

1 Introduced by Senator Clarkson

2 Referred to Committee on

3 Date:

4 Subject: Labor; safety; employment practices; wage and hour; notice of
5 potential layoffs; unemployment compensation

6 Statement of purpose of bill as introduced: This bill proposes to modify the
7 formal rulemaking requirements for the State’s Occupational Safety and Health
8 Plan. This bill also proposes to clarify the employee’s share of recovery where
9 an employer has willfully withheld pay. This bill also proposes to clarify how
10 the minimum wage is calculated and to remove the Commissioner of Labor’s
11 authority to recommend a subminimum wage for individuals with disabilities.
12 This bill also proposes changes to the notice requirement for potential layoffs.
13 This bill also proposes to provide employers and claimants with the option to
14 receive unemployment insurance notices and determinations electronically.
15 This bill also proposes to clarify reporting, for unemployment insurance
16 purposes, when a successor divides the operation of an employer’s business.
17 This bill also proposes to amend the statutory definition of the highest benefit
18 cost rate used to calculate the tax rate schedule for unemployment insurance.
19 This bill also proposes to round down the earnings on weekly claims with
20 respect to disregarded earnings. This bill also proposes to resume the short-
21 term compensation program effective with completion of the modernization of

1 the unemployment insurance system and to extend the deadline for
2 implementation of the modernized system by one year to July 1, 2026.

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

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

6 * * * Safety and Health Rulemaking * * *

7 Sec. 1. 21 V.S.A. § 204 is amended to read:

8 § 204. RULES AND PROCEDURE

9 (a)(1)(A) The provisions of 3 V.S.A. chapter 25, subchapter 3 shall not
10 apply to the Commissioner’s adoption in its entirety of any rule or standard
11 adopted by the U.S. Department of Labor’s Occupational Safety and Health
12 Administration pursuant to the Act for which the State is required to adopt a
13 rule or standard that is at least as effective as the federal rule or standard in
14 order to maintain the approval of the State’s Occupational Safety and Health
15 Plan.

16 (B) For every rule or standard proposed to be adopted pursuant to the
17 provisions of this subdivision (1), the Commissioner shall:

18 (i) provide notice of the proposed rule to interested parties
19 including affected employers and trade organizations that are known to the
20 Commissioner;

1 adopt rules and standards necessary to implement the purposes of the VOSHA
2 Code and duties imposed by the Code, insofar as they relate to health.

3 * * *

4 * * * Wage and Hour * * *

5 Sec. 3. 21 V.S.A. § 342a is amended to read:

6 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

7 * * *

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

15 * * *

16 Sec. 4. 21 V.S.A. § 384 is amended to read:

17 § 384. EMPLOYMENT; WAGES

18 (a)(1) Beginning on January 1, 2022, an employer shall not employ any
19 employee at a rate of less than \$12.55, and on each subsequent January 1, the
20 minimum wage rate shall be increased by five percent or the percentage
21 increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally

1 adjusted, or successor index, as calculated by the U.S. Department of Labor or
2 successor agency, rounded to one decimal point, for the 12 months preceding
3 the previous September 1, whichever is smaller, but in no event shall the
4 minimum wage be decreased. The minimum wage shall be rounded off to the
5 nearest \$0.01.

6 * * *

7 Sec. 5. 21 V.S.A. § 385 is amended to read:

8 § 385. ADMINISTRATION

9 The Commissioner and the Commissioner’s authorized representatives have
10 full power and authority for all the following:

11 * * *

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

15 * * * Notice of Potential Layoffs * * *

16 Sec. 6. 21 V.S.A. § 411 is amended to read:

17 § 411. DEFINITIONS

18 As used in this subchapter:

19 (1) “Affected employees” means employees who may be expected to
20 experience an employment loss as a consequence of a proposed or actual
21 business closing or mass layoff by their employer.

1 (2) “Business closing” means:

2 (A) the permanent shutdown of a facility;

3 (B) the permanent cessation of operations at one or more worksites in
4 the State that results in the layoff of ~~50~~ 25 or more employees over a 90-day
5 period; or

6 (C) the cessation of work or operations not scheduled to resume
7 within 90 days that affects ~~50~~ 25 or more employees.

8 * * *

9 (5) “Employer” means any person that employs:

10 (A) 50 or more full-time employees in total, including nationally and
11 internationally;

12 (B) 50 or more part-time employees in total, including nationally and
13 internationally, who work at least 1,040 hours per employee per year; or

14 (C) a combination of 50 or more:

15 (i) full-time employees; and

16 (ii) part-time employees who work at least 1,040 hours per
17 employee per year.

18 * * *

19 (7) “Mass layoff” means a permanent employment loss of at least ~~50~~ 25
20 employees at one or more worksites in Vermont during any 90-day period. In
21 determining whether a mass layoff has occurred or will occur, employment

1 losses for two or more groups of employees, each of which is below this
2 threshold but which in the aggregate exceed this threshold and which occur
3 within any 90-day period shall be considered to be a mass layoff unless the
4 employer demonstrates that the employment losses are the result of separate
5 and distinct actions and causes.

