

1 S.117

2 An act relating to wage and hour, unemployment compensation, and
3 workers' compensation

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

5 * * * Safety and Health Rulemaking * * *

6 Sec. 1. [Deleted.]

7 Sec. 2. [Deleted.]

8 Sec. 3. [Deleted.]

9 Sec. 4. [Deleted.]

10 * * * Wage and Hour * * *

11 Sec. 5. 21 V.S.A. § 342a is amended to read:

12 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

13 * * *

14 (d) If the Commissioner determines that the unpaid wages were willfully
15 withheld by the employer, the order for collection ~~may~~ shall provide that the
16 employer is liable to pay an additional amount not to exceed twice the amount
17 of unpaid wages, ~~one-half~~. One-half of which will the additional amount
18 recovered above the employee's unpaid wages shall be remitted to the
19 employee and one-half of ~~which~~ shall be retained by the Commissioner to
20 offset administrative and collection costs.

21 * * *

§ 384. EMPLOYMENT; WAGES

* * *

§ 385. ADMINISTRATION

* * *

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* * * Notice of Potential Layoffs * * *

Sec. 8. [Deleted.]

* * * Unemployment Compensation * * *

Sec. 9. 21 V.S.A. § 1308 is amended to read:

§ 1308. ORGANIZATION

The Commissioner shall determine ~~his or her~~ the method of procedure in accordance with the provisions of this chapter. Notwithstanding any requirement in this chapter that the Commissioner mail notices and determinations, the Commissioner may provide claimants and employers with the option to authorize communications from the Commissioner to be delivered electronically.

Sec. 10. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT
EMPLOYMENT INFORMATION; DISCLOSURE OF
INFORMATION TO OTHER STATE AGENCIES TO
INVESTIGATE MISCLASSIFICATION OR MISCODING

* * *

(c) If an employing unit fails to comply adequately with the provisions of subsection (b) of this section and section 1314a of this subchapter, the Commissioner shall determine the benefit rights of a claimant upon the

1 available information. Prompt notice in writing of the determination shall be
2 given to the employing unit. The employing unit may request or authorize the
3 Commissioner to provide notice of the determination electronically. The
4 determination shall be final with respect to a noncomplying employer as to any
5 charges against its experience-rating record for benefits paid to the claimant
6 before the week following the receipt of the employing unit's reply. The
7 employing unit's experience rating record shall not be relieved of these
8 charges, notwithstanding any other provision of this chapter, unless the
9 Commissioner determines that failure to comply was due to unavoidable
10 accident or mistake.

11 * * *

12 Sec. 11. 21 V.S.A. § 1314a is amended to read:

13 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
14 PENALTIES

15 * * *

16 (d) Reports required by subsection (c) of this section shall be submitted to
17 the Commissioner not later than 10 calendar days after the date the
18 Commissioner's request was sent electronically or mailed to the employing
19 unit.

20 (e) On request of the Commissioner, any employing unit or employer shall
21 report, within 10 days after the mailing, electronic delivery, or personal

1 delivery of the request, separation information for a claimant, any
2 disqualifying income the claimant may have received, and any other
3 information that the Commissioner may require to determine the claimant's
4 eligibility for unemployment compensation. The Commissioner shall make a
5 request when:

6 * * *

7
8 Sec. 12. 21 V.S.A. § 1330 is amended to read:

9 § 1330. ASSESSMENT PROVIDED

10 When any employer fails to pay any contributions or payments required
11 under this chapter, the Commissioner shall make an assessment of
12 contributions against the employer together with applicable interest and
13 penalty. After making the assessment, the Commissioner shall give notice to
14 the employer electronically or by ordinary or certified mail, and the assessment
15 shall be final unless the employer petitions for a hearing on the assessment
16 pursuant to section 1331 of this subchapter.

17 Sec. 13. 21 V.S.A. § 1331 is amended to read:

18 § 1331. NOTICE; HEARING

19 (a) Any employer against whom an assessment is made may, within 30
20 days after the date of the assessment, file with the Commissioner a petition for
21 a hearing before a referee appointed for that purpose. The petition shall set

(c) After the hearing the petitioner shall be promptly notified electronically or by ordinary or certified mail of the findings of fact, conclusions, and decision of the referee.

