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S.264

Introduced by Senators Pearson, Ingram and Pollina

Referred to Committee on

Date:

Subject: Labor; employment practices; paid vacation leave

Statement of purpose of bill as introduced: This bill proposes to require employers to provide employees with a minimum of two weeks of paid vacation leave per year.

An act relating to paid vacation leave

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

Sec. 1. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Paid Vacation Leave

§ 571. DEFINITIONS

As used in this subchapter:

(1)(A) “Employer” means any of the following who employ one or more individuals in Vermont:

(i) a person;

(ii) the receiver, trustee, trustee in bankruptcy, or successor of a person; or

1 (iii) the administrator or executor of the estate of a deceased
2 individual.

3 (B) The term “employer” includes any agent of an employer.

4 (2) “Combined time off” means a policy wherein the employer provides
5 time off from work for vacation, sickness, or personal reasons, and the
6 employee has the option to use all of the leave for whatever purpose he or she
7 chooses.

8 (3) “Commissioner” means the Commissioner of Labor.

9 (4) “Earned sick time” means time off that is earned and accrued
10 pursuant to the provisions of subchapter 4B of this chapter.

11 (5) “Employee” means a person who, in consideration of direct or
12 indirect gain or profit, is employed by an employer for an average of not less
13 than 18 hours per week during a year. However, the term “employee” shall not
14 include:

15 (A) An individual who is employed by the federal government.

16 (B) An individual who is employed by an employer:

17 (i) for 20 weeks or fewer in a 12-month period; and

18 (ii) in a job scheduled to last 20 weeks or fewer.

19 (C) An employee of a health care facility as defined in 18 V.S.A.

20 § 9432(8) or a facility as defined in 33 V.S.A. § 7102(2) if the employee only
21 works on a per diem or intermittent basis.

1 (D) A substitute teacher employed by a school district, supervisory
2 district, or supervisory union as defined in 16 V.S.A. § 11 that is:

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

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

7 (iii) not under contract or written agreement to provide at least one
8 period of long-term substitute coverage consisting of 30 or more consecutive
9 school days in the same assignment.

10 (E) An individual who is under 18 years of age.

11 (F) An individual who is either:

12 (i) a sole proprietor or partner owner of an unincorporated
13 business who is excluded from the provisions of chapter 9 of this title pursuant
14 to subdivision 601(14)(F) of this title; or

15 (ii) an executive officer, manager, or member of a corporation or a
16 limited liability company for whom the Commissioner has approved an
17 exclusion from the provisions of chapter 9 of this title pursuant to subdivision
18 601(14)(H) of this title.

19 (G) An individual who:

20 (i) works on a per diem or intermittent basis;

1 (ii) works only when he or she indicates that he or she is available
2 to work;

3 (iii) is under no obligation to work for the employer offering the
4 work; and

5 (iv) has no expectation of continuing employment with the
6 employer.

7 (6) “Paid time-off policy” means any policy under which the employer
8 provides paid time off from work to an employee that includes a combination
9 of one or more of the following:

10 (A) annual leave;

11 (B) combined time off;

12 (C) vacation leave;

13 (D) personal leave;

14 (E) sick leave; or

15 (F) any similar type of leave.

16 (7) “Vacation leave” means time that an employee accrues pursuant to
17 this subchapter that may be used for vacation or personal reasons.

18 § 572. ACCRUAL OF VACATION LEAVE

19 (a)(1) An employee shall accrue not less than one hour of vacation leave
20 for every 26 hours worked.

1 (2) As an alternative to the accrual of vacation leave pursuant to
2 subdivision (1) of this subsection, an employer may provide an employee with
3 a fixed number of vacation hours at the beginning of each 12-month period.
4 An employer shall provide at least 80 hours of vacation leave per 12-month
5 period to each employee to whom it elects to provide vacation leave pursuant
6 to this subdivision (a)(2).

7 (3) An employer may comply with the provisions of this subsection by
8 providing its employees with combined time off or leave by any name,
9 provided the combined time off or leave:

10 (A) may be used by the employee for vacation or personal reasons;
11 and

12 (B) accrues at a rate that is equal to or greater than the minimum
13 requirements set forth in subdivisions (1) and (2) of this subsection (a).

14 (b) An employer that elects to permit employees to accrue vacation leave
15 pursuant to subdivision (a)(1) of this section may, for full-time employees who
16 are exempt from the overtime provisions of the Federal Fair Labor Standards
17 Act, 29 U.S.C. § 213, limit the number of hours for which the employee may
18 accrue vacation leave to 40 hours per week.

19 (c)(1) Vacation leave that remains unused at the end of an annual period
20 shall be carried over to the next annual period, and the employee shall continue

1 to accrue additional vacation leave as provided pursuant to subsection (a) of
2 this section.

3 (2) Notwithstanding subdivision (1) of this subsection, an employer may
4 adopt a leave policy that provides that unused vacation leave will expire not
5 earlier than two years after the date on which it accrued.

6 (d)(1) Vacation leave shall be compensated at a rate that is equal to the
7 greater of either:

8 (A) the normal hourly wage rate of the employee; or

9 (B) the minimum wage rate pursuant to section 384 of this title.

