

House Proposal of Amendment

S. 117

An act relating to rulemaking on safety and health standards and technical corrections on employment practices and unemployment compensation

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Safety and Health Rulemaking * * *

Sec. 1. [Deleted.]

Sec. 2. [Deleted.]

Sec. 3. [Deleted.]

Sec. 4. [Deleted.]

* * * Wage and Hour * * *

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

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

* * *

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

* * *

Sec. 6. 21 V.S.A. § 384 is amended to read:

§ 384. EMPLOYMENT; WAGES

(a)(1) Beginning on January 1, 2022, an employer shall not employ any employee at a rate of less than \$12.55, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency, rounded to one decimal point, for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest \$0.01.

* * *

Sec. 7. 21 V.S.A. § 385 is amended to read:

§ 385. ADMINISTRATION

The Commissioner and the Commissioner's authorized representatives have full power and authority for all the following:

* * *

~~(5) To recommend a suitable scale of rates for learners, apprentices, and persons with disabilities, which may be less than the regular minimum wage rate for experienced workers without disabilities.~~

* * * 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 available information. Prompt notice in writing of the determination shall be given to the employing unit. The employing unit may request or authorize the Commissioner to provide notice of the determination electronically. The determination shall be final with respect to a noncomplying employer as to any charges against its experience-rating record for benefits paid to the claimant before the week following the receipt of the employing unit's reply. The employing unit's experience rating record shall not be relieved of these

charges, notwithstanding any other provision of this chapter, unless the Commissioner determines that failure to comply was due to unavoidable accident or mistake.

* * *

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

§ 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
PENALTIES

* * *

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

(e) On request of the Commissioner, any employing unit or employer shall report, within 10 days after the mailing, electronic delivery, or personal delivery of the request, separation information for a claimant, any disqualifying income the claimant may have received, and any other information that the Commissioner may require to determine the claimant's eligibility for unemployment compensation. The Commissioner shall make a request when:

* * *

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

§ 1330. ASSESSMENT PROVIDED

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

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

§ 1331. NOTICE; HEARING

(a) Any employer against whom an assessment is made may, within 30 days after the date of the assessment, file with the Commissioner a petition for a hearing before a referee appointed for that purpose. The petition shall set forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous.

(b) Hearing or hearings on the assessment shall be held by the referee at times and places provided by the rules of the Board and due notice of the time and place of the hearing or hearings shall be given electronically or by ordinary or certified mail to the petitioner.

(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.

* * *

Sec. 14. 21 V.S.A. § 1332 is amended to read:

§ 1332. REVIEW BY BOARD; SUPREME COURT APPEAL

* * *

(d) The parties shall be promptly notified electronically or by ordinary or certified mail of the findings of fact, conclusions, and decision of the Board. The decision of the Board shall be final unless it is appealed to the Supreme Court.

Sec. 15. 21 V.S.A. § 1337a is amended to read:

§ 1337a. ADMINISTRATIVE DETERMINATION; HEARING ON

(a) Any employing unit aggrieved by an administrative determination affecting its rate of contributions, its rights to adjustment or refund on contributions paid, its coverage as an employer, or its termination of coverage may, within 30 days after the date of the determination, file with the Commissioner a petition for a hearing on the determination. The petition shall set forth specifically and in detail the grounds upon which it is claimed the administrative determination is erroneous. Hearing or hearings on the petition shall be held by a referee appointed for that purpose, at times and places as provided by rules of the Board. Notice of the time and place of the hearing or hearings shall be given electronically or by ordinary or certified mail to the petitioner.

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

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

§ 1357. NOTICES; FORM AND SERVICE

Notices required under the provisions of this chapter, unless otherwise provided by the provisions of this chapter or by rules adopted by the Supreme Court, shall be deemed sufficient if given in writing and delivered to the person entitled to it by an agent of the Commissioner, or sent electronically or by ordinary or certified mail to the last known address of the person appearing in the records of the Commissioner. The manner of service shall be certified by the agent of the Commissioner making the service. Regardless of the manner of service and unless otherwise provided, appeal periods shall commence to run from the date of the determination or decision rendered. If a person to whom a notice has been sent files with the Commissioner within 60 days after the date of the notice a sworn statement to the effect that the notice was not received, or if the Commissioner is satisfied that the addressee did not receive the notice, a new notice shall be sent to that person and the appeal period shall commence to run from the date on which the new notice is sent.

