

MEMORANDUM

To: Chair Michael Marcotte of the House Committee on Commerce and Economic Development and Chair Alison Clarkson of the Senate Committee on Economic Development, Housing, and General Affairs

From: Commissioner Michael Harrington, Vermont Department of Labor

Date: February 10, 2025

Subject: Department of Labor Technical Corrections

The Vermont Department of Labor is submitting this memorandum to request technical corrections to various statutory sections under the jurisdiction of the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing, and General Affairs. 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.

1. 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 mailed. This proposal will allow claimants and employers the option to request and authorize electronic communication for notifications, helping modernize operations and improve efficiency.

Fix: Amend statutory sections to provide the option for electronic notice and distribution of documents.

2. 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.

Fix: Amend statutory language to use the benefit-cost ratio rather than the highest benefits paid out to determine the health of the UI trust fund.



3. 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.

Fix: Amend the statute to clarify that earnings on weekly claims should be rounded “down” to the nearest dollar rather than rounded “to the nearest dollar.” This will benefit the claimant.

4. 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.

Fix: Add statutory language to round the minimum wage to the nearest two decimal places, which would provide legal clarity and correct the calculation method.

5. 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. STC is being designed into the new system, and the Department proposes bringing this back to offer as an option for employers.

Fix: 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.

6. Wage & Hour (21 V.S.A § 342a)

When recovering outstanding wages owed to individuals, current law requires that any collected funds must first go to the Department for any penalties and/or interest BEFORE paying the individual their wages owed. This is problematic and inconsistent with the intent of ensuring that workers receive their back pay promptly.

Fix: Revise statutory language to ensure that back wages are paid to individuals first before any penalties or interest are collected.

7. Workers’ Compensation (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 rulemaking process.

Fix: Insert statutory language allowing the Department to automatically adopt updated federal safety standards without formal rule-making, provided they are the minimum required standards.



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 employees impacted. This is too high to ensure timely intervention and services for all affected workers. Lowering the threshold would help provide timely services after layoffs. Additionally, an update to the definition of “employer” is required under the section to eliminate confusion about the requirements of Vermont employers.

Fix: Lower the notification threshold from 50 to 25 employees impacted by layoffs or closures and clarify the definition of “employer” to specify if the number of individuals employed by the company means the number of employees totals or solely those employed in Vermont. The Department of Labor recommends that the statute define an employer as “any person who employs 50 or more employees in total, not just in Vermont.”

9. 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 businesses in order to lower their UI tax liabilities. The consequence is that one of the businesses could be provided a new employer rate, thereby allowing the entity to “dump” its UI tax rate and pay fewer contributions than legally required. The Department would like to add language specifically 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.

Fix: Clarify that the act of “SUTA Dumping” is prohibited by adding language that prevents business operators from splitting businesses for the sole purpose of obtaining a lower UI tax rate.

10. 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 once the new system was implemented. However, the current language includes ambiguity regarding the effective date and the legal ability to revert to the original amount. The current statutory language states that the maximum weekly benefit amount “shall not decrease,” but when the \$60 dollar rider is supposed to go away, there is a legal question about whether it can go away as intended due to that language.

Fix: Repeal the original language in full or amend the dates to align with the new UI IT system. The maximum benefit amount should either decrease to the calculated amount or remain at the artificial rate until the calculation catches up to the last calculation that included the \$60 bump.

The Department respectfully requests that the Committees of Jurisdiction 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. We appreciate your consideration of these requests and look forward to speaking with the Committees on these modifications.

