Learn more about Vermont's New Earned Sick Time Law

As of January 1, 2017, most Vermont employers will be required to provide their employees with paid sick leave. The Vermont Department of Labor is charged with enforcing the new law. Below you will find the mandatory workplace poster. For a copy of the new poster, click here. You will also find a series of "Frequently Asked Questions". For a copy of the "Frequently Asked Questions" click here.

There is also a link to the Vermont Department of Labor's "Final Rule". For a copy of the "Final Earned Sick Time Rule" click here. To view the Act passed by the Vermont Legislators, click here. If you have questions about the new law, please call 802-828-4281.

Vermont's Earned Sick Time Act

Notice of Employee Rights

HOW IS SICK TIME EARNED?

An employee will earn one hour of earned sick time for every 52 hours of actual work, including overtime. An employee will be entitled to use up to 24 hours of earned sick time annually in 2017 and 2018, and up to 40 hours in 2019 and subsequent years.

HOW CAN SICK TIME BE USED?

An employee can use sick time when the employee or employee's child, parent, grandparent, spouse, or parent-in-law is sick or injured. This includes helping a family member obtain health care or travel to an appointment related to his or her long-term care, or to address the effects of domestic violence, sexual assault or stalking. An employee may use earned sick time to care for a family member because the school or business where the family member is located is closed for public health or safety reasons.

VERMONT
DEPARTMENT OF LABOR
www.labor.vermont.gov

FOR MORE INFORMATION,
or to report suspected violations of the Act, contact the
Vermont Department of Labor at 1-802-828-0267

WHEN DOES ACCRUAL BEGIN?

An employee begins accruing sick leave on January 1st, 2017 or on the first day of employment, whichever comes later.

IS THERE AN EXCEPTION FOR SMALL BUSINESSES?

A small business that employs five or fewer full-time employees will not be subject to the Act until January 1st, 2018.

WHEN WILL PAID SICK TIME BE AVAILABLE TO USE?

An employer may elect to allow the use of earned sick time as it accrues, or may impose a waiting period of up to one year after January 1st, 2017 or the first day of employment, whichever comes later.

ARE ALL EMPLOYEES ENTITLED TO SICK TIME?

Not all employees are subject to the protections of the Act. There are limited exemptions for certain types of employment, as well as for certain seasonal and part time employees. For a complete list, go to:
http://legislature.vermont.gov/statutes/section/21/005/00481

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Vermont Earned Sick Time Law Frequently Asked Questions

These FAQs are based upon the Vermont Earned Sick Time Law, 21 V.S.A. §§ 481- 486, and the accompanying Earned Sick Time Administrative Rules, which are available at:

http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT069/ACT069%20As%20Enacted.pdf

http://labor.vermont.gov/wordpress/wp-content/uploads/Earned-sick-time-clean-copy-proprule.pdf

The Earned Sick Time Law sets minimum requirements; employers may choose to provide more generous policies.

Section A: Introduction

Q: When do employers have to start complying with the law?
A: All employers with more than five full-time employees must begin complying with the Earned Sick Time Law on January 1, 2017. Employers of five or fewer full-time employees will have to start complying by January 1, 2018.

Q. What does the Earned Sick Time Law do?
A. The law entitles Vermont employees to earn up to 24 hours per annual period of paid leave in 2017 and 2018, and 40 hours per year of paid leave after January 1, 2019, to address certain personal and family needs. The number of hours to which an employee is entitled is related to the number of hours worked.

Q: How do employees earn sick time?
A: Employers have two options to provide their employees earned sick time. Employees can accrue time as they work, or can be provided with a lump sum on a yearly basis. One hour of sick time is accrued for every 52 hours of actual work, including overtime.

Section B: Employees Eligible for Earned Sick time

Q: Which employees are eligible for earned sick time?
A: Employees whose primary place of work is in Vermont, and who are not subject to the exemptions listed below.

Q: How do I know if my primary place of work is in Vermont?
A: For most employees, the location where they do most of their work for their employer is their primary place of work.

