 greater benefits from any insurance carrier authorized to provide family and
6 medical leave insurance in this State;

7 (3) establishing an employee benefits plan that provides equivalent or
8 greater benefits; or

9 (4) any combination of subdivisions (1) through (3) of this subsection.

10 (b)(1) The Commissioner of Labor may approve an alternative insurance or
11 benefit plan under this section upon determining, in consultation with the
12 Commissioner of Financial Regulation, that it provides benefits that are
13 equivalent to or more generous than the benefits provided pursuant to this
14 subchapter.

15 (2)(A) Nothing in this section shall be construed to require that the
16 benefits provided by an alternative insurance or benefit plan be identical to the
17 benefits provided pursuant to this subchapter.

18 (B) The Commissioners of Labor, in consultation with the
19 Commissioner of Financial Regulation, shall determine whether the benefits
20 provided by a proposed alternative insurance or benefit plan are equivalent to
21 or more generous than the benefits provided pursuant to this subchapter by

1 weighing the relative value of the alternative plan's length of leave, wage
2 replacement, and cost to employees against the provisions of this subchapter.

3 (c)(1) Except as otherwise provided pursuant to subdivision (4) of this
4 subsection, an alternative insurance or benefit plan shall only be permitted to
5 become effective on January 1 following its approval and shall remain in effect
6 until it is discontinued pursuant to subdivision (3) of this subsection.

7 (2)(A) An employer shall submit an application to the Commissioner of
8 Labor for approval of a new or modified alternative insurance or benefit plan
9 on or before October 15 of the calendar year prior to when it shall take effect.

10 (B) The Commissioner shall make a determination and notify the
11 employer of whether its application has been approved on or before
12 December 1. If the application is approved, the Commissioner shall also
13 provide a copy of the notice to the Commissioners of Financial Regulation and
14 of Taxes on or before December 1.

15 (3) An employer may discontinue its alternative insurance or benefit
16 plan on January 1 of any year by filing notice of its intent to discontinue the
17 plan with the Commissioners of Labor and of Taxes on or before November 1
18 of the prior year.

19 (4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of
20 this subsection to the contrary, for calendar year 2022, an employer shall

1 submit an application for a new alternative insurance or benefit plan on or
2 before August 1.

3 (B) The Commissioner shall make a determination and notify the
4 employer of whether its application has been approved on or before September
5 15. If the application is approved, the Commissioner shall also provide a copy
6 of the notice to the Commissioners of Labor and of Taxes on or before
7 September 15.

8 (C) Beginning on October 1, 2022, an employer that receives
9 approval for an alternative insurance or benefit plan pursuant to this
10 subdivision (4) shall be exempt from withholding contributions as provided
11 pursuant to subdivision 574(b)(2) of this subchapter.

12 (d) Nothing in this subchapter shall be construed to diminish an employer's
13 obligation to comply with any collective bargaining agreement or paid time off
14 policy that provides more generous benefits than the benefits provided
15 pursuant to this subchapter.

16 § 578. DISQUALIFICATIONS

17 A qualified employee shall be disqualified for benefits for any week in
18 which he or she has received:

19 (1) compensation for temporary partial disability or temporary total
20 disability under the workers' compensation law of any state or under a similar
21 law of the United States; or

1 (2) unemployment insurance benefits under the law of any state.

2 § 579. APPEALS

3 An employer or employee aggrieved by a decision under section 576 or 578
4 of this subchapter may appeal the decision as provided pursuant to sections
5 1348, 1349, and 1351–1357 of this title.

6 § 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

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

15 § 581. REHIRING; LIMITED RIGHT; SENIORITY AND BENEFITS

16 PROTECTED

17 (a)(1)(A) An employee who is not entitled to job protection pursuant to
18 section 472 of this chapter and is separated from employment in relation to a
19 leave for which he or she receives Family and Medical Leave Insurance
20 benefits pursuant to this subchapter shall have a limited right to be rehired by
21 his or her employer following the conclusion of his or her leave.

1 (B) The employer shall offer the employee the first available suitable
2 position based on the position the employee held at the time his or her leave
3 began.

4 (C) If the employee declines the offer, he or she shall not be entitled
5 to any further employment offers from the employer.