6 * * *

7 * * * Unemployment Compensation * * *

8 Sec. 7. 21 V.S.A. § 1308 is amended to read:

9 § 1308. ORGANIZATION

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

16 Sec. 8. 21 V.S.A. § 1314 is amended to read:

17 § 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;
18 DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT
19 EMPLOYMENT INFORMATION; DISCLOSURE OF
20 INFORMATION TO OTHER STATE AGENCIES TO
21 INVESTIGATE MISCLASSIFICATION OR MISCODING

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(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. 9. 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

1 Commissioner’s request was sent electronically or mailed to the employing
2 unit.

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

10 * * *

11 Sec. 10. 21 V.S.A. § 1330 is amended to read:

12 § 1330. ASSESSMENT PROVIDED

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

20 Sec. 11. 21 V.S.A. § 1331 is amended to read:

21 § 1331. NOTICE; HEARING

1 Sec. 13. 21 V.S.A. § 1337a is amended to read:

2 § 1337a. ADMINISTRATIVE DETERMINATION; HEARING ON

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

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

1 Sec. 14. 21 V.S.A. § 1357 is amended to read:

2 § 1357. NOTICES; FORM AND SERVICE

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

17 Sec. 15. 21 V.S.A. § 1325 is amended to read:

18 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

19 DISCLOSURE TO SUCCESSOR ENTITY

20 * * *

1 (b)(1) Disclosure of contribution rate to successor entity. Any individual or
2 employing unit who in any manner succeeds to or acquires the organization,
3 trade, or business or substantially all of the assets of any employer who has
4 been operating the business within two weeks prior to the acquisition, except
5 any assets retained by the employer incident to the liquidation of the
6 employer’s obligations, and who thereafter continues the acquired business
7 shall be considered to be a successor to the predecessor from whom the
8 business was acquired and, if not already an employer before the acquisition,
9 shall become an employer on the date of the acquisition. The Commissioner
10 shall transfer the experience-rating record of the predecessor employer to the
11 successor employer. If the successor was not an employer before the date of
12 acquisition, the successor’s rate of contribution for the remainder of the rate
13 year shall be the rate applicable to the predecessor employers with respect to
14 the period immediately preceding the date of acquisition if there was only one
15 predecessor or there were only predecessors with identical rates. If the
16 predecessors’ rates were not identical, the Commissioner shall determine a rate
17 based on the combined experience of all the predecessor employers. If the
18 successor was an employer before the date of acquisition, the contribution rate
19 that was assigned to the successor for the rate year in which the acquisition
20 occurred will remain assigned to the successor for the remainder of the rate
21 year, after which the experience-rating record of the predecessor shall be

1 combined with the experience rating of the successor to form the single
2 employer experience-rating record of the successor. At any time prior to the
3 issuance of the certificate required by subsection 1322(b) of this chapter, an
4 employing unit shall, upon request of a potential successor, disclose to the
5 potential successor its current experience-rating record.

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

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

20 * * *

1 Sec. 16. 21 V.S.A. § 1326 is amended to read:

2 § 1326. RATE BASED ON BENEFIT EXPERIENCE

3 * * *

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

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

10 (2)(A) The highest benefit cost rate ~~shall be determined by dividing the~~
11 ~~highest amount of benefit payments made during a consecutive 12 month~~
12 ~~period that ended within the 10-year period ending on the preceding December~~
13 ~~31, by the total wages paid during the four calendar quarter periods that ended~~
14 ~~within that 12-month period~~ is the highest annual ratio within the 10-year
15 period ending on the preceding December 31, of benefits paid, including the
16 State's share of extended benefits, for taxpaying employers divided by total
17 wages paid in covered employment for taxpaying employers for the same
18 period.

19 (B) Notwithstanding any provision of subdivision (A) of this
20 subdivision (d)(2) to the contrary, when computing the tax rate schedule to
21 become effective on July 1, 2021 and on each subsequent July 1, the

1 Commissioner shall calculate the highest benefit cost rate without
2 consideration of benefit payments made in calendar year 2020.

3 * * *

4 Sec. 17. 21 V.S.A. § 1338a is amended to read:

5 § 1338a. DISREGARDED EARNINGS

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

13 Sec. 18. 21 V.S.A. § 1462 is amended to read:

14 § 1462. PERIOD OF DORMANCY

15 On July 1, 2020, the Short-Time Compensation Program established
16 pursuant to sections 1451–1461 of this subchapter ~~shall cease~~ ceased operation
17 ~~and shall not resume operation unless directed to do so by enactment of the~~
18 ~~General Assembly or, if the General Assembly is not in session, by order of the~~
19 ~~Joint Fiscal Committee. The Joint Fiscal Committee shall issue such order~~
20 ~~only upon finding that, due to a change in circumstances, resumption of the~~
21 ~~Short Time Compensation Program would be the most effective way to assist~~