Q: Which employees are exempt from earned sick time?
A: The exempt employees are:

1. United States government employees;
2. employees who works for an average of less than 18 hours per week;
3. seasonal employees employed by an employer for 20 weeks or fewer in a 12-month period. If the job extends past 20 weeks, sick time accrual shall be deemed to have commenced on the first day of work. The one year waiting period may still apply to seasonal employees;
4. certain exempt state employees who are not covered by the collective bargaining agreement;
5. per diem health care workers;
6. substitute teachers, except for long-term substitutes;
7. minors under 18 years of age;
8. individuals that are either:
    a. a sole proprietor or partner owner of an unincorporated business who is excluded from the definition of employee under 21 VSA § 601(14) (F); or
    b. an executive officer, manager, or member of a corporation or a limited liability company for whom the Commissioner has approved an exclusion from the provisions of chapter 9 of Title 21, pursuant to § 601(14) (H);
9. an individual that works on a per diem or intermittent basis, only works when he or she indicates they can work, is under no obligation to work for the employer offering work **and** has no expectation of continuing employment with the employer.

Q: Does this law apply to non-profit employees, unionized employees, domestic workers, agricultural workers, and home health care workers?
A: Yes.

Q: Does this law apply to independent contractors?
A: No. Properly classified independent contractors are not employees.

Q: If an employee doesn't live in Vermont, could he or she be eligible to earn sick time?
A: Yes, if Vermont is his or her primary place of work.

Example: If an employee lives in New Hampshire, but works 900 hours in Vermont and 150 hours in New Hampshire in a single annual period, the primary place of work would be in Vermont.

Section C: Which Employers Need to Provide Earned Sick time?

Q: Do employers based outside of Vermont have to provide earned sick time?
A: If an employer has an employee or employees with a primary place of work in Vermont, then the employer must provide them with earned sick time equivalent to or in excess of the amount required by law.

Q: Does an employer have to provide earned sick time to employees who also work for other employers?
A: Yes, as long as an employee works an average of 18 hours a week or more.

Section D: How is Earned Sick Time Accrued?

Q: When does an employee start accruing?
A: Employees begin accruing earned sick time on January 1st 2017. An employer who meets the small employer requirements does not have to track accrual for employees until January 1st 2018.

Section E: Carryover of hours from one year to the next

Q: How many hours of earned sick time can an employee carry over from one year to the next?
A: The method by which an employee earns sick time determines if an employer must allow carryover of unused earned sick time:

Employer's Policy	Employer's Carryover Obligation Between January 1, 2017 and December 31, 2018	Employer's Carryover Obligation After January 1, 2019
The employee is provided earned sick time through hourly accrual.	The employee must be allowed to carry over up to 24 hours of unused earned sick time into the next year.	The employee must be allowed to carry over up to 40 hours of unused earned sick time into the next year.
The employee is provided earned sick time in a lump sum allocation at the beginning of each annual period.	The employer is not obligated to allow an employee to carry over unused earned sick time into the next year.	The employer is not obligated to allow an employee to carry over unused earned sick time into the next year.
The employee is paid out for unused earned sick time at end of annual period (which is not required but employers may elect to do so).	The employer is not obligated to allow an employee to carry over unused earned sick time into the next year for which they provided a payout.	The employer is not obligated to allow an employee to carry over unused earned sick time into the next year for which they provided a payout.

Section F: Permissible Uses of Earned Sick time

Q: When can an employee begin using earned sick time?
A: An employee may begin using earned sick time once it is accrued or after the optional waiting period of up to one year, at the employer's discretion.

Q: What can earn sick time be used for?
A: An employee can use sick time when the employee or employee's child, parent, grandparent, spouse, or parent-in-law is sick or injured. This includes an employee using sick time to help themselves or a family member to obtain health care, preventive care, or travel to an appointment related to their long-term care, or to address the effects of domestic violence, sexual assault, or stalking. An employee may use earned sick time to care for a family member because the school or business where the family member is located is closed for public health or safety reasons.

Q: Can an employee's use of earned sick time be counted toward leave under other laws?
A: Yes. An employee's use of earned sick time may be counted toward concurrent leave under state law such as the Vermont Parental and Family Leave Act.

