

## MEMORANDUM

To: Vermont House Committee on Commerce and Economic Development  
From: Commissioner Michael Harrington, Vermont Department of Labor  
Date: April 3, 2025  
Subject: Department of Labor Technical Corrections Bill: S.117, *an act relating to rulemaking on safety and health standards and technical corrections on employment practices and unemployment compensation.*

The Vermont Department of Labor put forward a series of technical corrections at the beginning of the 2025 Legislative Session for consideration by the Senate Committee on Economic Development, Housing, and General Affairs. These corrections became what is currently S.117, *an act relating to rulemaking on safety and health standards and technical corrections on employment practices and unemployment compensation.*

These proposed corrections aim to modernize processes, streamline operations, and resolve minor issues in existing law. The intent is to enhance the efficiency and effectiveness of the Department's services to Vermonters, employers, and claimants. Additionally, some of these requests are directly tied to the modernization of the State's Unemployment Insurance IT system and are necessary to successfully launch the new system.

### **Sections 1 – 4: Workers' Compensation/VOSHA Rulemaking (21 V.S.A §§ 204; 224)**

The Department is currently required to follow a formal rule-making process to adopt updated federal worksite safety standards, even though the state is mandated to adopt these standards under federal law. Amending the statute to allow the Department to adopt minimum standards issued by the federal government without going through the formal rulemaking process would save the State time and money. Beyond the cost of staff time, there is a \$2,500 filing fee for all administrative rule submissions. This would apply to only adopting the minimally required standard. Any standards that are more restrictive than the minimum would still be required to go through the full rulemaking process. Sections 1 – 4 allow the Department to automatically adopt updated federal safety standards without formal rulemaking, provided they are the minimum required standards.

### **Section 5: Wage & Hour (21 V.S.A § 342a)**

When recovering outstanding wages owed to individuals, current law requires that any collected funds must go to the Department first to pay off any penalties and/or interest *before* paying the complainant. This is problematic and inconsistent with the intent of ensuring that workers receive their back pay promptly. Section 5 revises statutory language to ensure that back wages are paid to individuals first before any penalties or interest are collected.



**Section 6: Minimum wage calculation (21 V.S.A. § 384)**

A recent issue was identified in how the Department calculates minimum wage amounts, which needs to be addressed to avoid future calculation inconsistencies. The proposed language would add statutory language to round the minimum wage to the nearest decimal place, which would provide legal clarity on the calculation method.

**Section 7: Prohibiting subminimum wage (21 V.S.A. § 385)**

This section was added by the Senate Committee on Economic Development, Housing, and General Affairs. This authority is not actively being used in Vermont and has not been used in many years. The Department is supportive of this added provision as it aligns the statute with the federal Americans with Disabilities Act. The proposed language would repeal the authority of the Commissioner of Labor to recommend a subminimum wage for individuals with a disability.

**Section 8: Notice of Potential Layoffs (21 V.S.A. § 411)**

The current threshold for employers to notify the Department of a mass layoff or facility closure is set at 50 or more employees impacted in a 90-day. In an effort to ensure timely intervention and services for all affected workers the Department is proposing to reduce the threshold of affected workers. Additionally, an update to the definition of “employer” is required under the section to eliminate confusion about the requirements of Vermont employers. Lowering the threshold and clarifying the definition of employer would allow the Department to provide timely services after layoffs. To help mitigate this issue, the Department requested that the notification threshold be lowered from 50 to 25 employees impacted by layoffs or closures. The Senate took this a step further and lowered the threshold to 20 employees. Additionally, the Department worked with the Senate to clarify the definition of “employer” to include all employees within a company’s employee count. Not just those working in Vermont. specify if the number of individuals employed by the company means the number of employees totals or solely those employed in Vermont.

**Sections 9 – 16: Allow for electronic notice and distribution of documents (21 V.S.A. §§ 1314; 1314a; 1330; 1331; 1332; 1337a; 1357)**

Current law requires that certain notices and determinations be physically mailed. This proposal will allow claimants and employers the option to request and authorize electronic communication for notifications, helping to modernize operations and improve efficiency. The Department’s proposed fix amends statutory sections to provide the option for electronic notice and distribution of documents.

