

LEGAL AND REGULATORY NOTES, FEBRUARY 2017

Are you *sure* your town is in compliance with Vermont's new Paid Sick Leave mandate?

Effective January 1, 2017, and pursuant to 21 V.S.A. §§ 481 et seq., municipalities with six or more employees who work 30 or more hours per week must provide a minimum amount of paid sick leave to certain employees, as described below. The law goes into effect one year later (January 1, 2018) for municipalities with five or fewer employees who work an average of 30 or more hours per week.

This article describes our general understanding of this complex and nuanced law. Implementing the requirements of the law and administering it in your town will require taking a number of steps.

The law requires that “eligible employees” receive at least one hour of paid sick leave for every 52 hour actually worked, including overtime. Employees who are exempt from overtime requirements under the federal Fair Labor Standards Act are assumed to work 40 hours in each work week unless the job worked specifies a lower number of hours per week.

An individual is an “eligible employee” for purposes of this law and must be provided with paid leave if he or she is an employee or an elected official of the municipality who:

- (a) is age 18 or older;
- (b) works an average of 18 or more hours per week during the year; and
- (c) is expected to work more than 20 weeks in a 12-month period. This definition includes newly-hired employees and those who are still in their probationary period of employment.

On the other hand, there is no obligation to provide paid leave to an individual who:

- (d) works on a per diem or intermittent basis;
- (e) works only when he or she indicates that he or she is available to work;
- (f) is under no obligation to work for the municipality; and
- (g) has no expectation of continuing employment with the municipality.

Although the Vermont Department of Labor refers to the law as “Vermont’s Earned Sick Time Law,” the law merely requires “paid leave” for certain purposes. Therefore, an employer may provide for this legally-required leave in any form such as vacation, personal days, combined time off (CTO), etc. Many municipalities already provide paid leave at a level that exceeds the amount required by state law. However, even those that provide paid leave must now ensure that paid leave is allowed for the five reasons specified in 21 V.S.A. § 483 and described below.

The law spells out five reasons for which employees must be allowed to use the paid leave. *All members will need to expand current leave policies and practices to include at least these reasons.* Accrued leave may be used when the employee:

1. is ill or injured;
2. obtains professional diagnostic, preventive, routine, or therapeutic health care;
3. cares for a sick or injured family member, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment, or accompanying the employee's parent, grandparent, spouse, or parent-in-law to an appointment related to his or her long-term care;
4. is arranging for social or legal services or obtaining medical care or counseling for the employee or a family member who is a victim of domestic violence, sexual assault, or stalking or is relocating because of any of these issues; or
5. cares for a family member because the school or business where that individual is normally located is closed for public health or safety reasons.

Under the law, a family member is a parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child. This usage does not precisely match that of the Vermont Parental and Family Leave Act (VPFLA), which additionally includes a civil union partner, step-child, and ward of the employee. For administrative ease and consistency in how employees are treated, it may be helpful for municipalities subject to the VPFLA to include all the aforementioned categories in defining the term "family" across subsections of their personnel policy.

In addition to the above reasons that employees must be allowed to use accrued leave, VLCT recommends allowing the use of paid leave for other purposes so employees have the flexibility to meet outside obligations. Such flexibility can contribute to employee engagement and retention.

The law contains many details about the ways in which paid leave is awarded, the ways in which it may be used, and how leave must carry over from one year to another. More information about the law can be found in the Frequently Asked Questions and Answers about the Paid Sick Leave Law which are posted on VLCT's Human Resources Assistance Program webpage, www.vlct.org/municipal-assistance-center/human-resources-assistance-program/. You may also contact the VLCT Municipal Assistance Center at info@vlct.org or 800-649-7915 for individual assistance with the leave provisions of your town's personnel policy.

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