Q: What is the pay for earned sick time?
A: Employees must be paid the same hourly rate they normally get. Hourly workers must be paid their regular hourly rate. Sick time hours are not paid at overtime or premium rates. To determine the proper rate of earned sick time pay for non-hourly employees, please review the definition of the "same hourly rate" in Section 7 of the Rules.

Q: When must an employee be paid after using earned paid sick time?
A: When used, earned sick time must be paid on the same schedule as regular wages are paid. Employers may not delay compensating employees for earned paid sick time.

Q: Are employers obligated to pay employees for unused earned sick time upon termination or at the end of employment?
A: No. Employers are not required to pay out unused earned sick time when an employee leaves, but may do so voluntarily.

Section G: Implementing the Earned Sick Time Law

Q: What is the "annual period" for tracking accrual, use, and carryover of earned sick time?
A: Any consecutive 12-month period of time, as determined by an employer, as long as accrual tracking begins upon hire.

Q: May an employer's sick time policies differ from what the law requires?
A: Yes. The law establishes minimum requirements. An employer is permitted to have a policy that is more generous. Employers may have different policies for different categories of employees as long as the minimum requirements are met for all non-exempt employees.

Example: An employer may allow employees to earn or use more sick time than the law would require, give employees more than 40 hours of sick time up front at the beginning of the annual period, or permit employees to use sick time before it has accrued.

Q: If an employee uses sick time, may the employer require the employee to find a replacement?
A: No. An employer cannot require an employee to find a replacement as a precondition of using accrued sick time.

Q: If an employee leaves the employer, and then returns, what happens to the employee's unused earned sick time?
A: It depends on if it was a voluntary separation or discharge:

Voluntary Separation or Discharge		
Time Between Last Day and Rehire	**Voluntary Separation (Quit)**	**Discharge**
Less Than a Year	Employee is not entitled to resume where they left off with their waiting period or banked time.	Employee is entitled to resume where they left off with their waiting period but not their banked time
More Than a Year	Employee is not entitled to resume where they left off with their waiting period or banked time	Employee is not entitled to resume where they left off with their waiting period or banked time

Q: What increments of leave time can an employee take off?
A: At the employer's discretion, sick time can be used in either the smallest time increments that the employer's payroll system permits or in increments of one hour.

Q: Can an employee use earned sick time before having accrued it?
A: Employers may arrange, at their discretion, for employees to use earned sick time before they accrue it and for employers to count the use against future accrual. An employer may not require the future accrual to be at a rate less than one hour for every 52 hours worked.

Section H: Using Other Paid Time off (PTO) Policies

Q: Can other paid time off (PTO) policies satisfy an employer's obligation to provide earned sick time?
A: Yes, as long as employees can use the PTO (such as vacation time or personal leave) for the same purposes and with the same rights that they would be able to use earned sick time.

An employer may substitute an existing plan so long as employees:

1. accrue at the rate of at least one hour of PTO for every 52 hours worked;
2. between January 1, 2017 and December 31, 2018 may use up to 24 hours per year of PTO;
3. after January 1, 2019 may use up to 40 hours per year of PTO;
4. are paid at least the amount that would be required for earned sick time;
5. can use PTO for the same purposes as earned sick time;
6. receive a notice of their rights under the law; and
7. receive the same job protections.

Q: If an employee uses up all of his or her paid time off, does the employer have to provide additional time if the employee gets sick?
A: No, employers are not required to provide additional paid sick time to employees who use their time for other purposes and need sick time later in the year, provided that the minimum

hours required by the Act are met. Employers are well advised to provide notice to employees that additional time will not be provided.

Q: I don't want to track accrual; can I provide a lump sum of earned sick time?
A: Employers may offer the time as a lump sum at the beginning of an annual period, but will still need to track usage.

Q: When do I have to provide these lump sums?
A: In order to avoid having to carry over unused sick time into a subsequent annual period, the lump sum must be provided at the beginning of the annual period.