6 (2) An employee shall not be entitled to be rehired pursuant to the
7 provisions of this section if:

8 (A) the employee fails to inform the employer of:

9 (i) the need for the leave;

10 (ii) his or her interest in being rehired at the conclusion of the
11 leave; and

12 (iii) the date on which his or her leave is anticipated to conclude;

13 (B) the employee had been given notice, or had given notice, prior to
14 providing his or her employer with notice of the leave;

15 (C) the employer can demonstrate by clear and convincing evidence
16 that during the leave, or prior to the employee's reinstatement, the employee's
17 position would have been terminated or the employee laid off for reasons
18 unrelated to the leave or the reason for which the employee took the leave; or

19 (D) the employee has exhausted his or her right to job protection for
20 the leave pursuant to section 472 of this chapter and the federal Family and
21 Medical Leave Act, 29 U.S.C. §§ 2611–2654.

1 (3) An employee's right to be rehired pursuant to the provisions of this
2 section shall expire two years after the date on which his or her leave
3 concluded.

4 (b) Upon being rehired pursuant to the provisions of this section, an
5 employee shall regain any seniority and unused accrued paid leave he or she
6 was entitled to prior to the leave, less any accrued paid leave used during the
7 leave.

8 (c) Nothing in this section shall be construed to diminish an employee's
9 rights pursuant to subsection 472(f) of this chapter.

10 (d)(1) An employee aggrieved by an employer's failure to comply with the
11 provisions of this section may bring an action in the Civil Division of the
12 Superior Court in the county where the employment is located for
13 compensatory and punitive damages or equitable relief, including restraint of
14 prohibited acts, restitution of wages or other benefits, reinstatement, costs, and
15 other appropriate relief.

16 (2) A copy of the complaint shall be filed with the Commissioner of
17 Labor.

18 (3) The court shall award reasonable attorney's fees to the employee if
19 he or she prevails.

1 § 582. PROTECTION FROM RETALIATION OR INTERFERENCE

2 (a) An employer shall not discharge or in any other manner retaliate against
3 an employee who exercises or attempts to exercise his or her rights under this
4 subchapter. The provisions against retaliation in subdivision 495(a)(8) of this
5 title shall apply to this subchapter.

6 (b) An employer shall not interfere with, restrain, or otherwise prevent an
7 employee from exercising or attempting to exercise his or her rights pursuant
8 to this subchapter.

9 (c) An employee aggrieved by a violation of the provisions of this
10 subchapter may bring an action in Superior Court seeking compensatory and
11 punitive damages or equitable relief, including restraint of prohibited acts,
12 restitution of wages or other benefits, reinstatement, costs, reasonable
13 attorney's fees, and other appropriate relief.

14 § 583. CONFIDENTIALITY OF INFORMATION

15 (a) Information obtained from an employer or individual in the
16 administration of this subchapter and determinations of an individual's right to
17 receive benefits that reveal an employer's or individual's identity in any
18 manner shall be kept confidential and, to the extent that such information is
19 obtained or kept by the State, shall be exempt from public inspection and
20 copying under the Public Records Act. Such information shall not be

1 admissible as evidence in any action or proceeding other than one brought
2 pursuant to the provisions of this subchapter.

3 (b) Notwithstanding subsection (a) of this section:

4 (1) an individual or his or her duly authorized agent may be provided
5 with information to the extent necessary for the proper presentation of his or
6 her claim for benefits or to inform him or her of his or her existing or
7 prospective rights to benefits; and

8 (2) an employer may be provided with information that the
9 Commissioner of Labor or of Taxes determines is necessary to enable the
10 employer to discharge fully its obligations and protect its rights under this
11 subchapter.

12 § 584. RULEMAKING

13 (a) The Commissioner of Taxes shall adopt rules as necessary to implement
14 the provisions of section 574 of this subchapter. The rules adopted by the
15 Commissioner of Taxes shall include:

16 (1) procedures for the collection of contributions; and

17 (2) reporting and record-keeping requirements for employers.

