

## Vermont Becomes Fifth State to Enact Paid Sick Leave

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On March 9, 2016, Vermont Governor Peter Shumlin signed into law bill [H. 187](#) ("Act"), which will require Vermont employers to provide paid sick leave beginning on January 1, 2017. Vermont has become the fifth state (after Connecticut, California, Massachusetts, and [Oregon](#)) to enact mandatory paid sick leave legislation. The Act is intended "to promote a healthier environment at work, school, and in public by ensuring that employees are provided with paid leave time for purposes of health care and safety."

### Which Employers Are Covered?

- The Act applies to all employers, both public and private, operating in Vermont, regardless of size.
- Employers with five or fewer employees who are employed for an average of no fewer than 30 hours per week during a year ("small employers"), however, are not subject to the Act's requirements until January 1, 2018.<sup>1</sup>
- New employers are exempt from the requirements under the Act for a period of one year after they have hired their first employee.<sup>2</sup>

### Which Employees Are Covered?

- Under the Act, an "employee" is any person who is employed for an average of no fewer than 18 hours per week during a year.
- Several categories of employees are excluded from coverage under the Act, including, but not limited to:

<sup>1</sup> Additionally, the Act provides that the Vermont Commissioner of Labor and the Secretary of Commerce and Community Development will create a program to help small employers implement the requirements of the Act.

<sup>2</sup> An employer may not transfer an employee to another employer with whom the employer has substantially common ownership, management, or control for the purposes of either employer claiming an exemption under this provision.

- federal employees,
- certain employees employed by the State of Vermont,<sup>3</sup>
- employees who work on a per-diem or intermittent basis,
- employees under the age of 18, and
- individuals employed by the employer for 20 weeks or less in a 12-month period in a job that is scheduled to last 20 weeks or less.

### **For What Purposes Can Paid Leave Be Taken?**

Under the Act, sick time may be taken for the following reasons:

- an employee's own illness or injury, or to obtain professional diagnostic, preventive, routine, or therapeutic health care;
- for the same purposes when caring for a family member,<sup>4</sup> including accompanying the employee's family member to an appointment related to that individual's long-term care;
- to arrange for social or legal services or to obtain medical care or counseling for an employee, or for the employee's family member, who is a victim of domestic violence, sexual assault, or stalking or who is relocating as the result of domestic violence, sexual assault, or stalking; and
- to care for a family member because the school or business where that individual is normally located during the employee's workday is closed for public health or safety reasons.

### **How Does Sick Time Accrue?**

- Employees will begin to accrue sick time on January 1, 2017, or upon commencement of their employment, whichever is later.
- Employees accrue one hour of sick time for every 52 hours worked. (Employers may establish a more generous accrual rate.)
- From January 1, 2017, through December 18, 2018, employers may limit the amount of sick time accrued to 24 hours in any 12-month period. Beginning on

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<sup>3</sup> Exempt from coverage under the Act are individuals who are employed by the State of Vermont and exempt or excluded from the state's classified service pursuant to 3 V.S.A. § 311. This does not include individuals who are employed by the State of Vermont in a temporary capacity pursuant to 3 V.S.A. § 331.

<sup>4</sup> A "family member" includes a parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child.

January 1, 2019, employers may limit the amount of sick time accrued to 40 hours in any 12-month period.

- With respect to exempt employees, an employer may limit the number of hours for which they accrue sick time to 40 hours per week.
- Employers may impose a waiting period, during which employees will accrue sick time but cannot use the sick time. If employers choose to impose a waiting period, it may be any length of time not exceeding one year,<sup>5</sup> and the waiting period must end on or before December 31, 2017.<sup>6</sup>

### **How May Employees Use Sick Time?**

- If an employee's absence is shorter than a normal workday, the employee may use earned sick time in the smallest increments that the employer's payroll system uses for other leave time. Employers are not required to allow an employee to use earned sick time in increments of less than one hour.
- Generally, employers may adopt a policy that *requires* employees to use earned sick time if they take time off for one of the reasons covered by the Act.
- Alternatively, employers may, on a case-by-case basis, permit an employee not to use his or her sick time when absent for one of the reasons covered by the Act, so long as the employee:
  - makes up the hours of work missed during the same pay period of the absence, or
  - trades hours with another employee to cover the equivalent number of hours missed during the same period of the absence.