§ 1332. REVIEW BY BOARD; SUPREME COURT APPEAL

§ 1337a. ADMINISTRATIVE DETERMINATION; HEARING ON

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1 contributions paid, its coverage as an employer, or its termination of coverage
2 may, within 30 days after the date of the determination, file with the
3 Commissioner a petition for a hearing on the determination. The petition shall
4 set forth specifically and in detail the grounds upon which it is claimed the
5 administrative determination is erroneous. Hearing or hearings on the petition
6 shall be held by a referee appointed for that purpose, at times and places as
7 provided by rules of the Board. Notice of the time and place of the hearing or
8 hearings shall be given electronically or by ordinary or certified mail to the
9 petitioner.

10 (b) After a hearing pursuant to subsection (a) of this section, the petitioner
11 shall be promptly notified electronically or by ordinary or certified mail of the
12 findings of fact, conclusions, and decision of the referee. The decision of the
13 referee shall be final unless the employing unit or Commissioner makes
14 application for review of the decision by the Board within 30 days after the
15 date of the decision or unless the Board, on its own motion within the same
16 period, initiates a review of the decision.

17 Sec. 16. 21 V.S.A. § 1357 is amended to read:

18 § 1357. NOTICES; FORM AND SERVICE

19 Notices required under the provisions of this chapter, unless otherwise
20 provided by the provisions of this chapter or by rules adopted by the Supreme
21 Court, shall be deemed sufficient if given in writing and delivered to the

1 person entitled to it by an agent of the Commissioner, or sent electronically or
2 by ordinary or certified mail to the last known address of the person appearing
3 in the records of the Commissioner. The manner of service shall be certified
4 by the agent of the Commissioner making the service. Regardless of the
5 manner of service and unless otherwise provided, appeal periods shall
6 commence to run from the date of the determination or decision rendered. If a
7 person to whom a notice has been sent files with the Commissioner within 60
8 days after the date of the notice a sworn statement to the effect that the notice
9 was not received, or if the Commissioner is satisfied that the addressee did not
10 receive the notice, a new notice shall be sent to that person and the appeal
11 period shall commence to run from the date on which the new notice is sent.

12 Sec. 17. 21 V.S.A. § 1325 is amended to read:

13 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

14 DISCLOSURE TO SUCCESSOR ENTITY

15 * * *

16 (b)(1) Disclosure of contribution rate to successor entity. Any individual or
17 employing unit who in any manner succeeds to or acquires the organization,
18 trade, or business or substantially all of the assets of any employer who has
19 been operating the business within two weeks prior to the acquisition, except
20 any assets retained by the employer incident to the liquidation of the
21 employer's obligations, and who thereafter continues the acquired business

1 shall be considered to be a successor to the predecessor from whom the
2 business was acquired and, if not already an employer before the acquisition,
3 shall become an employer on the date of the acquisition. The Commissioner
4 shall transfer the experience-rating record of the predecessor employer to the
5 successor employer. If the successor was not an employer before the date of
6 acquisition, the successor's rate of contribution for the remainder of the rate
7 year shall be the rate applicable to the predecessor employers with respect to
8 the period immediately preceding the date of acquisition if there was only one
9 predecessor or there were only predecessors with identical rates. If the
10 predecessors' rates were not identical, the Commissioner shall determine a rate
11 based on the combined experience of all the predecessor employers. If the
12 successor was an employer before the date of acquisition, the contribution rate
13 that was assigned to the successor for the rate year in which the acquisition
14 occurred will remain assigned to the successor for the remainder of the rate
15 year, after which the experience-rating record of the predecessor shall be
16 combined with the experience rating of the successor to form the single
17 employer experience-rating record of the successor. At any time prior to the
18 issuance of the certificate required by subsection 1322(b) of this chapter, an
19 employing unit shall, upon request of a potential successor, disclose to the
20 potential successor its current experience-rating record.

(3) If a successor, upon acquisition of an employer under subdivision (1) of this subsection, divides operation of the successor business between two or more corporate entities, the successor shall designate one of the corporate entities involved in successor's business operations as the filing successor for purposes of quarterly wage reporting and benefit rate assignment. The designated filing successor shall include all employees involved in carrying on the successor business in the designated filing successor's quarterly wage reporting and shall pay the full successor benefit tax on all business employees.

Sec. 18. 21 V.S.A. § 1326 is amended to read:

* * *

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(B) Notwithstanding any provision of subdivision (A) of this subdivision (d)(2) to the contrary, when computing the tax rate schedule to become effective on July 1, 2021 and on each subsequent July 1, the Commissioner shall calculate the highest benefit cost rate without consideration of benefit payments made in calendar year 2020.

