

Administrative Procedures – Final Proposed Rule Coversheet**Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Earned Sick Time Rules

Anne M. Noonan, on 11/23/16
 (signature) (date)

Printed Name and Title:

Anne M. Noonan, Commissioner
 Vermont Department of Labor

RECEIVED BY: _____

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Earned Sick Time

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

16P-053

3. ADOPTING AGENCY:

Vermont Department of Labor

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Dirk Anderson

Agency: Vermont Department of Labor

Mailing Address: PO Box 488, Montpelier, VT 05601-0488

Telephone: 802 828 - 4391 Fax: 802 828 - 4066

E-Mail: dirk.anderson@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://labor.vermont.gov>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Krystal Shattuck

Agency: Vermont Department of Labor

Mailing Address: PO Box 488, Montpelier, VT 05601-0488

Telephone: 802 828 - 4281 Fax: 802 828 - 4066

E-Mail: krystal.shattuck@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

21 V.S.A. 487

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
13. **CONCISE SUMMARY (150 WORDS OR LESS):**
This Rule governs the administration of the earned sick time act.
14. **EXPLANATION OF WHY THE RULE IS NECESSARY:**
The Rule is necessary to implement the earned sick time act enacted by the Legislature. The Rule is required by statute.
15. **LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**
Employers and employees in Vermont; The Department of Labor.
16. **BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):**
The Rule will have an economic impact on employers who do not currently offer paid sick leave to their employees. The Rule will require employers to offer 3 days of paid sick leave in 2018 and 5 days beginning in 2019.
17. A HEARING WAS HELD.
18. **HEARING INFORMATION**
(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 11/2/2016

Time: 11:00 AM

Street Address: 88 Merchants Row, Rutland, VT

Zip Code: 05701

Date: 11/3/2016

Time: 11:00 AM

Street Address: 109 State Street, Montpelier, VT

Zip Code: 05602

Date: 11/4/2016

Time: 11:00 AM

Street Address: 63 Pearl Street, Burlington, VT

Zip Code: 05401

Date:

Time: AM

Street Address:

Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

11/11/2016

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Sick Leave

Employers

Paid Time Off

Run Spell Check

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Earned Sick Time

2. ADOPTING AGENCY:

Vermont Department of Labor

3. AGENCY REFERENCE NUMBER, IF ANY:

16P-053

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE**

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

Not Applicable

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Earned Sick Time Rules

Anne M. Noonan, on 11/23/16
(signature) (date)

Printed Name and Title:

Anne M. Noonan, Commissioner
Vermont Department of Labor

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Earned Sick Time

2. ADOPTING AGENCY:

Vermont Department of Labor

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Employers who do not offer paid sick leave to their employees. Employees who do not receive paid sick leave from their employers. The Department of Labor.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

No impact.

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

There is no alternative to the Rule. The Rule is required to implement the Earned Sick Time Act enacted by the Legislature. However, small employers of 5 or fewer employees have an additional year to implement the Rule.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

There is no alternative to the Rule. The Rule is required to implement the Earned Sick Time Act enacted by the Legislature. However, small employers of 5 or

fewer employees have an additional year to implement the Rule.

7. GREENHOUSE GAS IMPACT: *EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:*

a. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., “THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS” OR “LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE.”):

No impact

b. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., “THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT.” OR “THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND /OR AGRICULTURAL LAND.”):

No impact

c. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., “THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS.” OR “THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION.”):

No impact

d. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., “THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS.” OR “AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A ‘METHANE TO ENERGY PROJECT’.”):

No impact

e. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

None

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Earned Sick Time

2. ADOPTING AGENCY:

Vermont Department of Labor

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Department of Labor consulted with employers, employee organizations, and advocacy groups. The Department held three public hearings.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Vermont Department of Labor.

The Main Street Alliance.

Associated Industries of Vermont.

Lake Champlain Chamber of Commerce.

Businesses for Social Responsibility.

Vermont Commission on Women.



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Agency of Administration
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Montpelier, VT 05609-0201
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Office of the Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES

To: Louise Corliss, SOS
Chris Winters, SOS
Charlene Dindo, LCAR
ICAR Members

Date: September 13, 2016

Proposed Rule: Earned Sick Time Rules
(Department of Labor)

The following official action was taken at the September 12, 2016 meeting of ICAR.