### **What Are the Carryover and Payment Rules?**

- Employees may carry over earned unused sick time to the next 12-month period. Employers are not required, however, to allow employees to use more than 40 hours of sick time in any 12-month period.
- If an employer chooses to pay employees for accrued, unused sick time at the end of the 12-month period, then the employee will not carry over sick time to the next 12-month period.

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<sup>5</sup> If an employee is discharged after completing the waiting period and subsequently rehired by the same employer within 12 months, the employee may not be subject to another waiting period. The employee will not, however, be able to retain any previously accrued sick time, unless agreed upon by the employer. This does not apply to employees who voluntarily separate from their employment.

<sup>6</sup> Small employers may also impose a waiting period of up to one year that must end on or before December 31, 2018.

- Employers must calculate the amount of earned sick time that an employee has accrued (i) as it accrues per pay period or (ii) on a quarterly basis, provided that the employee can use his or her accrued sick time as it is accrued during each quarter.
- Paid sick time must be compensated at the greater of (i) the normal hourly wage rate of the employee or (ii) the minimum wage under 21 V.S.A. § 384. During the time of leave, the employee's health benefits must continue, although the employer may require that the employee continue to contribute at the existing rate of employee contribution.
- Employers may require employees to make reasonable efforts to avoid scheduling routine or preventive health care during regular work hours. Employers may not, however, require an employee to find a replacement when he or she takes paid sick time, including when such time is for diagnostic, preventive, routine, or therapeutic purposes.
- Upon separation, employees are not entitled to payment for accrued, unused sick time.

### **What If an Employer Already Has a Sick Leave Policy?**

- Employers are in compliance with the Act if they provide (i) a paid time off policy or (ii) paid sick leave through a collective bargaining agreement ("CBA"), where either such policy or CBA:
  - meets or exceeds the Act's accrual and use rules and allows for the use of paid time off for all of the reasons provided under the Act, or
  - frontloads paid sick time such that employees are:
    - provided with at least the full amount of paid sick time as required under the Act at the beginning of each annual period, and
    - allowed to use such paid sick time at any time during the year for all of the reasons provided under the Act.
- In either case, the employer is not required to provide additional paid sick time if the employee chooses to use his or her paid time off for purposes other than those provided for under the Act.

### **What Are the Notice and Recordkeeping Requirements?**

- An employer may require employees to notify it as soon as practicable of their intent to use earned sick time and the expected duration of the absence.

- An employer must post, in a conspicuous place in the employer's workplace, a notice of the provisions under the Act in a form that will be provided by the Vermont Commissioner of Labor.
- An employer must also notify its employees of the provisions under the Act when an employee is hired.
- The Act does not include any recordkeeping requirements; however, in case of an alleged violation, an employer's records will be subject to examination.

### **What Other Rules and Prohibitions Should Employers Know About?**

- The Vermont Commissioner of Labor is charged with enforcing the Act.
- Employees may file complaints under the Act within two years of an alleged violation. The Vermont Department of Labor may also do so on its own initiative.
- Employers that violate the Act are subject to fines of up to \$5,000.
- The Act incorporates the anti-retaliation provisions set forth in 21 V.S.A. § 397 that prohibit retaliation when an employee makes a complaint of a violation or cooperates in an investigation of a violation, or when an employer believes an employee may do so.
- The Act does not diminish employees' rights to unpaid parental and family leave provided under the Vermont Parental and Family Leave Act.

### **What Vermont Employers Should Do Now**

The requirements of the Act for employers will take effect on January 1, 2017. In anticipation, employers operating in Vermont should:

- review existing leave policies to determine whether they comply with the requirements set forth in the Act;
- if entering into a CBA, consider how the requirements of the Act should be addressed in that agreement;
- train management, payroll, and human resources personnel on the requirements of the Act; and
- confirm with any third-party payroll vendors that the requirements under the law will be satisfied.

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