

1 H.196
2 Introduced by Representatives Trieber of Rockingham, Young of Glover,
3 Copeland-Hanzas of Bradford, Bartholomew of Hartland, Beck
4 of St. Johnsbury, Belaski of Windsor, Briglin of Thetford,
5 Buckholz of Hartford, Burke of Brattleboro, Christie of
6 Hartford, Cina of Burlington, Colburn of Burlington, Connor of
7 Fairfield, Deen of Westminster, Donovan of Burlington, Dunn
8 of Essex, Fields of Bennington, Gonzalez of Winooski, Hebert
9 of Vernon, Hill of Wolcott, Hooper of Brookfield, Howard of
10 Rutland City, Krowinski of Burlington, Lippert of Hinesburg,
11 Long of Newfane, Macaig of Williston, Masland of Thetford,
12 McCormack of Burlington, McCullough of Williston, McFaun
13 of Barre Town, Miller of Shaftsbury, Morris of Bennington,
14 Mrowicki of Putney, O'Sullivan of Burlington, Partridge of
15 Windham, Poirier of Barre City, Pugh of South Burlington,
16 Rachelson of Burlington, Sharpe of Bristol, Squirrell of
17 Underhill, Stevens of Waterbury, Stuart of Brattleboro, Sullivan
18 of Burlington, Till of Jericho, Toleno of Brattleboro, Troiano of
19 Stannard, Walz of Barre City, Webb of Shelburne, Weed of
20 Enosburgh, Willhoit of St. Johnsbury, Wood of Waterbury, and
21 Yantachka of Charlotte

1 Referred to Committee on

2 Date:

3 Subject: Labor; employment practices; paid family leave

4 Statement of purpose of bill as introduced: This bill proposes to create a
5 Family Leave Insurance Program within the Department of Labor that will
6 provide employees with 12 weeks of paid family leave and that will be funded
7 by contributions from employers and employees. This bill also proposes to
8 amend Vermont's existing family leave law to make it applicable to all
9 employers, to clarify certain provisions.

10 An act relating to paid family leave

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

12 Sec. 1. 21 V.S.A. § 471 is amended to read:

13 § 471. DEFINITIONS

14 As used in this subchapter:

15 (1) "Employer" means an individual, organization ~~or~~ governmental
16 body, partnership, association, corporation, legal representative, trustee,
17 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,
18 air or express company doing business in or operating within this State ~~which~~
19 ~~for the purposes of parental leave, employs 10 or more individuals who are~~

1 ~~employed for an average of at least 30 hours per week during a year and for the~~
2 ~~purposes of family leave, employs 15 or more individuals for an average of at~~
3 ~~least 30 hours per week during a year.~~

4 (2) “Employee” means a person who, in consideration of direct or
5 indirect gain or profit, ~~has been continuously employed by the same employer~~
6 ~~for a period of one year for an average of at least 30 hours per week is~~
7 employed by an employer and has been employed in Vermont for at least six
8 of the previous 12 months.

9 (3) “Family leave” means a leave of absence from employment by an
10 employee ~~who works for an employer which employs 15 or more individuals~~
11 ~~who are employed for an average of at least 30 hours per week during the year~~
12 for one of the following reasons:

13 (A) the serious illness of the employee; ~~or~~

14 (B) the serious illness of the employee’s child, stepchild or ward who
15 lives with the employee, foster child, parent, grandparent, sibling, spouse, or
16 parent of the employee’s spouse;

17 ~~(4) “Parental leave” means a leave of absence from employment by an~~
18 ~~employee who works for an employer which employs 10 or more individuals~~
19 ~~who are employed for an average of at least 30 hours per week during the year~~
20 ~~for one of the following reasons:~~

21 (C) the employee’s pregnancy;

1 (D) the birth of the employee's child; or
2 ~~(B)~~(E) the initial placement of a child 16 years of age or younger
3 with the employee for the purpose of adoption or foster care.

4 ~~(5)~~(4) "Serious illness" means an accident, disease, or physical or
5 mental condition that:

6 (A) poses imminent danger of death;

7 (B) requires inpatient care in a hospital; or

8 (C) requires continuing in-home care under the direction of a
9 physician.

10 (5) "Commissioner" means the Commissioner of Labor.

11 Sec. 2. 21 V.S.A. § 472 is amended to read:

12 § 472. FAMILY LEAVE

13 (a) During any 12-month period, an employee shall be entitled to take
14 ~~unpaid leave for a period not to exceed 12 weeks~~ up to 12 weeks of paid family
15 leave using Family Leave Insurance benefits pursuant to section 472c of this
16 subchapter for the following reasons:

17 (1) ~~for parental leave, during~~ the employee's pregnancy ~~and;~~

18 (2) ~~following~~ the birth of ~~an~~ the employee's child ~~or;~~

19 (3) ~~within a year following~~ the initial placement of a child 16 years of
20 age or younger with the employee for the purpose of adoption; or foster care;

21 ~~(2)~~(4) ~~for family leave, for~~ the serious illness of the employee; or

1 (5) the serious illness of the employee's child, stepchild or ward of the
2 employee who lives with the employee, foster child, parent, grandparent,
3 sibling, spouse, or parent of the employee's spouse.