Present: Chair Michael Clasen, Scott Bascom, Clare O'Shaughnessy, Jen Duggan, John Kessler and Allan Sullivan

Absent: Steve Knudson – voted electronically
Dirk Anderson
Diane Bothfeld

The Committee has no objection to the proposed rule being filed with the Secretary of State.

The Committee approves the rule with the following recommendations.

1. Throughout document and rule, be consistent with capitalization of "Act".

The Committee opposes filing of the proposed rule.

cc: Michael Hoyt

Vermont Earned Sick Time Rules

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Vermont Earned Sick Time Rules

Section 1. Authority.

This rule is issued by authority of the Commissioner of Labor pursuant to 21 V.S.A. § 487 and Act 69 of the 2016 General Assembly (“Act”).

Section 2. Purpose and Scope.

- (a) Purpose. To clarify practices and policies in the administration and enforcement of “An act relating to absence from work for health care and safety.” 21 V.S.A. §§ 481 - 486 (the Act).
- (b) Interaction with the Vermont Parental and Family Leave Act. Time accrued by an employee may be used at the same time as time off provided by the Vermont Parental and Family Leave Act. An employee may choose to use earned sick time as provided under the Act to receive pay when taking leave under the Vermont Parental and Family Leave Act that would otherwise be unpaid.

Section 3. Definitions.

As used in the Act, the following terms shall have the following meanings unless the context clearly requires otherwise:

- (1) **“Annual period”** means any continuous 12-month period of time as determined by the first day of work. If an employee has been working before the implementation date of the Act, his or her annual period will start on January 1. An employer with an existing fixed paid leave year may use such fixed paid leave year as the annual period, provided that all earned sick time accrued pursuant to the act shall be carried over into the fixed paid leave year. The use of approved off-payroll time does not restart the annual period and accrual of earned sick time shall resume upon the employee’s return to work.

Vermont Earned Sick Time Rules

- (2) **“Child”** means a minor or adult son or daughter by birth or adoption.
- (3) **“Commissioner”** means the Commissioner of Labor or his or her designee.
- (4) **“Discharge”** means a separation from employment initiated by the employer, including a temporary or seasonal layoff.
- (5) **“Domestic Violence”** has the same definition as in 15 V.S.A. § 1151.
- (6) **“Earned Sick Time”** means paid time off from work accrued by an employee and provided by an employer for the purposes permitted by the Act.
- (7) **“Employee”** means any person who, in consideration of direct or indirect gain or profit is employed by an employer for an average of not less than 18 hours per week. To calculate if an employee has worked an average of 18 hours per week an employer shall, on a yearly basis, divide the number of hours worked by the employee in the last completed calendar year by 52. If an individual has been employed for an average of not less than 18 hours per week in the prior calendar year, the individual’s accrual of sick time shall be deemed to have commenced on the first day of that year. The previous calendar year calculation shall not be applied to those individuals hired during that calendar year who are anticipated to work an average of more than 18 hours a week. The term “employee” shall not include:
 - (A) an employee of the federal government;
 - (B) an individual who is employed by an employer for 20 weeks or fewer in a 12-month period and in a job scheduled to last 20 weeks or fewer. 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 on the use of earned sick time may still apply to the employee.

Vermont Earned Sick Time Rules

(C) an individual that is employed by the State and is exempt or excluded from the State classified service pursuant to 3 V.S.A. § 311, but not an individual that is employed by the State in a temporary capacity pursuant to 3 V.S.A. § 331.

(D) an employee of a health care facility as defined in 18 V.S.A. § 9432(8) or a facility as defined in 33 V.S.A. § 7102(2) if the employee only works on a per diem or intermittent basis.

