H.239

Introduced by Representatives Kornheiser of Brattleboro, Mulvaney-Stanak of Burlington, Anthony of Barre City, Burke of Brattleboro, Christie of Hartford, Cina of Burlington, Colburn of Burlington, Cordes of Lincoln, Hooper of Burlington, Small of Winooski, Surprenant of Barnard, Townsend of South Burlington, Troiano of Stannard, Vyhoffsky of Essex, and Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Labor; employment practices; good cause employment; reliable work schedules

Statement of purpose of bill as introduced: This bill proposes to require employers to provide their employees with a reliable work schedule, to require employers to reimburse employees for necessary expenditures that are incurred by employees in the course of employment, and to establish a good cause standard for termination of employment.

An act relating to establishing various employment standards and protections
It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds the following:

(1) Reliable work schedules.

(A) Low-wage and service workers experience a variety of challenges in their jobs, including few, if any, contractual job protections and little to no control over their schedules.

(B) The COVID-19 Pandemic has exacerbated these challenges and the tenuous economic situation faced by low-wage and service workers.

(C) A significant percentage of low-wage and service workers are women and people of color, groups that have long experienced institutionalized and structural discrimination in the United States.

(D) According to a recent issue brief from the General Assembly’s Joint Fiscal Office, for the week ending November 14, 2020 about 73 percent of unemployment insurance recipients were women and about 26 percent of recipients worked in the hospitality and food service sectors.

(E) Workers in service and retail jobs have a higher frequency of irregular shift schedules, on-call shifts, split shifts, or rotating shifts.

(F) According to some national studies, workers whose jobs include irregular shift schedules, on-call shifts, split shifts, or rotating shifts report a
greater degree of conflict between work and family than workers who work a
regular or predictable schedule.

(G) Nationally, the frequency of irregular shift schedules is greatest
among workers earning less than $40,000.00 per year.

(H) Requiring employers to provide workers with a more reliable and
predictable schedule will enhance workers’ wellbeing and make Vermont a
more attractive place for workers and families to relocate, live, and raise
children.

(2) Good cause standard for dismissal.

(A) The Vermont statutes offer workers protection from many forms
of arbitrary or discriminatory treatment in the workplace.

(B) Some Vermont workers enjoy protections from termination for
no reason or termination for an arbitrary, capricious, trivial, or pretextual
reason pursuant to a collective bargaining agreement or contract.

(C) Other Vermont workers, however, do not enjoy such protections.
Those workers are known as “at-will” employees. An “at-will” employee may
be discharged for any reason that is not prohibited by law or public policy or
for no reason at all.

(D) Currently, absent an agreement between an employer and an
employee to the contrary, an employee is presumed to be an “at-will”
employee in 49 out of 50 U.S. states.
(E) However, Montana and most industrialized countries provide workers with legal protections against arbitrary dismissal. Among other things, Montana’s law makes it illegal to discharge an employee for other than “good cause” after the employee has completed his or her probationary period. “Good cause” can include a variety of legitimate business reasons, including an employee’s failure to perform his or her job duties satisfactorily, disruption to the employer’s operations, or other economic factors.

(F) The additional job security that a “good cause” standard for dismissal provides will distinguish Vermont from other states and make it a more attractive place for workers and families to relocate, live, and raise children.

(3) Reimbursement of work expenses.

(A) The COVID-19 Pandemic has forced many workers to shift to working remotely, and a significant number of newly remote workers have relocated to Vermont during the Pandemic.

(B) A recent study found that nationally, 16 percent of employers plan to continue having at least a portion of their employees work remotely after the COVID-19 Pandemic ends.

(C) Working remotely can create additional flexibility and enhance the wellbeing of workers by eliminating time spent commuting, making
workers more available to care for family members, and enhancing work-life
balance.

(D) However, working remotely can also generate significant
expenses for workers, including the costs of information technology, Internet
access, and office furniture.