18 (b) The Commissioner of Labor shall adopt rules as necessary to
19 implement all other provisions of this subchapter. The rules adopted by the
20 Commissioner of Labor shall include:

21 (1) acceptable documentation for demonstrating eligibility for benefits;

1 (2) requirements for providing certification from a health care provider
2 of the need for family leave that are modeled on the federal rules governing
3 certification of a serious health condition under the Family and Medical Leave
4 Act;

5 (3) requirements for obtaining authorization for an individual's health
6 care provider to disclose information necessary to make a determination of the
7 individual's eligibility for benefits;

8 (4) requirements for providing documentation of the need for safe leave
9 that are consistent with the forms of documentation permitted pursuant to
10 section 472d of this title;

11 (5) in consultation with the Commissioner of Financial Regulation,
12 requirements and criteria for the approval of an employer's alternative
13 insurance or benefit plan pursuant to section 577 of this subchapter and for
14 determining whether a proposed plan provides benefits that are equivalent to or
15 more generous than the benefits provided pursuant to this subchapter; and

16 (6) procedures for appeals pursuant to subsection 579(b) of this
17 subchapter.

18 § 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

19 The Family and Medical Leave Insurance Special Fund is created pursuant
20 to 32 V.S.A. chapter 7, subchapter 5. The Fund shall consist of contributions
21 collected from employers pursuant to section 574 of this subchapter. The Fund

1 may be expended by the Commissioners of Labor and of Taxes for the
2 payment of premiums for and the administration of the Family and Medical
3 Leave Insurance Program. All interest earned on Fund balances shall be
4 credited to the Fund.

5 § 586. OVERPAYMENT OF BENEFITS; COLLECTION

6 (a)(1) Any individual who by nondisclosure or misrepresentation of a
7 material fact, by him or her, or by another person, has received Family and
8 Medical Leave Insurance benefits when he or she failed to fulfill a requirement
9 for the receipt of benefits pursuant to this chapter or while he or she was
10 disqualified from receiving benefits pursuant to section 580 of this chapter
11 shall be liable to repay to the Commissioner of Labor the amount received.

12 (2) Upon determining that an individual has received benefits under this
13 chapter that he or she was not entitled to, the Commissioner of Labor shall
14 provide the individual with notice of the determination. The notice shall
15 include a statement that the individual is liable to repay to the Commissioner
16 the amount of overpaid benefits and shall identify the basis of the overpayment
17 and the time period in which the benefits were paid.

18 (3) The determination shall be made within not more than three years
19 after the date of the overpayment.

20 (b)(1) An individual liable under this section shall repay the overpaid
21 amount to the Commissioner for deposit into the Fund.

1 (2) If the Commissioner finds that the individual intentionally
2 misrepresented or failed to disclose a material fact with respect to his or her
3 claim for benefits, in addition to the repayment under subdivision (1) of this
4 subsection, the person shall pay an additional penalty of 15 percent of the
5 amount of the overpaid benefits, which shall also be deposited into the Fund.

6 (3) The Commissioner may collect the amounts due under this section in
7 civil action in the Superior Court.

8 (c) If an individual is liable to repay any amount pursuant to this section,
9 the Commissioner may withhold, in whole or in part, any future benefits
10 payable to the individual pursuant to this chapter and credit the withheld
11 benefits against the amount due from the individual until it is repaid in full,
12 less any penalties assessed under subdivision (b)(2) of this section.

13 (d) In addition to the remedy provided pursuant to this section, an
14 individual who intentionally misrepresented or failed to disclose a material fact
15 with respect to his or her claim for benefits may be subject to the penalties
16 provided pursuant to section 580 of this title.

17 Sec. 2. ADOPTION OF RULES

18 (a) On or before January 1, 2020, the Commissioner of Taxes shall
19 adopt rules necessary to implement the provisions of 21 V.S.A. § 574, which
20 shall include:

21 (1) procedures for the collection of contributions; and

1 (2) reporting and record-keeping requirements for employers.