4 (b) During the leave, at the employee's option, the employee may use
5 accrued sick leave or vacation leave or any other accrued paid leave, ~~not to~~
6 ~~exceed six weeks.~~ ~~Utilization~~ Use of accrued paid leave shall not extend the
7 leave provided ~~herein~~ by this section.

8 (c) The employer shall continue employment benefits for the duration of
9 the family leave at the level and under the conditions coverage would be
10 provided if the employee continued in employment continuously for the
11 duration of the leave. The employer may require that the employee contribute
12 to the cost of the benefits during the leave at the employee's existing rate of
13 ~~employee~~ contribution.

14 (d) The employer shall post and maintain in a conspicuous place in and
15 about each of ~~his or her~~ its places of business printed notices of the provisions
16 of this subchapter on forms provided by the Commissioner of Labor.

17 (e)(1) An employee shall give his or her employer reasonable written
18 notice of intent to take family leave under this subchapter. Notice shall include
19 the date the leave is expected to commence and the estimated duration of the
20 leave.

1 (2) In the case of the adoption or birth of a child, an employer shall not
2 require that notice be given more than six weeks prior to the anticipated
3 commencement of the leave.

4 (3) In the case of an unanticipated serious illness or premature birth, the
5 employee shall give the employer notice of the commencement of the leave as
6 soon as practicable.

7 (4) In the case of serious illness of the employee or a member of the
8 employee's family, an employer may require certification from a physician to
9 verify the condition and the amount and necessity for the leave requested.

10 (5) An employee may return from leave earlier than estimated upon
11 approval of the employer.

12 (6) An employee shall provide reasonable notice to the employer of his
13 or her need to extend the leave to the extent provided by this chapter.

14 (f) ~~Upon return from leave taken under this subchapter, an employee shall~~
15 ~~be offered~~ An employer shall offer an employee who has been employed by
16 the employer for at least 12 months and is returning from family leave taken
17 under this subchapter the same or a comparable job at the same level of
18 compensation, employment benefits, seniority, or any other term or condition
19 of the employment existing on the day the family leave began. This
20 subchapter shall not apply if, prior to requesting leave, the employee had been
21 given notice or had given notice that the employment would terminate. This

1 subsection shall not apply if the employer can demonstrate by clear and
2 convincing evidence that:

3 (1) during the period of leave, the employee's job would have been
4 terminated or the employee laid off for reasons unrelated to the leave or the
5 condition for which the leave was granted; or

6 (2) the employee performed unique services and hiring a permanent
7 replacement during the leave, after giving reasonable notice to the employee of
8 intent to do so, was the only alternative available to the employer to prevent
9 substantial and grievous economic injury to the employer's operation.

10 (g) An employer may adopt a leave policy more generous than the leave
11 ~~policy~~ provided by this subchapter. Nothing in this subchapter shall be
12 construed to diminish an employer's obligation to comply with any collective
13 bargaining agreement or any employment benefit program or plan which
14 provides greater leave rights than the rights provided by this subchapter. A
15 collective bargaining agreement or employment benefit program or plan may
16 not diminish rights provided by this subchapter. Notwithstanding the
17 provisions of this subchapter, an employee may, at the time a need for ~~parental~~
18 ~~or~~ family leave arises, waive some or all the rights under this subchapter
19 provided the waiver is informed and voluntary and any changes in conditions
20 of employment related to any waiver shall be mutually agreed upon between
21 employer and employee.

1 (h) Except for serious illness of the employee, an employee who does not
2 return to employment with the employer who provided the family leave shall
3 return to the employer the value of any compensation paid to or on behalf of
4 the employee during the leave, except payments of Family Leave Insurance
5 benefits and payments for accrued sick leave or vacation leave. An employer
6 may elect to waive the rights provided pursuant to this subsection.

7 Sec. 3. 21 V.S.A. § 472c is added to read:

8 § 472c. FAMILY LEAVE INSURANCE; SPECIAL FUND;

9 ADMINISTRATION

10 (a) The Family Leave Insurance Program is established in the Department
11 of Labor for the provision of Family Leave Insurance benefits to eligible
12 employees pursuant to this section.

13 (b) The Family Leave Insurance Special Fund is created pursuant to
14 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the
15 Commissioner for the administration of the Family Leave Insurance Program
16 and payment of Family Leave Insurance benefits provided pursuant to this
17 section.

18 (c)(1) The Fund shall consist of contributions equal to 0.93 percent of each
19 employee's wages, or a different rate as determined by the Commissioner
20 pursuant to subdivision (2) of this subsection, of which one-half shall be

1 deducted from an employee's wages and one-half shall be paid by the
2 employee's employer.

