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S.117

Introduced by Committee on Economic Development, Housing and General
Affairs

Date:

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

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

1 term compensation program effective with completion of the modernization of
2 the unemployment insurance system and to extend the deadline for
3 implementation of the modernized system by one year to July 1, 2026.

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

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

7 * * * Safety and Health Rulemaking * * *

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

9 § 204. RULES AND PROCEDURE

10 (a)(1)(A) Except as otherwise provided pursuant to subdivision (2) of this
11 subsection (a), the provisions of 3 V.S.A. chapter 25, subchapter 3 shall not
12 apply to the Commissioner's adoption in its entirety of any rule or standard
13 adopted by the U.S. Department of Labor's Occupational Safety and Health
14 Administration pursuant to the act for which the State is required to adopt a
15 rule or standard that is at least as effective as the federal rule or standard in
16 order to maintain the approval of the State's Occupational Safety and Health
17 Plan.

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

- 1 (i) provide notice of the proposed rule to interested parties,
2 including affected employers and trade organizations that are known to the
3 Commissioner;
- 4 (ii) post the proposed rule or standard to the Department’s website
5 for at least 30 days; and
- 6 (iii) provide at least 30 days for members of the public to submit
7 comments regarding the proposed rule.
- 8 (C)(i) After compliance with the procedures set forth in subdivision
9 (B) of this subdivision (a)(1), adoption of the rule or standard shall be
10 complete upon filing with the Secretary of State and the rule or standard shall
11 take effect on the later of 15 days after it is filed with the Secretary of State or
12 a later effective date as determined by the Commissioner.
- 13 (ii) The filing with the Secretary of State shall include:
- 14 (I) a cover sheet on a form prepared by the Secretary of State
15 that contains at least the following information:
- 16 (aa) the title or subject of the rule or standard;
17 (bb) a summary of the dates on which the Department
18 complied with the requirements of this subdivision (a)(1); and
- 19 (cc) a signed and dated statement by the Commissioner that
20 the procedural requirements of this subdivision (a)(1) have been met and that
21 the Commissioner approves the contents of the filing; and

1 apply to the Commissioner's adoption in its entirety of any rule or standard
2 adopted by the U.S. Department of Labor's Occupational Safety and Health
3 Administration pursuant to the act for which the State is required to adopt a
4 rule or standard that is at least as effective as the federal rule or standard in
5 order to maintain the approval of the State's Occupational Safety and Health
6 Plan.

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

9 ~~(i) provide notice of the proposed rule to interested parties,~~
10 ~~including affected employers and trade organizations that are known to the~~
11 ~~Commissioner;~~

12 ~~(ii) post the proposed rule or standard to the Department's website~~
13 ~~for at least 30 days; and~~

14 ~~(iii) provide at least 30 days for members of the public to submit~~
15 ~~comments regarding the proposed rule.~~

16 ~~(C)(i) After compliance with the procedures set forth in subdivision~~
17 ~~(B) of this subdivision (a)(1), adoption of the rule or standard shall be~~
18 ~~complete upon filing with the Secretary of State and the rule or standard shall~~
19 ~~take effect on the later of 15 days after it is filed with the Secretary of State or~~
20 ~~a later effective date as determined by the Commissioner.~~

1 ~~(ii) The filing with the Secretary of State shall include:~~

2 ~~(I) a cover sheet on a form prepared by the Secretary of State~~
3 ~~that contains at least the following information:~~

4 ~~(aa) the title or subject of the rule or standard;~~

5 ~~(bb) a summary of the dates on which the Department~~
6 ~~complied with the requirements of this subdivision (a)(1); and~~

7 ~~(cc) a signed and dated statement by the Commissioner that~~
8 ~~the procedural requirements of this subdivision (a)(1) have been met and that~~
9 ~~the Commissioner approves the contents of the filing; and~~

10 ~~(II) the text of the rule or standard.~~

11 ~~(D) After adopting a rule or standard pursuant to the provisions of~~
12 ~~this subdivision (a)(1), the Department shall create a file containing all papers~~
13 ~~and records used or created during the adoption of the rule or standard. The~~
14 ~~file shall be maintained for at least one year after the date on which the rule or~~
15 ~~standard is adopted.~~

16 ~~(2)(A) For any rule or standard proposed that is more protective of~~
17 ~~health and safety than the federal standard or any rule or standard for which~~
18 ~~there is no corresponding federal rule or standard, the Commissioner shall~~
19 ~~adopt the proposed rule or standard pursuant to the rulemaking procedures set~~
20 ~~forth in 3 V.S.A. chapter 25, relating to administrative procedure, shall apply~~
21 ~~to this chapter and the VOSHA Code.~~

1 purposes and duties set forth in this subchapter insofar as they relate to safety
2 and to enforcement of the VOSHA Code.

3 (b) ~~Subject to the procedures set forth in section 204 of this chapter, the~~
4 The Commissioner, in consultation with the Secretary of Human Services,
5 shall adopt rules and standards necessary to implement the purposes of the
6 VOSHA Code and duties imposed by the Code, insofar as they relate to health.

7 * * *

8 * * * Wage and Hour * * *

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

10 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

11 * * *

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

19 * * *

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

2 § 384. EMPLOYMENT; WAGES

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

12 * * *

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

14 § 385. ADMINISTRATION

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

17 * * *

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

- 1 (i) full-time employees; and
2 (ii) part-time employees who work at least 1,040 hours per
3 employee per year.