2 (b) On or before June 1, 2020, the Commissioner of Labor shall adopt rules
3 necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter
4 13, which shall include:

5 (1) acceptable documentation for demonstrating eligibility for benefits;

6 (2) requirements for providing certification from a health care provider
7 of the need for family leave that are modeled on the federal rules governing
8 certification of a serious health condition under the Family and Medical Leave
9 Act;

10 (3) requirements for obtaining authorization for an individual's health
11 care provider to disclose information necessary to make a determination of the
12 individual's eligibility for benefits;

13 (4) requirements for providing documentation of the need for safe leave
14 that are consistent with the forms of documentation permitted pursuant to
15 section 472d of this title;

16 (5) in consultation with the Commissioner of Financial Regulation,
17 requirements and criteria for the approval of an employer's alternative
18 insurance or benefit plan pursuant to section 577 of this subchapter and for
19 determining whether a proposed plan provides benefits that are equivalent to or
20 more generous than the benefits provided pursuant to this subchapter;

1 (6) procedures for appeals pursuant to subsection 579(b) of this
2 subchapter; and

3 (7) the establishment of the existence of an in loco parentis relationship
4 between an employee and another individual.

5 Sec. 3. EDUCATION AND OUTREACH

6 On or before June 1, 2021, the Commissioner of Labor shall develop and
7 make available on the Department of Labor's website information and
8 materials to educate and inform employers and employees about the Family
9 and Medical Leave Insurance Program established pursuant to 21 V.S.A.
10 chapter 5, subchapter 13.

11 Sec. 4. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE

12 INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL
13 FUND

14 The Commissioner of Finance and Management may, pursuant to 32 V.S.A.
15 § 588(4)(C), issue warrants for expenditures from the Family and Medical
16 Leave Insurance Special Fund necessary to establish the Family and Medical
17 Leave Insurance Program in anticipation of the receipt on or after July 1, 2021
18 of contributions submitted pursuant to 21 V.S.A. §§ 573 and 574.

19 Sec. 5. ADEQUACY OF RESERVES; REPORT

20 Annually on or before January 15, 2022, 2023, and 2024, the Commissioner
21 of Labor, in consultation with the Commissioners of Finance and Management,

1 of Financial Regulation, and of Taxes, shall submit a written report to the
2 House Committees on Appropriations, on General, Housing, and Military
3 Affairs, and on Ways and Means and the Senate Committees on
4 Appropriations, on Economic Development, on Housing and General Affairs,
5 and on Finance regarding the amount and adequacy of the reserves in the
6 Family and Medical Leave Insurance Special Fund and any recommendations
7 for legislative action necessary to ensure that an adequate reserve is maintained
8 in the Fund.

9 Sec. 6. 21 V.S.A. § 471 is amended to read:

10 § 471. DEFINITIONS

11 As used in this subchapter:

12 (1) “Employer” means ~~an individual, organization, or governmental~~
13 ~~body, partnership, association, corporation, legal representative, trustee,~~
14 ~~receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,~~
15 ~~air, or express company doing business in or operating within this State which~~
16 ~~for the purposes of parental leave~~ any of the following that employs 10 or more
17 individuals who are employed for an average of at least 30 hours per week
18 during a year and for the purposes of family leave employs 15 or more
19 individuals for an average of at least 30 hours per week during a year;

20 (A) a person;

1 Sec. 7. 21 V.S.A. § 472 is amended to read:

2 § 472. FAMILY LEAVE

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

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

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

7 (3) within a year following the initial placement of a child 16 18 years
8 of age or younger with the employee for the purpose of adoption; or foster
9 care;

10 (2)(4) ~~for family leave, for the serious illness of the employee; or~~

11 (5) the serious illness of the employee's child, stepchild or ward of the
12 employee who lives with the employee, foster child, parent, spouse, or parent
13 of the employee's spouse family member.

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~~ Family and Medical 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, Family and Medical
19 Leave Insurance benefits, or other 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, or a placement for
9 foster care, an employer shall not require that notice be given more than six
10 weeks prior to the anticipated 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 Family and Medical 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. 8. 21 V.S.A. § 472d is added to read:

8 § 472d. LEAVE

9 (a) As used in this section:

10 (1) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.

11 (2) “Domestic violence” has the same meaning as in 15 V.S.A. § 1151.

12 (3) “Employer” means any of the following who employ one or more
13 individuals to perform services in Vermont:

14 (A) a person;

15 (B) the receiver, trustee, trustee in bankruptcy, or successor of a
16 person; or

17 (C) the administrator or executor of the estate of a deceased
18 individual.