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* * *

On July 1, 2020, the Short-Time Compensation Program established pursuant to sections 1451–1461 of this subchapter ~~shall cease~~ ceased operation and ~~shall not resume operation unless directed to do so by enactment of the General Assembly or, if the General Assembly is not in session, by order of the Joint Fiscal Committee. The Joint Fiscal Committee shall issue such order only upon finding that, due to a change in circumstances, resumption of the Short-Time Compensation Program would be the most effective way to assist employers in avoiding layoffs. Upon the effective date of such an enactment or order~~ Effective upon completion of the project to implement a modernized

1 information technology system for the unemployment insurance program in
2 2026, the Short-Time Compensation Program shall resume operation pursuant
3 to the provisions of sections 1451–1461 of this subchapter.

4 Sec. 21. 2022 Acts and Resolves No. 183, Sec. 52f is amended to read:

5 Sec. 52f. UNEMPLOYMENT INSURANCE; INFORMATION

6 TECHNOLOGY MODERNIZATION; ANNUAL REPORT;

7 INDEPENDENT VERIFICATION

8 (a)(1) The Secretary of Digital Services and the Commissioner of Labor
9 shall, to the greatest extent possible, plan and carry out the development and
10 implementation of a modernized information technology system for the
11 unemployment insurance program so that the modernized system is ready and
12 able to implement on or before July 1, ~~2025~~ 2026 the changes to the
13 unemployment insurance weekly benefit amount set forth in Secs. 52d and 52e
14 of this act.

15 * * *

16 Sec. 21a. 2022 Acts and Resolves No. 183, Sec. 59 is amended to read:

17 Sec. 59. EFFECTIVE DATES

18 * * *

19 (b)(1) Notwithstanding 1 V.S.A. § 214, Sec. 52a (repeal of prior
20 unemployment insurance supplemental benefit) shall take effect retroactively
21 on October 7, 2021.

* * *

(4)(A) Sec. 52d (amendment of temporary increase in unemployment insurance maximum weekly benefit) shall take effect on July 1, ~~2025~~ 2026 or the date on which the Commissioner of Labor determines that the Department of Labor is able to implement the provisions of that section as set forth in Sec. 52f(b), whichever is earlier, and shall apply to benefit weeks beginning after that date.

(B) However, Sec. 52d shall not take effect at all if Sec. 52c takes effect before the conditions of subdivision (A) of this subdivision (b)(4) are satisfied.

(5)(A) Sec. 52e (increase in unemployment insurance weekly benefit amount) shall take effect on July 1, ~~2025~~ 2026 and shall apply to benefit weeks beginning after that date.

(B) However, Sec. 52e shall not take effect at all if either

(i) Sec. 52d takes effect before July 1, ~~2025~~ 2026; or

(ii) Sec. 52c has not taken effect before July 1, ~~2025~~ 2026.

* * *

* * * Workers' Compensation * * *

Sec. 22. 21 V.S.A § 601 is amended to read:

§ 601. DEFINITIONS

As used in this chapter:

* * *

(31) “Medical case management” means the planning and coordination of health care services appropriate to achieve the goal of medical rehabilitation.

(A) Medical case management may include medical case assessment, including a personal interview with the injured employee; assistance in developing, implementing, and coordinating a medical care plan with health care providers in consultation with the injured employee and the employees’ family; and an evaluation of treatment results. The goal of medical case management is to provide the injured employee with reasonable treatment options to ensure that the injured employee can make an informed choice.

(B) Medical case managers shall not provide medical care or adjust claims.

(C) An injured employee shall be entitled to medical case management services if reasonably supported. Reasonable support includes a recommendation made by a health care provider or evidence demonstrating the injured employee’s medical recovery would benefit from the services, or both.

1 Sec. 23. 21 V.S.A. § 602 is amended to read:

2 § 602. PROCESS AND PROCEDURE

3 * * *

4 (d) When an injured employee does not speak English fluently, the
5 employer shall pay for translation services to ensure the injured employee fully
6 understands the employee's rights and can effectively participate in the
7 employee's medical recovery and the workers' compensation claims process.

8 Sec. 24. 21 V.S.A. § 640b is amended to read:

9 § 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF

10 PROPOSED BENEFITS OR SERVICES ARE NECESSARY

11 (a) As used in this section:

12 (1) “benefits” “Benefits” means medical treatment and surgical,
13 medical, and nursing services and supplies, including prescription drugs and
14 durable medical equipment.

15 (2) “Services” means medical case management services.