Q: If an employer who offers more earned sick time than required by law changes their policy, can that employer take away sick days an employee has already earned?
A: No, an employer who offers more sick time than required by law can make a prospective change to reduce it to the minimum amount required, but that change cannot be made retroactively if an employee has already "earned" (accrued) that time. An employer could prevent employees from accruing more time in the future but must allow employees to use the sick time they have already earned.

Section I: Notification Requirements and Options for Employees Using Earned Sick Time

Q: Do employees need to notify their employers before they use earned sick time?
A: Yes. An employee must make a good faith effort to provide notice of the need in advance of the use of earned sick time, to the extent possible.

Q: Does an employee have to reference "Earned Sick Time" in order to use earned sick time?
A: No. An employee does not need to reference the law or the term "earned sick time" to his or her employer in order to use earned sick time, as long as it is used for a purpose authorized by the Act.

Q: What sort of notification system can an employer use?
A: Reasonable ones. Reasonable notice may include compliance with an employer's reasonable notification system that the employee customarily uses to communicate with the employer for absences or requesting leave.

Q: Can an employer require advance notice about a pre-scheduled use of earned sick time like an annual check-up?
A: Yes, employers may require reasonable notice if the employee has a pre-scheduled or anticipated time the employee plans to take off to use earned sick time.

Q: What notice can an employer require for multi-day absences?
A: For multi-day absences, an employer may require notification of the expected duration of the leave from the employee or the employee's surrogate (e.g. spouse, adult family member or other responsible party), unless the circumstances make such notice impracticable.

Q: Can an employer require post-use verification from employees?
A: Yes, employers may require employees to provide reasonable proof that they used earned sick time for allowable purposes after using any amount of time. An employer may not require further information about the details of a medical condition or domestic violence.

Q: Can an employee be disciplined for using earned sick time fraudulently?
A: If an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for earned sick time (e.g., being sick, caring for an ill family member), an employer may discipline the employee for misuse of earned sick time.

An employee may not be disciplined for using earned sick time for allowable purposes when following all other rules. Please see "retaliation" section of this document for more information.

Section J: Documentation Requirements and Options for Employers

Q: I work in an industry that requires an employee to certify that he or she is healthy enough to return to work. Can I still ask for documentation?
A: An employer may require an employee to provide a fitness-for-duty certification, a work release, or other documentation from a medical provider before an employee returns to work after an absence during which earned sick time was used. An employer may only do so if such certification is customarily required and consistent with industry practice or state and federal safety requirements, and reasonable safety concerns exist regarding the employee's ability to perform duties. "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the employee or others.

Q: Can an employer delay compensating an employee for earned paid sick time until the employer receives documentation?
A: No.

Section K: Recordkeeping and Disclosure Obligations for Employers

Q: Does an employer have to include accrued earned sick time and use on an employee's wage statement?
A: No. Employers are not required to provide earned sick time information on wage statements.

Q: Does an employer have to give employees access to their own earned sick time records?
A: Yes.

Q: Do employers have to keep track of the sick time employees earn and use?
A: Yes.

Q: Do employers have to post a notice about earned sick time rights for their employees?
A: Yes, employers must post a notice of the Earned Sick Time Law where employees are likely to see it and in languages spoken by employees. The poster will be made available for download at www.labor.vermont.gov.

Section L: Retaliation Prohibited

Q: Can an employer retaliate against an employee for using earned sick time?
A: No. Retaliation is illegal. An employer cannot retaliate against an employee because the employee has exercised his or her rights under the Act, the employee lodged a complaint of a violation of the Act, the employee has cooperated with the Commissioner in an investigation of a violation of the Act, or the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of the Act.

Section M: Violations

Q: How will the Earned Sick Time Law and regulations be enforced?
A: The law grants the Vermont Department of Labor the authority to issue civil citations against employers.

Q: Can employees file a complaint?
A: Employees can file a complaint with the Department of Labor's Wage and Hour Division.

The complaint form is available online at www.labor.vermont.gov.

Section N: Additional Information

Q: Where can I find more information about the law?
A: The Department of Labor's website has more information about the law and regulations: www.labor.vermont.gov.

Questions: Additional questions can be addressed to the Department of Labor's Wage and Hour Division at 802-828-0267.