19 (4) “Employee” means a person who, in consideration of direct or
20 indirect gain or profit, has been continuously employed by the same employer
21 for a period of six months for an average of at least 20 hours per week.

1 (5) “Family member” means:

2 (A) the employee’s child or foster child;

3 (B) a stepchild or ward who lives with the employee;

4 (C) the employee’s spouse, domestic partner, or civil union partner;

5 (D) the employee’s parent or the parent of the employee’s spouse,

6 domestic partner, or civil union partner;

7 (E) the employee’s sibling;

8 (F) the employee’s grandparent;

9 (G) the employee’s grandchild; or

10 (H) a child for whom the employee stands in loco parentis or an

11 individual who stood in loco parentis for the employee when he or she was a

12 child.

13 (6) “Sexual assault” has the same meaning as in 15 V.S.A. § 1151.

14 (7) “Stalking” has the same meaning as in 15 V.S.A. § 1151.

15 (b)(1) In addition to any other leave provided pursuant to this subchapter,

16 an employee shall be entitled to take up to 8 weeks of leave in a 12-month

17 period if:

18 (A) the employee or the employee’s family member is a victim of

19 domestic violence, sexual assault, or stalking;

20 (B) the employee is using the leave for one of the following reasons

21 related to the domestic violence, sexual assault, or stalking;

- 1 (i) to seek or obtain medical care, counseling, or social or legal
2 services;
- 3 (ii) to recover from injuries;
- 4 (iii) to participate in safety planning;
- 5 (iv) to relocate or secure safe housing; or
- 6 (v) to meet with a State’s attorney or law enforcement officer; and

7 (C) the employee is not the perpetrator of the domestic violence,
8 sexual assault, or stalking.

9 (2)(A) An employee may use the leave provided pursuant to this
10 subsection intermittently.

11 (B) An employee who uses leave intermittently shall be entitled to
12 take leave in increments of not less than one day.

13 (c) During the leave, at the employee’s option, the employee may use
14 accrued sick leave, vacation leave, or any other accrued paid leave. Use of
15 accrued paid leave shall not extend the leave provided pursuant to this section.

16 (d)(1)(A) If the need for a leave pursuant to this section is foreseeable, the
17 employee shall provide the employer with written notice of the need for the
18 leave as soon as practicable.

19 (B) An employee shall not be required to provide advance notice of
20 the need for leave caused by an emergency or other unforeseen event, but shall

1 instead notify the employer that the leave was taken or is being taken within
2 three business days after commencing the leave.

3 (2)(A) An employer may require an employee to provide documentation
4 of the need for the leave from one of the following sources:

5 (i) a court or a law enforcement or other government agency;

6 (ii) a domestic violence, sexual assault, or stalking assistance
7 program;

8 (iii) a legal, clerical, medical, or other professional from whom the
9 employee, or the employee's family member, received counseling or other
10 assistance concerning domestic violence, sexual assault, or stalking; or

11 (iv) a self-certification of the employee's, or the employee's
12 family member's, status as a victim of domestic violence, sexual assault, or
13 stalking, signed under penalty of perjury, on a standard form adopted for that
14 purpose by:

15 (I) a federal or State government entity, including the Vermont
16 Department for Children and Families; or

17 (II) a nonprofit organization that provides support services to
18 protected tenants.

19 (B) An employer shall not disclose any information received
20 pursuant to this subdivision (d)(2) except to the extent:

21 (i) consented to by the employee in writing;

1 (ii) required pursuant to a court order; or

2 (iii) required pursuant to State or federal law.

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

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

12 (g)(1) Upon return from leave taken under this section, an employee shall
13 be offered the same or comparable job at the same level of compensation,
14 employment benefits, seniority, and any other term or condition of the
15 employment existing on the day leave began.

16 (2) This subsection shall not apply if, prior to requesting leave, the
17 employee had been given notice or had given notice that the employment
18 would terminate.

19 (3) This subsection shall not apply if the employer can demonstrate by
20 clear and convincing evidence that during the period of leave the employee's

1 job would have been terminated or the employee would have been laid off for
2 reasons unrelated to the leave or the reason for which the leave was taken.

