

MEMORANDUM

To: Senate Committee on Economic Development, Housing and General Affairs
From: Commissioner Michael Harrington, Vermont Department of Labor
Date: March 13, 2025
Subject: Impacts of DR 25-0652, *An act relating to compensation, workers' compensation, unemployment compensation, and wage requirements for State construction projects*, and DR 25-0653, *An act relating to employee rights*

Thank you for the opportunity to comment on two labor bills currently under review by the Senate Committee on Economic Development, Housing, and General Affairs. The Department has some concerns it would like to share on **DR 25-0652**, *An act relating to compensation, workers' compensation, unemployment compensation, and wage requirements for State construction projects*, and **DR 25-0653**, *An act relating to employee rights*. The Department has provided a detailed analysis of each section of these bills, but in general, the Department does not support the measures outlined in these bills and recommends that the Committee not move these bills forward. The reasons why the Department is making this recommendation are outlined below, but overall, it believes that there are more pressing issues that should be prioritized over the provisions in these bills, such as housing and education reform and the intersection between education policy and workforce development.

DR 25-0652: An act relating to compensation, workers' compensation, unemployment compensation, and wage requirements for State construction projects

With the understanding that the Committee will not be voting out sections 1(e), 2, 8, 9, and 10 of DR 25-0652 at this time, the Department's feedback below concerns the remaining sections.

Section 1: Minimum Wage for Agricultural Workers

Should the Committee move the minimum wage for agricultural workers forward, the Department will potentially be impacted in the Wage & Hour unit with additional complaints and investigations. At this time, it is hard to know the extent of the impact this will have on the Department, but it will undoubtedly increase the number of investigations conducted by the Wage & Hour unit. The Department recommends that the Committee confer with the Agency of Agriculture if it has not done so already, to understand the sector impact.

Section 3: Payment of Accrued Vacation Time on Separation from Employment

This section would require employers to pay out any unused, accrued vacation time when an employee is terminated. Currently, any payment of accrued vacation time is determined by an individual employer's policy. The Department shares the concerns of other witnesses on how to account for scenarios of businesses that offer unlimited or combined time off policies and the dollar value that should be assigned to that at the time of separation. The question has also been raised as



to whether businesses would need to carry this cost as a liability for business books and potentially ensure a significant amount of cash funds are available at the time of separation to pay out the accrued time. Additionally, should the Committee consider moving this provision forward, it should strongly consider an exemption from this requirement for employees who are terminated for misconduct or gross misconduct.

It is important to note that for those filing for unemployment insurance benefits, vacation pay is considered disqualifying income and may render an individual ineligible or partially ineligible to receive benefits for weeks when receiving vacation pay.

Lastly, the Department would encourage the Committee to speak with the Department of Human Resources about any potential financial impact on the State as an employer and implications for collective bargaining.

Section 4: Workers' Compensation and Health Insurance Benefits

This section would include health insurance benefits in the definition of “wages” for the purposes of workers’ compensation insurance. The Department opposes this provision. First, for employees with health insurance, their average weekly wage (AWW) and compensation rate might increase significantly, which means workers’ compensation (WC) premiums paid by businesses that insure their employees would also increase. The National Council on Compensation Insurance (NCCI) estimates that the proposed change from this section, if enacted, would result in an impact of +4.0% (\$7M) to +6.9% (\$13M) on overall WC system costs in Vermont. The Department has provided an accompanying fiscal note from NCCI in a separate document.

We know that roughly half of Vermont employees receive some amount of health care coverage from their employers. Those who receive that benefit would then receive more in WC weekly benefits than those who do not have employer-provided health care, resulting in an arbitrary reward system for some employees and not for others.

Second, some employees continue to receive employer-paid health insurance while they are out on temporary disability. If the employer is still paying for the insurance, then the employee is getting that benefit, so in cases such as this, the amount should not be included in their AWW.

If health insurance is not included in the AWW while the employee is still on the work health insurance plan, that creates an administrative burden for the Department of Labor, as staff and/or insurance adjusters would constantly have to monitor whether employers are providing coverage to an injured worker. If coverage stops, then the value of the health insurance can be added to the AWW, which would, in turn, increase the administrative burden on the Department.