10 (2) Group insurance benefits shall continue during an employee's use of
11 vacation leave at the same level and conditions that coverage would be
12 provided for normal work hours. The employer may require that the employee
13 contribute to the cost of the benefits while using vacation leave at the existing
14 rate of employee contribution.

15 (e) An employer shall calculate the amount of vacation leave that an
16 employee has accrued pursuant to subdivision (a)(1) of this section:

17 (1) during each pay period; or

18 (2) on a quarterly basis, provided that an employee may use vacation
19 leave as it accrues during each quarter.

1 § 573. USE OF VACATION LEAVE

2 (a) An employee shall be permitted to use vacation leave accrued pursuant
3 to section 572 of this subchapter for absences of less than eight hours, provided
4 that an employer shall not be required to permit an employee to use vacation
5 leave in increments of less than one hour.

6 (b) An employer may require a probationary period for newly hired
7 employees of up to one year. During a probationary period, an employee shall
8 accrue vacation leave pursuant to section 572 of this subchapter, but shall not
9 be permitted to use the vacation leave until after he or she has completed the
10 waiting period.

11 (c) An employer shall not require an employee to find a replacement for
12 times when the employee is using vacation leave.

13 (d) An employer may require an employee to provide reasonable advanced
14 notice, not to exceed 30 days, of his or her intent to use vacation leave.

15 § 574. SEPARATION FROM EMPLOYMENT

16 (a) Upon separation from employment, an employee shall not be entitled to
17 any payment for unused vacation leave accrued pursuant to section 572 of this
18 subchapter unless agreed to by the employer or provided pursuant to an
19 employment contract or collective bargaining agreement.

20 (b)(1) An employee who is discharged by his or her employer after he or
21 she has completed a waiting period required pursuant to subsection 573(b) of

1 this subchapter and is subsequently rehired by the same employer within 12
2 months after being discharged from employment:

3 (A) shall not be required to complete a new probationary period
4 pursuant to subsection 573(b) of this subchapter; and

5 (B) shall not be entitled to retain any vacation leave that accrued
6 before the time of his or her discharge unless agreed to by the employer.

7 (2) An employee who voluntarily separates from employment after he or
8 she has completed a probationary period required pursuant to subsection
9 573(b) of this subchapter and is subsequently rehired by the same employer
10 within 12 months after the separation from employment:

11 (A) may be required to complete a new probationary period pursuant
12 to subsection 573(b) of this subchapter before he or she may begin using
13 accrued vacation leave; and

14 (B) shall not be entitled to retain any vacation leave that accrued
15 before his or her separation from employment unless agreed to by the
16 employer.

17 § 575. NOTICE; ENFORCEMENT; RULEMAKING

18 (a)(1) An employer shall post notice of the provisions of this subchapter in
19 a form provided by the Commissioner in a place conspicuous to employees at
20 the employer's place of business.

1 (2) An employer shall notify an employee of the provisions of this
2 subchapter at the time of the employee's hiring.

3 (b) The provisions against retaliation set forth in section 397 of this title
4 shall apply to this subchapter.

5 (c) An employer who violates this subchapter shall be subject to the penalty
6 provisions of section 345 of this title.

7 (d) The Commissioner shall enforce this subchapter in accordance with the
8 procedures established in section 342a of this title. However, the appeal
9 provision of subsection 342a(f) shall not apply to any enforcement action
10 brought pursuant to this subsection.

11 (e) The Commissioner shall adopt rules as necessary to implement the
12 provisions of this subchapter.

13 § 576. COLLECTIVE BARGAINING AGREEMENTS; EMPLOYER

14 POLICIES

15 (a) Nothing in this subchapter shall be construed to prevent an employer
16 from:

17 (1) providing a greater amount of vacation leave than the amount
18 required pursuant to this subchapter; or

19 (2) entering into a collective bargaining agreement that provides a
20 greater amount of vacation leave than the amount required pursuant to this
21 subchapter.

1 (b) Nothing in this subchapter shall be construed to diminish an employer's
2 obligation to comply with any collective bargaining agreement or policy that
3 provides a greater amount of vacation leave than the amount required pursuant
4 to this subchapter.

5 (c) No collective bargaining agreement or employer policy may diminish
6 the rights provided by this subchapter.

7 § 577. NEW EMPLOYER EXEMPTION

8 (a) Notwithstanding any provision of this subchapter to the contrary, new
9 employers shall not be subject to the provisions of this subchapter for a period
10 of one year after the employer hires its first employee.

11 (b) For purposes of enforcement under section 575 of this subchapter, an
12 employer shall be presumed to be subject to the provisions of this subchapter
13 unless the employer proves that a period of not more than one year elapsed
14 between the date on which the employer hired its first employee and the date
15 on which the employer is alleged to have violated the provisions of this
16 subchapter.

17 (c) An employer shall not transfer an employee to a second employer with
18 whom there is, at the time of the transfer, substantially common ownership,
19 management, or control for the purposes of either employer claiming an
20 exemption pursuant to subsection (a) of this section.

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2020.