3 (2)(A) Notwithstanding subdivision (1) of this subsection, on or before
4 February 1 of the first year of each legislative biennium, the Commissioner
5 shall determine the rate of contribution necessary to provide Family Leave
6 Insurance benefits for the next two years at the rate set forth in subsection (f)
7 of this section. However, the rate of contribution determined by the
8 Commissioner shall not exceed one percent of each employee's wages.

9 (B) The new rate of contribution determined by the Commissioner
10 shall take effect on February 1 and shall remain in effect for two years.

11 (C) If the rate of contribution is equal to one percent of each
12 employee's wages and is insufficient to fund Family Leave Insurance benefits
13 at the rate set forth in subsection (f) of this section, the Commissioner shall
14 reduce the rate of Family Leave Insurance benefits to the extent necessary to
15 maintain the solvency of the Fund.

16 (d) The employer shall submit these contributions to the Commissioner in a
17 form and at times determined by the Commissioner.

18 (e) An employee shall file an application for Family Leave Insurance
19 benefits with the Commissioner under this section on a form provided by the
20 Commissioner. The Commissioner shall determine eligibility of the employee
21 based on the following criteria:

1 (1) The purposes for which the claim is made are documented.

2 (2) The employee provided his or her employer with reasonable
3 advanced notice of the requested leave.

4 (f)(1) Except as otherwise provided pursuant to subsection (c) of this
5 section, an employee awarded Family Leave Insurance benefits under this
6 section shall receive the employee's average weekly wage or an amount equal
7 to a 40-hour workweek paid at a rate double that of the livable wage, as
8 determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is
9 less.

10 (2) An employee shall be entitled to no more than 12 weeks of Family
11 Leave Insurance benefits in a 12-month period.

12 (g) The Commissioner of Labor shall make a determination of each claim
13 no later than five days after the date the claim is filed, and Family Leave
14 Insurance benefits shall be paid from the Fund created pursuant to this section.
15 An employee or employer aggrieved by a decision of the Commissioner under
16 this subsection may file with the Commissioner a request for reconsideration
17 within 30 days after receipt of the Commissioner's decision. Thereafter, an
18 applicant denied reconsideration may file an appeal to the Civil Division of the
19 Superior Court in the county where the employment is located.

20 (h)(1) A self-employed person, including a sole proprietor or partner owner
21 of an unincorporated business, may elect to obtain coverage under the Family

1 Leave Insurance Program pursuant to this section for a period of three years by
2 filing a notice of his or her election with the Commissioner on a form provided
3 by the Commissioner.

4 (2) A person who elects coverage pursuant to this subsection may file a
5 claim for and receive Family Leave Insurance benefits pursuant to this section
6 after making six months of contributions to the Fund.

7 (3) A person who elects to obtain coverage pursuant to this subsection
8 shall:

9 (A) contribute a portion of his or her work income equal to the
10 amount established pursuant to subsection (c) of this section at times
11 determined by the Commissioner; and

12 (B) provide to the Commissioner any documentation of his or her
13 income or related information that the Commissioner determines is necessary.

14 (4) A person who elects coverage pursuant to this subsection may
15 terminate that coverage at the end of the three-year period by providing the
16 Commissioner with written notice of the termination at least 30 days before the
17 end of the period.

18 (i) A person who willfully makes a false statement or representation for the
19 purpose of obtaining any benefit or payment under the provisions of this
20 section, either for himself or herself or for any other person, after notice and
21 opportunity for hearing, may be assessed an administrative penalty of not more

1 than \$20,000.00 and shall forfeit all or a portion of any right to compensation
2 under the provisions of this section, as determined to be appropriate by the
3 Commissioner after a determination by the Commissioner that the person has
4 willfully made a false statement or representation of a material fact.

5 (j)(1) An individual filing a claim for benefits pursuant to this section shall,
6 at the time of filing, be advised that:

7 (A) Family Leave Insurance benefits may be subject to income tax;

8 (B) requirements exist pertaining to estimated tax payments;

9 (C) the individual may elect to have income tax deducted and
10 withheld from the individual's benefits payment; and

11 (D) the individual may change a previously elected withholding
12 status.

13 (2) Amounts deducted and withheld from Family Leave Insurance
14 benefits shall remain in the Family Leave Insurance Special Fund until
15 transferred to the appropriate taxing authority as a payment of income tax.

16 (3) The Commissioner shall follow all procedures specified by the
17 federal Internal Revenue Service pertaining to the deducting and withholding
18 of income tax.

19 (k) The Commissioner may adopt rules as necessary to implement this
20 section.

1 Sec. 4. EFFECTIVE DATES

2 (a) This act shall take effect on January 1, 2018.

3 (b) Employers shall begin deducting taxes from employees' wages on
4 July 1, 2018, and, beginning on January 1, 2019, employees may begin to
5 receive benefits under this act.