(E) While some employers reimburse their employees for home
office expenses and equipment, others do not.

(F) Currently, California, Illinois, Iowa, Montana, New Hampshire, and South Dakota require employers to reimburse their employees for
necessary work expenses.

(G) Requiring reimbursement for necessary work expenses can make
Vermont a more attractive place for remote workers and their families to
relocate, live, and raise children and can serve as an economic development
tool for the State.

Sec. 2. 21 V.S.A. § 310 is added to read:

§ 310. SCHEDULING

(a) An employer shall provide each of its employees with a reliable work
schedule.

(b) As used in this section:

(1) “On-call shift” means a time period when the employer requires the
employee to be available for work, regardless of whether the employee
actually works or is required to report to his or her work location. The term “on-call shift” does not include a regular shift.

(2) “Regular shift” means a time period during which the employee is scheduled to work for the employer or to report to his or her work location, or both.

(3)(A) “Reliable work schedule” means that an employer does the following:

   (i) not later than 14 days before the first day of a schedule period, which shall be at least one week, provides each employee with a work schedule covering the period that shows all regular and on-call shifts for the employee during the period;

   (ii) except as provided in subdivision (iii) of this subdivision (b)(3)(A), does not change an employee’s schedule at any time after 14 days before the first day of the relevant schedule period except under the following circumstances:

   (I) the employer’s operation at the scheduled work location cannot begin or continue on a particular day due to threats made to employees or property at the work location, a utility failure, a natural disaster, a fire at or near the work location, a state of emergency declared by the Governor or the president of the United States, or severe weather conditions that pose a threat to employee safety;
(II) the employee requested a change to his or her schedule;

(III) the employee voluntarily traded his or her shift with another employee; or

(IV) the employer requests the employee to work additional hours due to an unanticipated absence or high volume of work, provided that the employer shall pay the employee one-and-one-half times his or her regular wage rate for any additional hours that the employee agrees to work; and

(iii) pays an employee for the number of hours that the employee was scheduled to work during any shifts that are eliminated after 14 days before the first day of the relevant schedule period for any reason other than as permitted pursuant to subdivision (ii) of this subdivision (b)(3)(A).

(B) Nothing in this subdivision (b)(3) shall be interpreted to require an employee to agree to work an additional shift or additional hours if the employer requests the employee to perform the additional work fewer than 14 days before the first day of the relevant schedule period.

Sec. 3. 21 V.S.A. § 311 is added to read:

§ 311. REIMBURSEMENT OF EMPLOYEE EXPENSES

(a)(1) An employer shall reimburse an employee for all necessary expenditures or losses incurred by the employee within the employee’s scope of employment that are directly related to services performed for the employer.
(2) An employer shall not be required to reimburse an employee for losses due to an employee’s own negligence, normal wear, or theft, provided the theft was not a result of the employer’s negligence.

(b) As used in this section, “necessary expenditures” means all reasonable expenditures or losses required of the employee in the discharge of employment duties and that inure to the primary benefit of the employer.

Sec. 4. 21 V.S.A. § 495 is amended to read:

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

* * *

(b)(1) It shall be an unlawful employment practice for an employer to discharge an employee for other than good cause shown. As used in this subdivision, “good cause” means either a reasonable, good-faith reason for discharge related to a legitimate business reason or that the employee has been employed by the employer for fewer than 90 days. “Good cause” does not include reasons for discharge that are trivial, arbitrary, capricious, or otherwise unrelated to a legitimate business reason. A “legitimate business reason” includes the employee’s failure to satisfactorily perform job duties.

(2) The provisions of this section shall not be construed to limit:

(A) the rights of employers to discharge employees for good cause shown; or
(B) any other rights of employees provided pursuant to law or in a contract or collective bargaining agreement.

(3) An employer shall post notice of the provisions of this subsection in a form provided by the Commissioner in a place conspicuous to employees at the employer’s place of business.

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Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2021.