16 * * *

17 (e) Within 14 days after receiving a request for preauthorization of
18 proposed medical case management services, the insurer shall do one of the
19 following, in writing:

1 (1) Authorize the services and notify the injured employee, the
2 Department, and the treating provider recommending the services, if
3 applicable.

4 (2) Deny the services because the entire claim is disputed, and the
5 Commissioner has not issued an interim order to pay benefits. The insurer
6 shall notify the injured employee, the Department, and the treating provider
7 recommending the services, if applicable, of the decision to deny benefits.

8 (3) Deny the request if there is not reasonable support for the requested
9 services. The insurer shall notify the injured employee, the Department, and
10 the treating provider recommending the services, if applicable, of the decision
11 to deny benefits.

12 (4) Notify the injured employee, the Department, and the treating
13 provider recommending the services, if applicable, that the insurer has
14 scheduled an examination of the injured employee pursuant to section 655 of
15 this title or ordered a medical record review pursuant to section 655a of this
16 title. Based on the examination or review, the insurer shall notify the injured
17 employee and the Department of the decision within 45 days after a request for
18 preauthorization. The Commissioner may, in the Commissioner's sole
19 discretion, grant a 10-day extension to the insurer to authorize or deny the
20 services, and such an extension shall not be subject to appeal.

1 (f) If the insurer fails to authorize or deny the services pursuant to
2 subsection (e) of this section within 14 days after receiving a request, the
3 injured employee or the injured employee's treating provider, if applicable,
4 may request that the Department issue an order authorizing services. After
5 receipt of the request, the Department shall issue an interim order within five
6 days after notice to the insurer, and five days in which to respond, absent
7 evidence that the entire claim is disputed. Upon request of a party, the
8 Commissioner shall notify the parties that the services have been authorized by
9 operation of law.

10 (g) If the insurer denies the preauthorization of the services pursuant to
11 subdivision (e)(2), (3), or (4) of this section, the Commissioner may, on the
12 Commissioner's own initiative or upon a request by the injured worker, issue
13 an order authorizing the services if the Commissioner finds that the evidence
14 shows that the services are reasonably supported.

15 Sec. 25. 21 V.S.A. § 650 is amended to read:

16 § 650. PAYMENT; AVERAGE WAGE; COMPUTATION

17 * * *

18 (f)(1)(A) When benefits have been awarded or are not in dispute as
19 provided in subsection (e) of this section, the employer shall establish a
20 weekday on which payment shall be mailed or deposited and notify the

1 claimant and the Department of that day. The employer shall ensure that each
2 weekly payment is mailed or deposited on or before the day established.

3 (B) Payment shall be made by direct deposit to a claimant who elects
4 that payment method. The employer shall notify the claimant of the claimant's
5 right to payment by direct deposit.

6 (2) If the benefit payment is not mailed or deposited on the day
7 established, the employer shall pay to the claimant a late fee equal to the
8 greater of \$10.00 or;

9 (A) five percent of the benefit amount, ~~whichever is greater~~, for each
10 ~~weekly~~ the first payment that is made after the established day;

11 (B) 10 percent of the benefit amount for the second payment that is
12 made after the established day; and

13 (C) 15 percent of the benefit amount for the third and any subsequent
14 payments that are made after the established day.

15 (3) As used in this subsection, "paid" means the payment is mailed to
16 the claimant's mailing address or, in the case of direct deposit, transferred into
17 the designated account. In the event of a dispute, proof of payment shall be
18 established by affidavit.

1 Sec. 26. LATE PAYMENT OF AVERAGE WEEKLY WAGES; PENALTY;
2 REPORT

3 (a) The payment of any late fee pursuant to 21 V.S.A. § 650(f)(2) shall be
4 reported to the Commissioner on a quarterly basis for one year, commencing
5 on October 1, 2025. The employer shall attest to the reasons for the late
6 payment and the steps being taken to avoid future late payments of benefit
7 amounts. The Commissioner shall compile the information in a format of the
8 Commissioner's choosing.

9 (b) An employer who fails to submit the report required by subsection (a)
10 of this section may be assessed an administrative penalty of not more than
11 \$500.00.

12 (c) On or before January 15, 2027, the Commissioner shall submit a written
13 report to the General Assembly with the Commissioner's findings on the
14 frequency of late payments at each penalty level, the reasons given for the late
15 payments, and the effectiveness of the late fee penalties in reducing the number
16 of late payments. The report shall include the Commissioner's
17 recommendation on whether to continue the reporting requirement and whether
18 the penalties for late payments should be maintained, increased, or decreased
19 based upon the reported data.

3 This act shall take effect on July 1, 2025.