3 (h)(1) An employer may adopt a leave policy more generous than the leave
4 provided by this section.

5 (2) Nothing in this section shall be construed to diminish an employer's
6 obligation to comply with any collective bargaining agreement or any
7 employment benefit program or plan that provides greater leave rights than the
8 rights provided by this section.

9 (3) A collective bargaining agreement or employment benefit program
10 or plan shall not diminish rights provided by this section.

11 Sec. 9. 21 V.S.A. § 1344 is amended to read:

12 § 1344. DISQUALIFICATIONS

13 (a) An individual shall be disqualified for benefits:

14 * * *

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

17 * * *

18 (F) Family and Medical Leave Insurance benefits pursuant to
19 chapter 5, subchapter 13 of this title.

20 * * *

1 Sec. 10. 21 V.S.A. § 1325 is amended to read:

2 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

3 DISCLOSURE TO SUCCESSOR ENTITY

4 (a)(1) The Commissioner shall maintain an experience-rating record for
5 each employer. Benefits paid shall be charged against the experience-rating
6 record of each subject employer who provided base-period wages to the
7 eligible individual. Each subject employer's experience-rating charge shall
8 bear the same ratio to total benefits paid as the total base-period wages paid by
9 that employer bear to the total base-period wages paid to the individual by all
10 base-period employers. The experience-rating record of an individual subject
11 base-period employer shall not be charged for benefits paid to an individual
12 under any of the following conditions:

13 * * *

14 (G) The individual was employed by that employer as a result of
15 another employee taking leave under chapter 5, subchapter 13 of this title, and
16 the individual's employment was terminated as a result of the reinstatement of
17 the other employee following his or her leave under chapter 5, subchapter 13
18 of this title.

19 * * *

1 Sec. 11. SELF-EMPLOYED INDIVIDUAL; OPT-IN; REPORT

2 On or before January 15, 2022, the Commissioner of Labor, in consultation
3 with the Commissioners of Financial Regulation and of Taxes, shall submit a
4 written report to the House Committee on General, Housing, and Military
5 Affairs and the Senate Committee on Economic Development, Housing and
6 General Affairs regarding the potential for permitting self-employed
7 individuals to elect to obtain coverage through the Family and Medical Leave
8 Insurance Program. In particular, the report shall examine the experience of
9 other states that allow self-employed individuals to obtain coverage under their
10 family and medical leave insurance programs and the potential impact of
11 permitting self-employed individuals to elect to obtain coverage through the
12 Family and Medical Leave Insurance Program on the performance and
13 solvency of the Program, contribution rates, and administrative costs. The
14 report shall also include a recommendation for legislative action necessary to
15 permit self-employed individuals to elect to obtain coverage through the
16 Family and Medical Leave Insurance Program.

17 Sec. 12. POTENTIAL USE OF REINSURANCE IN LIEU OF RESERVE;
18 REPORT

19 On or before January 15, 2021, the Commissioner of Labor, in consultation
20 with the Commissioners of Financial Regulation and of Taxes, shall report to
21 the House Committee on General, Housing, and Military Affairs and the

1 Senate Committee on Economic Development, Housing and General Affairs
2 regarding the potential for ensuring the solvency of the Program by obtaining
3 reinsurance in lieu of maintaining a reserve. The report shall identify the
4 potential benefits, risks, and costs to the State of obtaining an adequate
5 reinsurance policy, including any anticipated impacts on contribution rates.

6 Sec. 13. 3 V.S.A. § 638 is added to read:

7 § 638. FAMILY AND MEDICAL LEAVE INSURANCE

8 (a) All State employees shall be provided with family and medical leave
9 insurance that satisfies the requirements of 21 V.S.A. chapter 5, subchapter 13.

10 (b) The State shall bargain with the appropriate collective bargaining
11 representative for each bargaining unit of State employees to determine:

12 (1) whether State employees will be covered by the Family and Medical
13 Leave Insurance Program or an alternative insurance or benefit plan
14 established pursuant to 21 V.S.A. § 577;

15 (2) if the State employees will be covered by the Family and Medical
16 Leave Insurance Program, the portion of the contribution rate established
17 pursuant to 21 V.S.A. § 573 that the State and the employees will be
18 responsible for; and

19 (3) if the State employees will be covered by an alternative insurance or
20 benefit plan established pursuant to 21 V.S.A. § 577, the cost of the program to

1 the employees, and the length of leave and level of wage replacement that the
2 employees will be eligible for.