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

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

DISCLOSURE TO SUCCESSOR ENTITY

* * *

(b)(1) Disclosure of contribution rate to successor entity. Any individual or employing unit who in any manner succeeds to or acquires the organization, trade, or business or substantially all of the assets of any employer who has been operating the business within two weeks prior to the acquisition, except any assets retained by the employer incident to the liquidation of the employer's obligations, and who thereafter continues the acquired business shall be considered to be a successor to the predecessor from whom the business was acquired and, if not already an employer before the acquisition, shall become an employer on the date of the acquisition. The Commissioner shall transfer the experience-rating record of the predecessor employer to the successor employer. If the successor was not an employer before the date of acquisition, the successor's rate of contribution for the remainder of the rate year shall be the rate applicable to the predecessor employers with respect to the period immediately preceding the date of acquisition if there was only one predecessor or there were only predecessors with identical rates. If the predecessors' rates were not identical, the Commissioner shall determine a rate based on the combined experience of all the predecessor employers. If the successor was an employer before the date of acquisition, the contribution rate that was assigned to the successor for the rate year in which the acquisition occurred will remain assigned to the successor for the remainder of the rate year, after which the experience-rating record of the predecessor shall be combined with the experience rating of the successor to form the single employer experience-rating record of the successor. At any time prior to the

issuance of the certificate required by subsection 1322(b) of this chapter, an employing unit shall, upon request of a potential successor, disclose to the potential successor its current experience-rating record.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, an individual or employing unit who in any manner succeeds to or acquires the organization, trade, or business or substantially all of the assets of any employing unit who was an employer before the date of acquisition and whose currently assigned contribution rate is higher than that currently assigned to the acquiring individual or employing unit shall not be treated as a successor.

(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:

§ 1326. RATE BASED ON BENEFIT EXPERIENCE

* * *

(d) The Commissioner shall compute a current fund ratio, and a highest benefit cost rate, as follows:

(1) The current fund ratio shall be determined by dividing the available balance of the Unemployment Compensation Fund on December 31 of the preceding calendar year by the total wages paid for employment during that calendar year as reported by employers by the following March 31.

~~(2)(A) The highest benefit cost rate shall be determined by dividing the highest amount of benefit payments made during a consecutive 12-month period that ended within the 10-year period ending on the preceding December 31, by the total wages paid during the four calendar quarter periods that ended within that 12-month period~~ is the highest annual ratio within the 10-year period ending on the preceding December 31 of benefits paid, including the State's share of extended benefits, for taxpaying employers divided by total wages paid in covered employment for taxpaying employers for the same period.

(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.

* * *

Sec. 19. 21 V.S.A. § 1338a is amended to read:

§ 1338a. DISREGARDED EARNINGS

(a) An individual shall be deemed “partially unemployed” in any week of less than full-time work if the wages earned by the individual with respect to such week are less than the weekly benefit amount the individual would be entitled to receive if totally unemployed and eligible. As used in this section, “wages” in any one week includes only that amount of remuneration rounded down to the nearest dollar that is in excess of 50 percent of the individual’s weekly wage.

* * *

Sec. 20. 21 V.S.A. § 1462 is amended to read:

§ 1462. PERIOD OF DORMANCY

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

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

Sec. 52f. UNEMPLOYMENT INSURANCE; INFORMATION

TECHNOLOGY MODERNIZATION; ANNUAL REPORT;

INDEPENDENT VERIFICATION

(a)(1) The Secretary of Digital Services and the Commissioner of Labor shall, to the greatest extent possible, plan and carry out the development and implementation of a modernized information technology system for the unemployment insurance program so that the modernized system is ready and able to implement on or before July 1, ~~2025~~ 2026 the changes to the

unemployment insurance weekly benefit amount set forth in Secs. 52d and 52e of this act.

* * *

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

Sec. 59. EFFECTIVE DATES

* * *

(b)(1) Notwithstanding 1 V.S.A. § 214, Sec. 52a (repeal of prior unemployment insurance supplemental benefit) shall take effect retroactively 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.

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

§ 602. PROCESS AND PROCEDURE

* * *

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

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

§ 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF

PROPOSED BENEFITS OR SERVICES ARE NECESSARY

(a) As used in this section:

(1) ~~"benefits"~~ "Benefits" means medical treatment and surgical, medical, and nursing services and supplies, including prescription drugs and durable medical equipment.

(2) "Services" means medical case management services.

* * *

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

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

(2) Deny the services because the entire claim is disputed, and the Commissioner has not issued an interim order to pay benefits. The insurer

shall notify the injured employee, the Department, and the treating provider recommending the services, if applicable, of the decision to deny benefits.

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

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

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

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

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

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

* * *

(f)(1)(A) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the Department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established.

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

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

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

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

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

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

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

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

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

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

* * * Effective Date * * *

Sec. 27. EFFECTIVE DATE

This act shall take effect on July 1, 2025.

and that after passage the title of the bill be amended to read: “An act relating to wage and hour, unemployment compensation, and workers’ compensation”