4 * * *

5 (7) "Mass layoff" means a permanent employment loss of at least ~~50~~ 20
6 employees at one or more worksites in Vermont during any 90-day period. In
7 determining whether a mass layoff has occurred or will occur, employment
8 losses for two or more groups of employees, each of which is below this
9 threshold but which in the aggregate exceed this threshold and which occur
10 within any 90-day period shall be considered to be a mass layoff unless the
11 employer demonstrates that the employment losses are the result of separate
12 and distinct actions and causes.

13 * * *

14 * * * Unemployment Compensation * * *

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

16 § 1308. ORGANIZATION

17 The Commissioner shall determine ~~his or her~~ the method of procedure in
18 accordance with the provisions of this chapter. Notwithstanding any
19 requirement in this chapter that the Commissioner mail notices and
20 determinations, the Commissioner may provide claimants and employers with

1 the option to authorize communications from the Commissioner to be
2 delivered electronically.

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

4 § 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;
5 DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT
6 EMPLOYMENT INFORMATION; DISCLOSURE OF
7 INFORMATION TO OTHER STATE AGENCIES TO
8 INVESTIGATE MISCLASSIFICATION OR MISCODING

9 * * *

10 (c) If an employing unit fails to comply adequately with the provisions of
11 subsection (b) of this section and section 1314a of this subchapter, the
12 Commissioner shall determine the benefit rights of a claimant upon the
13 available information. Prompt notice in writing of the determination shall be
14 given to the employing unit. The employing unit may request or authorize the
15 Commissioner to provide notice of the determination electronically. The
16 determination shall be final with respect to a noncomplying employer as to any
17 charges against its experience-rating record for benefits paid to the claimant
18 before the week following the receipt of the employing unit's reply. The
19 employing unit's experience rating record shall not be relieved of these
20 charges, notwithstanding any other provision of this chapter, unless the

1 Commissioner determines that failure to comply was due to unavoidable
2 accident or mistake.

3 * * *

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

5 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
6 PENALTIES

7 * * *

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

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

19 * * *

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

21 § 1330. ASSESSMENT PROVIDED

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

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

9 § 1331. NOTICE; HEARING

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

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

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

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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.

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

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

9 § 1357. NOTICES; FORM AND SERVICE

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

1 receive the notice, a new notice shall be sent to that person and the appeal
2 period shall commence to run from the date on which the new notice is sent.

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

4 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

5 DISCLOSURE TO SUCCESSOR ENTITY

6 * * *

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

1 predecessors' rates were not identical, the Commissioner shall determine a rate
2 based on the combined experience of all the predecessor employers. If the
3 successor was an employer before the date of acquisition, the contribution rate
4 that was assigned to the successor for the rate year in which the acquisition
5 occurred will remain assigned to the successor for the remainder of the rate
6 year, after which the experience-rating record of the predecessor shall be
7 combined with the experience rating of the successor to form the single
8 employer experience-rating record of the successor. At any time prior to the
9 issuance of the certificate required by subsection 1322(b) of this chapter, an
10 employing unit shall, upon request of a potential successor, disclose to the
11 potential successor its current experience-rating record.

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

18 (3) If a successor, upon acquisition of an employer under subdivision (1)
19 of this subsection, divides operation of the successor business between two or
20 more corporate entities, the successor shall designate one of the corporate
21 entities involved in successor's business operations as the filing successor for

1 purposes of quarterly wage reporting and benefit rate assignment. The
2 designated filing successor shall include all employees involved in carrying on
3 the successor business in the designated filing successor's quarterly wage
4 reporting and shall pay the full successor benefit tax on all business employees.

5 * * *

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

7 § 1326. RATE BASED ON BENEFIT EXPERIENCE

8 * * *

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

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

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

1 wages paid in covered employment for taxpaying employers for the same
2 period.

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

8 * * *

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

10 § 1338a. DISREGARDED EARNINGS

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

18 * * *

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

2 § 1462. PERIOD OF DORMANCY

3 On July 1, 2020, the Short-Time Compensation Program established
4 pursuant to sections 1451–1461 of this subchapter ~~shall cease~~ ceased operation
5 ~~and shall not resume operation unless directed to do so by enactment of the~~
6 ~~General Assembly or, if the General Assembly is not in session, by order of the~~
7 ~~Joint Fiscal Committee. The Joint Fiscal Committee shall issue such order~~
8 ~~only upon finding that, due to a change in circumstances, resumption of the~~
9 ~~Short-Time Compensation Program would be the most effective way to assist~~
10 ~~employers in avoiding layoffs. Upon the effective date of such an enactment~~
11 ~~or order~~ Effective upon completion of the project to implement a modernized
12 information technology system for the unemployment insurance program in
13 2026, the Short-Time Compensation Program shall resume operation pursuant
14 to the provisions of sections 1451–1461 of this subchapter.

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

16 Sec. 52f. UNEMPLOYMENT INSURANCE; INFORMATION
17 TECHNOLOGY MODERNIZATION; ANNUAL REPORT;
18 INDEPENDENT VERIFICATION

19 (a)(1) The Secretary of Digital Services and the Commissioner of Labor
20 shall, to the greatest extent possible, plan and carry out the development and
21 implementation of a modernized information technology system for the

1 unemployment insurance program so that the modernized system is ready and
2 able to implement on or before July 1, ~~2025~~ 2026 the changes to the
3 unemployment insurance weekly benefit amount set forth in Secs. 52d and 52e
4 of this act.

5 * * *

6 * * * Effective Dates * * *

7 Sec. 22. EFFECTIVE DATES

8 (a) Secs. 1, 3, 5–21, and this section shall take effect on July 1, 2025.

9 (b) Secs. 2 and 4 shall take effect on July 1, 2028.