(i) "Health care facility" means all persons or institutions, including mobile facilities, whether public or private, proprietary or not for profit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any institution operated by religious groups relying solely on spiritual means through prayer for healing, and shall include but is not limited to:

(aa) hospitals, including general hospitals, mental hospitals, chronic disease facilities, birthing centers, maternity hospitals, and psychiatric facilities including any hospital conducted, maintained, or operated by the state of Vermont, or its subdivisions, or a duly authorized agency thereof;

(bb) nursing homes, health maintenance organizations, home health agencies, outpatient diagnostic or therapy programs, kidney disease treatment centers, mental health agencies or centers, diagnostic imaging facilities, independent diagnostic laboratories, cardiac catheterization laboratories, radiation

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therapy facilities, or any inpatient or ambulatory surgical, diagnostic, or treatment center.

- (ii) "Facility" means a residential care home, nursing home, assisted living residence, home for persons who are terminally ill, or therapeutic community residence licensed or required to be licensed pursuant to the provisions of Chapter 71 of Title 33.

(E) an employee of a school district, supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that:

- (i) is employed pursuant to a school district or supervisory union policy on substitute educators as required by the Vermont Standards Board for Professional Educators Rule 5381; and
- (ii) is under no obligation to work a regular schedule; and
- (iii) is not under contract or written agreement to provide at least one period of long-term substitute coverage which is defined as 30 or more consecutive school days in the same assignment.
- (iv) "School district" means town school districts, union school districts, interstate school districts, city school districts, unified union districts, and incorporated school districts, each of which is governed by a publicly elected board.
- (v) "Supervisory district" means a supervisory union that consists of only one school district, which may be a unified union district.
- (vi) "Supervisory union" means an administrative, planning, and educational service unit created by the State Board of Education under 16 VSA § 261

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that consists of two or more school districts; if the context clearly allows, the term also means a supervisory district.

(F) an individual who is under 18 years of age.

(G) an individual that is either:

- (i) 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
- (ii) 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).

(H) an individual that:

- (i) works on a per diem or intermittent basis; and
- (ii) works only when he or she indicates that he or she is available to work; and
- (iii) is under no obligation to work for the employer offering the work; and
- (iv) has no expectation of continuing employment with the employer.

(8) “**Employer**” means any individual, organization, or governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business or operating within this state.

(9) “**Foster child**” mean a foster child, a stepchild, a legal ward, or a child for whom an employee has assumed the responsibilities of parenthood, and a child of an employee standing in loco parentis, as defined by 29 U.S.C. § 2611(12) and 29 C.F.R. §§ 825.122(c) and 825.800.

Vermont Earned Sick Time Rules

- (10) **"Paid time off policy"** means any policy under which the employer provides paid time off from work to the employee that includes a combination of one or more of the following:
- (i) annual leave;
 - (ii) combined time off;
 - (iii) vacation leave;
 - (iv) personal leave;
 - (v) sick time; or
 - (vi) any similar type of leave.
- (11) **"Sexual Assault"** has the same definition as in 15 V.S.A. § 1151.
- (12) **"Small Employer"** means an employer who on January 1, 2017 has five or fewer employees who averaged 30 hours or more per week during the previous calendar year. Individuals working less than 30 hours per week shall not be counted when calculating the number of employees. A small employer is not subject to the requirements of the Act until January 1, 2018.
- (13) **"Stalking"** has the same definition as in 15 V.S.A. § 1151.

Section 4. Eligibility to Earn Sick Time.

- (a) An employee is eligible to accrue and use earned sick time if the employee's primary place of work is in Vermont, regardless of the primary location of the employer.

Vermont Earned Sick Time Rules

- (b) If an employee is eligible to accrue and use earned sick time, then all hours the employee works shall be applied toward accrual of earned sick time regardless of the location of the work.¹
- (c) An eligible employee who is permanently transferred to another state but remains with the same employer will no longer accrue earned sick time but may use any sick time already accrued.

Section 5. Accrual of Earned Sick Time.

