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S.82

Introduced by Senators Sirotkin, Cummings, Ayer, Balint, Clarkson, Ingram,
and Pearson

Referred to Committee on

Date:

Subject: Labor; employment practices; paid family leave

Statement of purpose of bill as introduced: This bill proposes to create a Family Leave Insurance Program within the Department of Labor that will provide employees with 12 weeks of paid family leave and that will be funded by contributions from employers and employees. This bill also proposes to amend Vermont's existing family leave law to extend coverage to additional employees, to clarify certain provisions, and to create an exemption from the law's rehiring requirements for employers that employ the equivalent of four or fewer full-time employees.

An act relating to paid family leave

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

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

§ 471. DEFINITIONS

As used in this subchapter:

1 (1) “Employer” means an individual, organization ~~or~~ governmental
2 body, partnership, association, corporation, legal representative, trustee,
3 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,
4 air or express company doing business in or operating within this State ~~which~~
5 ~~for the purposes of parental leave, employs 10 or more individuals who are~~
6 ~~employed for an average of at least 30 hours per week during a year and for the~~
7 ~~purposes of family leave, employs 15 or more individuals for an average of at~~
8 ~~least 30 hours per week during a year.~~

9 (2) “Employee” means a person who, in consideration of direct or
10 indirect gain or profit, has been continuously employed by the same employer
11 for a period of ~~one year~~ six months for an average of at least ~~30~~ 20 hours
12 per week.

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

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

18 (B) the serious illness of the employee’s child, stepchild or ward who
19 lives with the employee, foster child, parent, spouse, or parent of the
20 employee’s spouse;

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

5 (C) the employee’s pregnancy;

6 (D) the birth of the employee’s child; or

7 ~~(B)~~(E) the initial placement of a child 16 years of age or younger
8 with the employee for the purpose of adoption or foster care.

9 ~~(5)~~(4) “Serious illness” means an accident, disease, or physical or
10 mental condition that:

11 (A) poses imminent danger of death;

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

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

15 (5) “Commissioner” means the Commissioner of Labor.

16 (6) “Full-time equivalent employees” means the number of employees
17 expressed as the number of employee hours worked during a calendar quarter
18 divided by 520.

19 (7) “Vermont’s weekly livable wage” means a 40-hour workweek paid
20 at the rate of the livable wage determined by the Joint Fiscal Office pursuant to
21 2 V.S.A. § 505.

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

2 § 472. FAMILY LEAVE

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

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

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

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

11 (2)(4) ~~for family leave, for the serious illness of the employee; or~~

12 (5) the serious illness of the employee's child, stepchild or ward of the
13 employee who lives with the employee, foster child, parent, spouse, or parent
14 of the employee's spouse.

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

19 (c) The employer shall continue employment benefits for the duration of
20 the family leave at the level and under the conditions coverage would be
21 provided if the employee continued in employment continuously for the

1 duration of the leave. The employer may require that the employee contribute
2 to the cost of the benefits during the leave at the employee's existing rate of
3 ~~employee~~ contribution.

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

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

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

14 (3) In the case of an unanticipated serious illness or premature birth, the
15 employee shall, as soon as reasonably possible, give the employer notice of the
16 commencement of the leave.

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

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

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

3 ~~(f)(1) Upon return from leave taken under this subchapter, an employee~~
4 ~~shall be offered~~ An employer that employs five or more full-time equivalent
5 employees shall offer an employee returning from family leave taken under
6 this subchapter the same or a comparable job at the same level of
7 compensation, employment benefits, seniority, or any other term or condition
8 of the employment existing on the day the family leave began. This
9 subchapter shall not apply if, prior to requesting leave, the employee had been
10 given notice or had given notice that the employment would terminate. This
11 subsection shall not apply if the employer can demonstrate by clear and
12 convincing evidence that:

13 ~~(1)(A)~~ during the period of leave, the employee's job would have
14 been terminated or the employee laid off for reasons unrelated to the leave or
15 the condition for which the leave was granted; or

16 ~~(2)(B)~~ the employee performed unique services and hiring a
17 permanent replacement during the leave, after giving reasonable notice to the
18 employee of intent to do so, was the only alternative available to the employer
19 to prevent substantial and grievous economic injury to the employer's
20 operation.

