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S.15

Introduced by Senators Baruth, Sirotkin, Lyons, McCormack, Pollina, and
Zuckerman

Referred to Committee on

Date:

Subject: Labor; employment practices; paid absence from work

Statement of purpose of bill as introduced: This bill proposes to ensure that
employees accrue a minimum number of hours of paid sick time annually and
prohibits employers from penalizing employees who use their accrued sick
time.

11 An act relating to absence from work for health care and safety

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

13 Sec. 1. FINDINGS

14 The General Assembly finds:

15 (1) According to the Vermont Department of Labor 2013 Fringe
16 Benefits study, roughly one-half of all private sector employers provide some
17 form of paid leave to their employees. Less than 50 percent of private sector
18 workers employed by companies with under 20 workers have access to paid
19 leave that is specifically permitted to be used as sick time, while less than

1 three-quarters of workers employed by larger companies have access to paid
2 sick time.

3 (2) This figure represents nearly 60,000 working Vermonters, of whom
4 approximately 2,000 are employed as temporary workers for the State of
5 Vermont.

6 Sec. 2. PURPOSE

7 The purpose of this act is to promote a healthy work environment by
8 ensuring that employees are provided with paid sick time and that employers
9 do not penalize employees who use paid sick leave benefits.

10 Sec. 3. 21 V.S.A. § 384 is amended to read:

11 § 384. EMPLOYMENT; WAGES

12 * * *

13 (d) For the purposes of earned sick time, an employer must comply with
14 the provisions required under subchapter 4B of this chapter.

15 Sec. 4. 21 V.S.A. chapter 5, subchapter 4B is added to read:

16 Subchapter 4B. Earned Sick Time

17 § 481. DEFINITIONS

18 As used in this subchapter:

19 (1) “Combined time off” means a policy wherein the employer provides
20 time off for vacation, sickness, personal reasons, or holidays, and the employee
21 has the option to use all of the leave for whatever purpose he or she chooses.

1 (2) “Commissioner” means the Commissioner of Labor.

2 (3) “Differential” means compensation paid in addition to the usual
3 compensation paid to an employee of a health care facility as defined in
4 18 V.S.A. § 9432(8) who does not work on a regular schedule and who works
5 only when he or she indicates that he or she is available to work and has no
6 obligation to work when he or she does not indicate availability.

7 (4) “Earned sick time” means discretionary time earned and accrued
8 under the provisions of this subchapter and used for the purposes listed in
9 subdivisions 483(a)(1)–(5) of this subchapter.

10 (5) “Employee” has the same meaning as set forth in section 341 of this
11 title, except that it shall not include employees of the federal government.

12 (6) “Employer” means an individual, organization, or governmental
13 body, partnership, association, corporation, legal representative, trustee,
14 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,
15 air, or express company doing business in or operating within this State.

16 (7) “Full-time employee” means an employee who works more than
17 30 hours per week.

18 (8) “Seasonal employee” has the same meaning as set forth in
19 subdivision 2002(4) of this title.

1 § 482. EARNED SICK TIME

2 (a) An employee shall accrue not less than one hour of earned sick time for
3 every 30 hours worked.

4 (b) An employer may require a waiting period for new hires. During this
5 waiting period, an employee shall accrue earned sick time pursuant to this
6 section but cannot use the earned sick time until after he or she has worked for
7 the employer for 500 hours.

8 (c) In the absence of a more generous paid time policy or collective
9 bargaining agreement provision, an employer may:

10 (1) limit to a maximum of 56 hours in a 12-month period the amount of
11 earned sick time accrued pursuant to this section; or

12 (2) limit to 40 hours the number of hours in each workweek for which
13 full-time employees not subject to the overtime provisions of the Federal Fair
14 Labor Standards Act, 29 U.S.C. § 213(a)(1), may accrue earned sick time
15 pursuant to this section.

16 (d) Earned sick time accrued pursuant to this section shall be compensated
17 at the same hourly rate and with the same benefits, including health care
18 benefits, as the employee normally earns for hours worked.

19 (e) Service or tipped employees shall be compensated at an amount that is
20 not less than the minimum wage required for nonservice or nontipped
21 employees pursuant to section 384 of this title.

1 (f) An employer with a paid time policy that is comparable to or more
2 generous than the earned sick time provided under this section is not required
3 to provide additional earned sick time.

4 (g) If an employer offers combined time off that does not specifically
5 include paid sick time, an employee may use all or a portion of that time for
6 the purposes listed in subdivisions 483(a)(1)–(5) of this title.

7 (h) Nothing in this section shall be construed to interfere with the
8 enforcement of or require a change in a collective bargaining agreement that is
9 comparable to or more generous than the earned sick time provided under this
10 section.

11 § 483. USE OF EARNED SICK TIME

12 (a) An employee may use earned sick time accrued pursuant to section 482
13 of this title for any of the following reasons:

14 (1) The employee is ill or injured.

15 (2) The employee obtains professional diagnostic, preventive, routine, or
16 therapeutic health care.

17 (3) The employee cares for a sick or injured parent, grandparent, spouse,
18 child, brother, sister, parent-in-law, grandchild, foster child, person residing
19 with the employee, or family member for whom the employee is primarily
20 responsible to arrange or provide care for, including helping that individual
21 obtain diagnostic, preventive, routine, or therapeutic health treatment.

