Introduced by Representative Mulvaney-Stanak of Burlington

Referred to Committee on

Date:

Subject: Labor; unemployment insurance

Statement of purpose of bill as introduced: This bill proposes to amend the definition of employment for purposes of unemployment insurance; to require the Department of Labor to use State Employees for the intake, processing, administration, and adjudication of all unemployment insurance claims; to increase the amount of weekly unemployment insurance benefits; to establish additional instances in which an employee who voluntarily leaves employment may be eligible for unemployment insurance benefits; to create a study committee to examine the possibility of creating a portable benefits system for contingent workers in Vermont; and to require the Department of Labor to report to the General Assembly regarding improving the accessibility of the unemployment insurance system for individuals with limited English proficiency and to improve the Domestic and Sexual Violence Survivor’s Transitional Employment Program.

An act relating to expanding access to unemployment insurance benefits
It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise.

As used in this chapter:

* * *

(6)(A)(i) “Employment,” subject to the other provisions of this subdivision (6), means service within the jurisdiction of this State, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without outside this State may by election as hereinbefore provided in subdivision (5)(E)(i) of this section be treated as if wholly within the jurisdiction of this State. Whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the Commissioner, upon his or her approval of said the election as to any such employee, may treat the
services covered by said the approved election as having been performed wholly without outside the jurisdiction of this State.

* * *

(B)(i) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that:

(i)(I) Such the individual has been and will continue to be free from control or direction over the performance of such the services, both under his or her the contract of service and in fact; and

(ii)(II) Such the service is either outside the usual course of the business for which such the service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(iii)(III) Such the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the service performed.

(ii) As used in this subdivision (6)(B), the term “individual” means:

(I) a natural person;

(II) a single-member LLC that does not have any employees other than the member; or
(III) a corporation with a single shareholder that does not have any employees other than the shareholder.

* * *

(E) Notwithstanding subdivision (B) of this subdivision (6):

(i) An individual supplied by a temporary services employer to perform services for a customer or client shall be the employee of the temporary services employer.

(ii) An individual supplied by a person that is not a temporary services employer to perform services for a customer or client shall be the employee of the client or customer.

(iii) An employing unit that is not a temporary services employer who supplies an individual to perform services for a customer or client and pays wages or other compensation to the worker for the services performed shall be considered an agent of the employer.

* * *

(25) “Temporary services employer” means a person who contracts with clients or customers to supply individuals to perform services for the client or customer and performs all of the following functions with respect to the individuals performing the services:
(A) negotiates with clients or customers regarding the type of work
and working conditions and the time, place, quality, and price of the services
performed;

(B) determines the assignment or reassignment of the workers,
regardless of whether workers retain the right to refuse specific assignments;

(C) retains the authority to assign or reassign workers to other clients
or customers when a client or customer determines that a particular worker is
unacceptable;

(D) assigns or reassigns workers to perform services for specific
clients or customers;

(E) sets the rate of pay for the workers, whether or not through
negotiation;

(F) pays workers from its own account or accounts; and

(G) retains the right to hire and terminate workers.

Sec. 2. 21 V.S.A. § 1307 is amended to read:

§ 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

(a) The Commissioner of Labor shall administer this chapter. The
Commissioner may employ such persons, make such expenditures, require
such reports, make such investigations, and take such other action as he or she
considers necessary or suitable to that end.
(b) In the discharge of his or her duties imposed by this chapter, the Commissioner may administer oaths, take depositions, certify to official acts, and subpoena witnesses, and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter.

(c) Notwithstanding any provision of 3 V.S.A. chapter 14 to the contrary, the intake, processing, administration, and adjudication of unemployment insurance claims shall only be performed by State employees.

Sec. 3. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

(a) Each eligible individual who is totally unemployed in any week shall be paid with respect to such a week a weekly benefit amount determined as provided in this section.

* * *

(e) For benefit years beginning on January 3, 1988 and subsequent thereto, an individual’s weekly benefit amount shall be determined by dividing the individual’s two high quarter total subject wages required under subdivision (d)(1) of this section by 45.42; provided that the weekly benefit amount so determined shall not exceed the maximum weekly benefit amount computed as provided in subsection (f) of this section.
(f) The maximum weekly benefit amount shall be $425.00 $580.00. When
the State Unemployment Compensation Fund has a positive balance and all
advances made to the State Unemployment Compensation Fund pursuant to
Title XII of the Social Security Act have been repaid as of December 31 of the
last completed calendar year, on the first day of the first calendar week of July,
the maximum weekly benefit amount shall be adjusted by a percentage equal
to the percentage change during the preceding calendar year in the State
average weekly wage as determined by subsection (g) of this section, but in no
event shall the maximum weekly benefit amount decrease. When the
unemployment contribution rate schedule established by subsection 1326(e) of
this title is at schedule III, the maximum weekly benefit amount shall be
adjusted on the first day of the first calendar week in July to an amount equal
to $762 percent of the State annual average weekly wage as determined by
subsection (g) of this section. The maximum weekly benefit amount shall not
increase in any year that advances made to the State Unemployment
Compensation Fund pursuant to Title XII of the Social Security Act, as
amended, remain unpaid.