Section 5: Workers' Compensation and Translation Services

This section would require that translation services be provided for an injured employee who is not fluent in English. The committee has heard from others that there is some confusion as to whether this cost would fall on employers or their insurance companies. To clarify, under 21 V. S. A. § 603, the term employer refers to both the employer and the employer’s insurance carrier, if insured. “Employer” and “insurer” are used interchangeably in the Workers’ Compensation Act. As a practical matter, the cost of translation services would be borne by the insurance carriers and be



built into their pricing structure. The Department does not have a cost impact analysis, although it expects it would be de minimis compared to Section 4. The Department supports efforts that will increase access to services and benefits for injured workers with limited English proficiency.

Section 6: Workers' Compensation and Case Management Services

The Department supports the addition of medical case management services to those “benefits” currently covered under the preauthorization statute (21 V.S.A. § 640b). Medical case management services are already widely used by insurance carriers in certain circumstances. This amendment would merely apply to the preexisting preauthorization process for such services. Insurance carriers could still deny the services if they are not reasonably supported.

Section 7: Workers' Compensation and Timely Payments

In the Department's experience, carriers do miss payment dates; however, the Department does not have any aggregated number that would indicate how frequently this occurs. While such missed or late payments may be inadvertent and due to software issues or internal miscommunication, the negative effect on injured workers reliant on timely weekly payments is real.

Section 11: State Construction Projects and Prevailing Wage

The Department opposes the provision to change prevailing wage requirements for state construction projects for several reasons.

The Department is not aware of the existence of a map or list of existing collective bargaining agreements (CBA) that would be required to do the prevailing wage calculation. To better understand the impacts of this proposed change, finding this information is critical. Changing the prevailing wage rate to reflect those of a local CBA may end up bringing wages down for some occupations. The federal prevailing wage rate is higher than the current state prevailing wage rate for a few select occupations (electricians and plumbers, most notably), but otherwise, it is lower for the bulk of other common occupations (roofers, bricklayers, equipment operators, laborers, painters, etc.). It is unclear if these occupations even have CBAs. In addition, “nearest locality” is not defined; it could refer to any number of things, such as the nearest in geography, density, or demographics.

This will likely increase construction costs. While the intent may be to benefit workers, this bill makes work more onerous for contractors and given the current challenges with finding qualified bidders for contracts, it is highly likely that this change would deter contractors from wanting to bid on state projects. The downstream impact of this would be higher construction costs for the State and potentially less work for laborers. The Department would encourage the Committee to hear from the Department of Building and General Services, the Agency of Transportation, and contractors to understand the practical sector impacts.

Additionally, this change would place a significant administrative burden on contractors and state government to accomplish the prescribed record keeping and frequent reporting. It is also important to note that this bill would require employers and state agencies to compile, transmit, review, and store protected private wage information. In many cases, these contractors and state agencies may not have the systems to transmit and store this information in a secure way, which would add to the cost for employers and the State when implementing this bill.



DR 25-0653: An act relating to employee rights

The Department wishes to address the first section of this bill and will remain neutral on the other two.

Section 1: Good Cause Standard for Separation

The Department strongly opposes establishing a good cause standard for termination of employment. This has only been done in only one other state in the U.S., making Vermont an outlier considering this type of policy. This change also has the potential to create more hostile work environments and could act as a deterrent for employers to hire individuals with barriers to employment. It would limit flexibility for employers at a time when the State is encouraging them to hire and could create significant legal complications. This bill would surely reduce job opportunities for at-risk populations, such as those in recovery or exiting incarceration, and it will have a disproportionate impact on small businesses that do not have dedicated personnel or legal departments to assist. It would also place Vermont at a competitive disadvantage when recruiting businesses, resulting in companies choosing not to invest in Vermont and taking their business elsewhere.

In closing, the Department of Labor does not oppose every provision of each of these bills, but when considering them in totality, it would recommend not advancing these changes to state statutes without more conversation and financial analysis on those impacted. Thank you to the Committee for its time and consideration.

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