1 (4) The employee is arranging for social or legal services or obtaining
2 medical care or counseling for the employee or for the employee's parent,
3 grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster
4 child, person residing with the employee, or family member for whom the
5 employee is primarily responsible to arrange or provide care for, who is a
6 victim of domestic violence, sexual assault, or stalking or who is relocating as
7 the result of domestic violence, sexual assault, or stalking. As used in this
8 section, "domestic violence," "sexual assault," and "stalking" shall have the
9 same meaning as in 15 V.S.A. § 1151.

10 (5) The employee cares for a parent, grandparent, spouse, child, brother,
11 sister, parent-in-law, grandchild, foster child, person residing with the
12 employee, or family member for whom the employee is primarily responsible
13 to arrange or provide care for, because the school or business where that
14 individual is normally located during the employee's work day is closed for
15 public health or safety reasons.

16 (b) An employee shall use earned sick time accrued pursuant to section 482
17 of this title in the smallest time increments that the employer's payroll system
18 uses to account for other absences when the employee's absence is shorter than
19 a normal workday.

20 (c) An employee may use no more than 56 hours of earned sick time
21 accrued pursuant to section 482 of this title in any one year. Unused hours

1 shall be carried over to the next year and the employee has the right to earn the
2 balance between the unused portion and the maximum allowed.

3 (d) In the absence of a more generous paid time plan or collective
4 bargaining agreement, upon separation from employment, an employee shall
5 not be entitled to payment for unused earned sick time accrued pursuant to
6 section 482 of this title unless agreed upon by the employer.

7 (e) If, at an employer's discretion, an employer pays an employee for
8 unused earned sick time accrued pursuant to section 482 of this title at the end
9 of an annual period, then the amount for which the employee was compensated
10 does not carry over to the next year.

11 (f) An employee who is rehired within 12 months after a separation from
12 employment shall retain earned sick time accrued pursuant to section 482 of
13 this title that was unused at the time of separation, unless the employee was
14 compensated for this earned sick time at the time of separation from
15 employment. An employer shall retain a record of the earned sick time
16 accrued by an employee for at least 12 months after the employee's separation
17 from employment.

18 (g) An employer may require an employee to make reasonable efforts to
19 find a replacement for planned absences.

20 (h) An employer may require an employee planning to take earned sick
21 time accrued pursuant to section 482 of this title to:

1 (1) make reasonable efforts to avoid scheduling routine or preventive
2 health care during regular work hours; or

3 (2) notify the employer as soon as practicable of the intent to take
4 earned sick time accrued pursuant to section 482 of this title and the expected
5 duration of the employee's absence.

6 (i) An employer shall post notice of the provisions of this section in a form
7 provided by the Commissioner in a place conspicuous to employees at the
8 employer's place of business. An employer shall also notify an employee of
9 the provisions of this section at the time of the employee's hiring.

10 (j)(1) This section shall not apply to an employee of a health care facility as
11 defined in 18 V.S.A. § 9432(8) if the employee:

12 (A) is under no obligation to work a regular schedule;

13 (B) works only when he or she indicates that he or she is available to
14 work and has no obligation to work when he or she does not indicate
15 availability; and

16 (C) receives higher pay in the form of a differential as defined in
17 section 481 of this title, or some other increased compensation than that paid to
18 an employee of a health care facility performing the same job on a regular
19 schedule.

20 (2) An employer may agree to provide earned sick time to an employee
21 covered by this subsection.

1 (k) This section shall not apply to an employee of a school district,
2 supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that:

3 (1) is employed pursuant to a school district or supervisory union policy
4 on substitute educators as require by the Vermont Standards Board for
5 Professional Educators Rule 5381;

6 (2) is under no obligation to work a regular schedule; and

7 (3) is not under contract or written agreement to provide at least one
8 period of long-term substitute coverage which is defined as 30 or more
9 consecutive calendar days in the same assignment.

10 (l) In the absence of a more generous paid time plan or collective
11 bargaining agreement, a seasonal employee shall accrue earned sick time
12 pursuant to section 482 of this title during his or her first year of employment
13 but shall not use this earned sick time until his or her second year of
14 employment, provided that:

15 (1) the seasonal employee returns after the separation from employment
16 within 12 months as provided by subsection (f) of this section; and

17 (2) the seasonal employee is employed by the same employer as the
18 previous season.

19 (m) An employee who uses paid sick leave accrued pursuant to section 482
20 of this title shall not forfeit his or her rights to leave under sections 472 and
21 472a of this title.

1 (n) It shall be unlawful for an employer, employment agency, or labor
2 organization to:

3 (1) have an absence control policy that treats an employee's use of
4 earned sick leave in accordance with this subchapter or the employer's earned
5 sick time policy as an absence that could lead to or result in the employee's
6 discharge, demotion, suspension, or other adverse employment action; or

7 (2) discipline, discharge, demote, suspend, penalize, or otherwise
8 discriminate against an employee that:

9 (A) requests or uses earned sick leave in accordance with this
10 subchapter or the employer's earned sick time policy; or

11 (B) has lodged a complaint with the Commissioner alleging that the
12 employer has violated the provisions of this subchapter.

13 (o) An employer may adopt an earned sick time policy more generous than
14 the earned sick leave provided by this subchapter. Nothing in this subchapter
15 shall be construed to diminish an employer's obligation to comply with any
16 collective bargaining agreement or any employment benefit program or plan
17 which provides greater sick time rights than the rights provided by this
18 subchapter. A collective bargaining agreement or employment benefit
19 program or plan may not diminish rights provided by this subchapter.

20 (p) An employer who violates this section shall be subject to the penalty
21 provisions of section 345 of this title.

1 employers. The results of the survey shall be reported to the appropriate
2 committees.

3 Sec. 7. EFFECTIVE DATE

4 This act shall take effect on January 1, 2016.