1 (2) Small business exemption. An employer that employs four or fewer
2 full-time equivalent employees shall grant a preference in hiring to any
3 employee who takes family leave under this subchapter. To be eligible for a
4 preference in hiring, the employee shall provide written notice to the employer
5 of the date when he or she will become available for work no later than two
6 weeks before the conclusion of his or her leave. The preference shall be
7 limited to the same or any comparable job that becomes available within
8 12 months of the date on which the employee has notified the employer that he
9 or she will become available for work.

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 pursuant to this section.

17 (c)(1)(A) The Fund shall consist of contributions equal to 0.75 percent of
18 each worker's wages of which one-half shall be deducted from a worker's
19 wages and one-half shall be paid by the worker's employer.

20 (B) An employer may elect to pay a greater share of the contribution
21 for each of its workers.

1 (2) If the contributions pursuant to this subsection are insufficient to
2 fund Family Leave Insurance benefits at the rate set forth in subsection (e) of
3 this section, the Commissioner shall reduce the rate of Family Leave Insurance
4 benefits to the extent necessary to maintain the solvency of the Fund.

5 (3) The employer shall submit contributions to the Commissioner in a
6 form and at times determined by the Commissioner.

7 (4) The Commissioner shall adopt rules providing for a reduction of or
8 credit against contributions made pursuant to this subsection if the employer
9 offers a comparable or more generous leave plan for its employees.

10 (5) As used in this subsection, “worker” means an individual employed
11 or permitted to work by an employer, where the employer is unable to
12 show that:

13 (A) the individual is free from direction or control over the
14 performance of the work, both under the contract of service and in fact;

15 (B) the work is either outside the usual course of business for which
16 the work is performed, or outside all the places of business of the enterprise for
17 which the work is performed; and

18 (C) the individual is customarily engaged in an independently
19 established trade, occupation, profession, or business.

20 (d) An employee shall file an application for Family Leave Insurance
21 benefits with the Commissioner on a form provided by the Commissioner.

1 The Commissioner shall determine eligibility of the employee based on the
2 following criteria:

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

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

6 (e)(1) Except as otherwise provided pursuant to subsection (c) of this
7 section, an employee awarded Family Leave Insurance benefits under this
8 section shall receive:

9 (A) if the employee earns an average weekly wage that is not more
10 than Vermont's weekly livable wage, 90 percent of his or her average weekly
11 wage;

12 (B) if the employee earns an average weekly wage that is greater than
13 Vermont's weekly livable wage rate but not more than two times Vermont's
14 weekly livable wage rate, 60 percent of his or her average weekly wage; and

15 (C) if the employee earns an average weekly wage that is more than
16 two times Vermont's weekly livable wage, 50 percent of his or her average
17 weekly wage.

18 (2) Notwithstanding subdivision (1) of this subsection, no employee
19 may receive weekly Family Leave Insurance benefits equal to more than two
20 times Vermont's weekly livable wage.

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

3 (4)(A) An employee shall not be entitled to receive Family Leave
4 Insurance benefits in any week that he or she receives compensation pursuant
5 to 21 V.S.A. chapter 9 or chapter 17, or is receiving disability benefits under
6 federal or State law.

7 (B) In a week in which an employee is receiving benefits through a
8 disability insurance plan or other employer-provided benefit program, the
9 combined amount of those benefits and any Paid Family Leave benefits
10 received pursuant to this section shall not exceed the employee's average
11 weekly wage.

12 (f) 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 employee or employer denied reconsideration may file an appeal in the Civil
19 Division of the Superior Court in the county where the employment is located.

20 (g) A person who willfully makes a false statement or representation for the
21 purpose of obtaining any benefit or payment under the provisions of this

1 section, either for himself or herself or for any other person, after notice and
2 opportunity for hearing, may be assessed an administrative penalty of not more
3 than \$20,000.00 and shall forfeit all or a portion of any right to compensation
4 under the provisions of this section, as determined to be appropriate by the
5 Commissioner after a determination by the Commissioner that the person has
6 willfully made a false statement or representation of a material fact.

7 (h) The Commissioner may adopt rules as necessary to implement this
8 section.

9 Sec. 4. SEVERABILITY

10 If any provision of this act or the application of the provision to any person
11 or circumstances is held invalid, the remainder of the act and the application of
12 its provisions to persons or circumstances, other than those as to which they
13 are held invalid, shall not be affected.

14 Sec. 5. EFFECTIVE DATES

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

16 (b) Employers shall begin deducting contributions from employees' wages
17 on July 1, 2018, and, beginning on January 1, 2019, employees may begin to
18 receive benefits under this act.