3 (c)(1) The contribution rate determined pursuant to subdivision (b)(2) of
4 this section or the cost of the plan to the employees determined pursuant to
5 subdivision (b)(3) of this section shall be the same for all State employees,
6 regardless of whether the employees are permitted to collectively bargain
7 pursuant to 3 V.S.A. chapter 27 or 28.

8 (2) The length of leave and level of wage replacement determined
9 pursuant to subdivision (b)(3) of this section shall be the same for all State
10 employees, regardless of whether the employees are permitted to collectively
11 bargain pursuant to 3 V.S.A. chapter 27 or 28.

12 (3) Notwithstanding subdivisions (1) and (2) of this subsection, the
13 sworn Vermont State Police Officers below the rank of Lieutenant shall not be
14 required to have the same rate of contribution or the same cost of the plan,
15 length of leave, and level of wage replacement as other State employees.

16 Sec. 14. PLAN FOR OPERATION OF FAMILY AND MEDICAL
17 LEAVE INSURANCE PROGRAM; REPORT

18 The Commissioner of Labor, in consultation with the Commissioner of
19 Taxes, shall, on or before December 15, 2020, submit a written report outlining
20 a plan for the State to operate the Family and Medical Leave Insurance
21 Program to the House Committees on Appropriations, on General, Housing,

1 and Military Affairs, and on Ways and Means and the Senate Committees on
2 Appropriations, on Economic Development, Housing and General Affairs, and
3 on Finance. The report shall include a detailed explanation of how the State
4 will implement the Family and Medical Leave Insurance Program and carry
5 out the requirements of 21 V.S.A. chapter 5, subchapter 13, including specific
6 details and requirements related to staffing, information technology
7 development, the development of rules and procedures, ensuring adequate
8 reserves in the Family and Medical Leave Insurance Special Fund, and, if
9 appropriate, the utilization of one or more third-party administrators. The
10 report shall also include a recommendation for any legislative action necessary
11 for the State to successfully implement the Family and Medical Leave
12 Insurance Program.

13 Sec. 15. APPROPRIATIONS; POSITIONS

14 (a)(1) The sum of \$1,000,000.00 is appropriated from the Family and
15 Medical Leave Insurance Special Fund to the Department of Taxes in fiscal
16 year 2021 for the adoption of rules and the development of information
17 technology systems necessary to implement the provisions of 21 V.S.A. § 574.

18 (2) The sum of \$217,900.00 is appropriated from the Family and
19 Medical Leave Insurance Special Fund to the Department of Labor for the
20 adoption of rules and the development of forms, procedures, and outreach and

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

3 (b) The establishment of one new administrator position in the Department
4 of Labor is authorized in fiscal year 2021.

5 Sec. 16. EFFECTIVE DATES

6 (a) This section and Secs. 1, 2, 3, 4, 5, 8, 11, 12, 13, 14, and 15 shall take
7 effect on passage.

8 (b) Secs. 6, 7, 9, and 10 shall take effect on October 1, 2022.

9 (c)(1) Contributions shall begin being paid pursuant to 21 V.S.A. §§ 573
10 and 574 on July 1, 2021, and beginning on October 1, 2022, employees may
11 begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

12 (2) An employer that is subject to a collective bargaining agreement
13 shall not be required to pay contributions or be subject to the provisions of
14 21 V.S.A. chapter 5, subchapter 13 until either the effective date of the next
15 collective bargaining agreement after June 30, 2021 or the effective date of a
16 supplement to or provision of an existing collective bargaining agreement that
17 specifically addresses the provisions of 21 V.S.A. chapter 5, subchapter 13, in
18 order to permit the employer and the collective bargaining representative to
19 negotiate regarding the employer and employee shares of the contribution rate
20 or whether the employer will provide benefits through an alternative plan
21 established pursuant to 21 V.S.A. § 577.