**Section 17: Employer Successorship Clarification (21 V.S.A. § 1325)**

The Department is seeing instances where out-of-state employers are purchasing businesses in Vermont and trying to split them into two new separate businesses in order to lower their UI tax liabilities. The vernacular for this is known as SUTA dumping. The consequence of this is that the existing employer with the high tax rate decreases its payroll and transfers the high wage earners under the new business, which has a lower tax rate. The Department is seeking to have language added to the statute expressly prohibiting this practice to better support our legal positions in these instances, as the current statutory language is not clearly supportive of the Department’s position that this business practice is not authorized. This undermines fair tax contributions and the integrity of the UI system. To fix this, the proposed language clarifies that business operators of a successor business consisting of two or more



corporate entities must file a unified quarterly wage report with all of the employees of the successor business regardless of their technical corporate affiliation.

### **Section 18: Calculation of annual tax rate schedule for UI employers (21 V.S.A. § 1326)**

The U.S. Department of Labor (USDOL) has identified an issue in how the annual tax rate schedule for Unemployment Insurance (UI) employers is calculated. The current language uses the highest amount of benefits paid out, but this may not be the best indicator of the health of the UI trust fund. The necessary language should reflect the benefit-cost ratio as the metric to determine appropriate tax rates. One way to look at this, is to imagine the cost of a candy bar in 1990 versus the cost of a candy bar in 2024. At face value, its easy to say that candy bars are more expensive in 2024; however this does not taking into consideration the state of the economy in 1990 versus 2024, and the value of the dollar in each year. The language in the bill would amend the statutory language to use the benefit-cost ratio rather than the highest benefits paid out to determine the health of the UI trust fund. Thus, taking into consideration the taxable wage base and ensuring that the health of the trust fund is relative to the economy.

### **Section 19: Disregarded earnings (21 V.S.A. § 1338a)**

Statutory language currently requires earnings reported on a weekly claim to be rounded to the nearest dollar. This is causing confusion and inconsistency, as claimants are sometimes required to report earnings higher than they actually receive, reducing the amount of benefits they are eligible for. For example, if a claimant earned \$435.25 one week, they would be required to report \$436 in earnings. The proposed language would amend the statute to clarify that earnings on weekly claims should be rounded “down” to the nearest.

### **Section 20: Short-Term Compensation (STC) Program (21 V.S.A. § 1462)**

The STC program, which helps employers avoid layoffs by providing UI benefits to workers whose hours are reduced, was placed on hold in 2020 due to outdated systems. The program was put in a dormant state in 2020 as the Department could not implement the program with legacy systems. This federal program is being designed into the new system, and the Department proposes bringing this back to offer as an option to employers. The proposed language would reinstate the STC program by amending relevant language to allow the Department to offer it as an option for employers following the successful launch of the new UI IT system.

### **Section 21: Additional benefits fix (21 V.S.A. § 1338)**

Following the pandemic, the Legislature passed an artificial \$60 bump to the maximum weekly benefit amount for claimants. This increase was intended to be reduced to \$25, and applied to all claimants, once the new system was implemented. However, the effective date of this change will occur before the new system functionality is implemented. The Senate Committee on Economic Development, Housing, and General Affairs amended the dates of the original law to align with the Department’s adoption of the new UI IT system.

Additionally, current language is ambiguous regarding what happens to the maximum weekly benefit amount when the \$60 bump ends. Technically, the statute states that the maximum weekly benefit amount shall never decrease, but that language does not contemplate this artificial increase. If left alone, the maximum weekly benefit amount will stay at the artificially inflated amount until the calculation



catches up, which could take roughly 3-years. The other option is to add language that explicitly states that the maximum weekly benefit amount will return to the calculated rate once the increase ends.

The Department respectfully requests that the Committees review and consider these technical corrections to improve the functioning of Vermont's labor laws and ensure more effective service delivery. The proposed changes are necessary for modernization, efficiency, and fairness, ensuring that the Department's operations align with current practices and requirements.