* * *

Sec. 4. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

* * *
(c) After March 31, 1984, benefits are payable on the basis of service in employment as defined in subdivisions 1301(6)(A)(ix) and (x) of this title, in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

* * *

(2) With respect to services performed in any other capacity for an educational institution benefits shall not be payable on the basis of such services to any individual for any week of unemployment that commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services for any educational institution in the second of such academic years or terms, except that if benefits are denied to any individual under this subdivision and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision.

[Repealed.]
(3) With respect to any services described in subdivision (1) or (2) of this subsection (c), benefits shall not be payable on the basis of services in any such capacities to any individual for any week that commences during an established and customary vacation period or holiday recess if such the individual performs such the services in the period immediately before such the vacation period or holiday recess, and there is a reasonable assurance that such the individual will perform such the services in the period immediately following such the vacation period or holiday recess.

(4) With respect to any services described in subdivision (1) or (2) of this subsection (c), benefits shall not be payable on the basis of services in any such capacities as specified in subdivisions (1), (2), and (3) of this subsection (c) to any individual who performed such the services in an educational institution while in the employ of an educational service agency. As used in this subdivision, the term “educational service agency” means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing such the services described in subdivision (1) of this subsection (c) to one or more educational institutions.

* * *

Sec. 5. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

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

(2) For any week benefits are claimed, except as provided in subdivision (a)(3) of this section, until he or she has presented evidence to the satisfaction of the Commissioner that he or she has performed services in employment for a bona fide employer and has had earnings in excess of six times his or her weekly benefit amount if the Commissioner finds that such individual is unemployed because:

(A) He or she has left the employ of his or her last employing unit voluntarily without good cause attributable to such employing unit. An individual shall not suffer more than one disqualification by reason of such separation. However, an individual shall not be disqualified for benefits if the individual left such employment:

(i) to accompany a spouse who:

(ii)(I) is on active duty with the U.S. Armed Forces and is required to relocate due to permanent change of station orders, activation orders, or unit deployment orders, and when such relocation would make it impractical or impossible, as determined by the Commissioner, for the individual to continue working for such employing unit; or

(ii)(II) holds a commission in the U.S. Foreign Service and is assigned overseas, and when such relocation would make it impractical or
impossible, as determined by the Commissioner, for the individual to continue working for such the employing unit:

(ii) due to a change in the location of the individual’s principal place of work so that it is located more than 35 miles from the individual’s primary residence or in a location that takes more than one and one-half hours for the individual to commute to;

(iii) due to working conditions that pose a risk to the individual’s health and safety as certified by a health care provider, as defined in 18 V.S.A. § 9432(9);

(iv) due to an unreliable work schedule;

(v) to care for a family member who is ill, injured, pregnant, or disabled, provided that the individual shall not be eligible for benefits under the provisions of this chapter until he or she meets the requirements of subsection 1343(a) of this chapter; or

(vi) to care for the individual’s child due to the unavailability of adequate or affordable childcare, provided that the individual shall not be eligible for benefits under the provisions of this chapter until he or she meets the requirements of subsection 1343(a) of this chapter.

* * *

(G) As used in this subdivision (a)(2):
(i) “Child” means an individual’s child, stepchild, ward, or foster child.

(ii) “Family member” means an individual’s parent, grandparent, spouse, child, sibling, parent-in-law, or grandchild. As used in this subdivision (a)(2)(G)(ii), “spouse” includes a domestic partner or civil union partner.

(iii) “Unreliable work schedule” means that the employer:

(I) fails to provide the individual with a work schedule at least 14 days in advance of the first day of a schedule period; or

(II) changes the individual’s work schedule within 14 days of the first day of a schedule period for reasons other than the following:

(aa) 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;

(bb) the individual requested a change to his or her schedule;

(cc) the individual voluntarily traded his or her shift with another employee; or
(dd) the employer requests the individual to work additional 
hours due to an unanticipated absence or high volume of work and offers to 
pay the individual one-and-one-half times his or her regular wage rate for any 
additional hours that the individual agrees to work.

* * *

Sec. 6. CONTINGENT WORK AND PORTABLE EMPLOYEE BENEFITS 
STUDY COMMITTEE 
(a) Creation. There is created the Contingent Work and Portable Employee 
Benefits Study Committee. 
(b) Membership. The Committee shall be composed of the following 
four members: 
(1) the Commissioner of Labor or designee; 
(2) the Commissioner of Financial Regulation or designee; 
(3) the State Treasurer or designee; and 
(4) the Secretary of Commerce and Community Development or 
designee. 
(c)(1) Powers and duties. The Committee shall study contingent work and 
workers in Vermont and mechanisms for creating insurance, retirement, and 
other types of employment benefits that are portable and easily accessible to 
workers who are not employed as traditional full-time or permanent 
employees, including freelance workers in e-commerce, self-employed
workers, contingent workers, and workers in the on-demand economy. In particular, the Committee shall study the following issues:

(A) the prevalence and types of contingent work in Vermont;

(B) the number, types, demographics, and geographic distribution of contingent workers in Vermont;

(C) the current practices, policies, and procedures of employers in relation to contingent workers;

(D) the applicability and efficacy of Vermont’s employment laws with respect to contingent workers;

(E) the types of businesses and employers that utilize contingent workers in Vermont;

(F) the availability of traditional social safety nets to workers who are not employed as traditional full-time or permanent employees, including freelance workers in e-commerce, self-employed workers, contingent workers, and workers in the on-demand economy;

(G) the necessity for new mechanisms to replace or augment traditional social safety nets for workers who are not employed as traditional full-time or permanent employees;

(H) potential mechanisms that could replace or augment traditional social safety nets for workers who are not employed as traditional full-time or permanent employees; and
(I) potential funding models, including both worker- and consumer-driven funding models, for mechanisms that could replace or augment traditional social safety nets for workers who are not employed as traditional full-time or permanent employees.

(2) As used in this subsection:

(A) “Contingent worker” means a worker who is not considered a permanent employee, including a temporary employee, leased employee, home worker, freelance worker, consultant, or an individual classified as an independent contractor.

(B) “Traditional social safety nets” means governmental and employer provided insurance and benefit programs such as group health insurance, employer-sponsored life insurance, employer-sponsored retirement plans, unemployment insurance, and workers’ compensation.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Departments of Labor and of Financial Regulation.

(e)(1) Commissioner of Labor; survey of employers. On or before September 15, 2021, the Commissioner of Labor shall conduct a survey of Vermont employers relating to the Committee’s study of contingent work and workers as set forth in subdivisions (c)(1)(A) through (c)(1)(E) of this section. The Commissioner shall report to the Committee on the results of the survey on or before November 15, 2021.
(2) Any employer surveyed by the Commissioner in relation to this section shall provide the requested information to the Commissioner within 30 days of receiving the survey.

(3) An individual employer’s responses pursuant to this section shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

(4) The Commissioner may aggregate the information provided in employer responses and shall only disclose or publish information provided by employers in aggregated or statistical form.

(f) Report. On or before January 15, 2022, the Committee shall submit a written report to the General Assembly with its findings and any recommendations for legislative action.

(g) Meetings.

(1) The Commissioner of Labor shall call the first meeting of the Committee to occur on or before September 15, 2021.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Committee shall cease to exist on January 15, 2022.
Sec. 7. DOMESTIC AND SEXUAL VIOLENCE SURVIVOR’S
TRANSITIONAL EMPLOYMENT PROGRAM; UTILIZATION;
IMPROVEMENTS; REPORT

(a) On or before January 15, 2022, the Commissioner of Labor shall, in consultation with the Vermont Network Against Domestic and Sexual Violence and other Vermont organizations that advocate for victims of domestic and sexual violence, prepare and submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs that examines the awareness and utilization of the Domestic and Sexual Violence Survivor’s Transitional Employment Program and potential related improvements to the Program. In particular, the report shall examine:

(1) the current methods for making employees, employers, advocacy organizations, and the general public aware of the Program and the benefits it provides;

(2) the utilization of the Program since its creation;

(3) potential measures for improving outreach and public awareness of the Program;

(4) potential measures to improve utilization of the Program by victims of domestic and sexual violence; and
(5) whether victims of domestic and sexual violence would be better served if, in lieu of the benefits provided by the Program, they were eligible to receive unemployment insurance benefits after leaving employment due to domestic or sexual violence.

(b) The report may include a recommendation for legislative action and funding necessary to implement or facilitate measures identified pursuant to subdivisions (a)(3)–(5) of this section.

Sec. 8. IMPROVING ACCESSIBILITY TO UNEMPLOYMENT INSURANCE FOR INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY; REPORT

(a) On or before January 15, 2022, the Commissioner of Labor shall, in consultation with AALV, the Vermont Field Office for the U.S. Committee for Refugees and Immigrants, and other Vermont organizations that advocate for individuals with limited English proficiency, prepare and submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs that examines how to improve access to unemployment insurance for individuals who have limited English proficiency. The report shall do the following:
(1) identify the current measures the Department of Labor employs to
provide access to and information regarding the unemployment insurance
program to individuals with limited English proficiency;

(2) identify the five most commonly spoken languages in Vermont
 besides English;

(3) identify the cost of providing unemployment insurance related
information, written materials, and forms through the Department’s website in
the languages identified pursuant to subdivision (2) of this subsection;

(4) identify additional specific actions that the Department can take to
improve access to the unemployment insurance program for individuals with
limited English proficiency;

(5) provide a detailed plan for how the Department will improve access
to the unemployment insurance program for individuals with limited English
proficiency; and

(6) identify any legislative action and funding necessary to implement or
facilitate the actions and plan described pursuant to subdivisions (4) and (5) of
this subsection.

(b) As used in this section, “individuals with limited English proficiency”
includes individuals who do not speak English.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2021.