- (a) Between January 1, 2017, and December 31, 2018, an employee shall accrue earned sick time on all hours worked at a rate of no less than one hour of earned sick time for every 52 hours worked, including overtime hours, of which a minimum of 24 hours shall be usable per annual period.
- (b) After December 31, 2018, an employee shall accrue earned sick time on all hours worked at a rate of no less than one hour of earned sick time for every 52 hours worked, including overtime hours, of which a minimum of 40 hours shall be usable per annual period.
- (c) An employer may allow the accrual of additional earned sick time in excess of the minimum amount.
- (d) An employer shall not be required to track accrual balances in increments of less than one hour.
- (e) An employee exempt from overtime requirements under The Fair Labor Standards Act (29 U.S.C. § 213(a)(1)) shall be assumed to work 40 hours in each work week for

¹ For example, in a single year, an employee of a Vermont catering company works 550 hours in Vermont, 350 hours in New Hampshire and 200 hours in Maine. The caterer will accrue earned sick time on all 1,100 hours worked for the catering company.

Vermont Earned Sick Time Rules

purposes of earned sick time accrual unless the job worked specifies a lower number of hours per week. In such cases, earned sick time shall accrue based on the specified number of hours worked per week.

- (f) Adjunct faculty compensated on a fee-for-service or “per-course” basis shall be deemed to work 3 hours for each “classroom hour” worked.
- (g) An employer shall be in compliance with this section if the employer provides the employee with at least the full amount of earned sick time required by subsections (a) and (b) of this section at the beginning of each annual period. If the employer provides an employee with the full amount of sick time at the beginning of each annual period, any unused earned sick time hours at the end of the annual period shall not carry over into the subsequent annual period.
- (h) Except as otherwise provided in subsection (g) of this section and section seven of these rules, earned sick time that remains unused at the end of an annual period shall be carried over to the next annual period and the employee shall continue to accrue earned sick time at the same rate established in the Act. However, nothing in this subsection shall be construed to permit an employee to use more earned sick time during an annual period than any limit on the use of earned sick time that is established by his or her employer pursuant to the Act.

Section 6. Use of Earned Sick Time.

- (a) From January 1, 2017, to December 31, 2018, an employee has the right to use up to 24 hours of accrued earned sick time per annual period.

Vermont Earned Sick Time Rules

(b) Beginning January 1, 2019, an employee has the right to use up to 40 hours of accrued sick time per annual period.

(c) An employee may use earned sick time for the following:

- (1) care for the employee's own physical or mental illness, injury, or medical condition that requires homecare, professional medical diagnosis or care, or preventative medical care, including diagnostic, preventive, routine, or therapeutic health treatment;
- (2) care for the employee's parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild or foster child, who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care;
- (3) care for the employee's sick or injured parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, 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. Routine healthcare treatment includes travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.
- (4) arranging for social or legal services or obtaining medical care or counseling for the employee or for the employee's parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster child, who is a victim of domestic violence, sexual assault, or stalking or who is relocating as the result of domestic

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violence, sexual assault, or stalking. "Domestic violence," "sexual assault," and "stalking" shall have the same meanings as in 15 V.S.A. § 1151.

- (5) care for a parent, grandparent, spouse, child, brother, sister, parent-in-law, grandchild or foster child, because the school or business where that individual is normally located during the employee's workday is closed for public health or safety reasons. A "business" includes a care facility.
- (d) An employer is not required to pay earned sick time and the employee shall not be charged for the use of earned sick time if the employee is not scheduled to be at work during the period of use.
- (e) If an employee's absence is shorter than a normal workday, the employee shall use earned sick time in the smallest time increments that the employer's payroll system uses or that the employer's paid time off policy permits. Employers may limit the minimum use of earned sick time to one hour.
- (f) An employer shall post notice of the provisions of the Act in a form provided by the Commissioner, and in a place conspicuous to an employee at the employer's place of business. An employer shall also notify an employee of the provisions of the Act at the time the employee is hired.
- (g) An employer shall not require an employee to make up time off from work as a condition of using earned sick time. However, an employee and employer may by mutual agreement arrange for the employee to work additional hours during the same pay period to avoid the use of and payment for earned sick time.

Vermont Earned Sick Time Rules

- (h) An employer shall not require an employee to find a replacement for the employee's absences for purposes authorized by the Act, including absences for professional diagnostic, preventive, routine, or therapeutic health care.
- (i) If an employee is absent from work for one of the reasons listed in subsection (c) of this section, the employee shall not be required to use earned sick time and the employer will not be required to pay for the time that the employee was absent if the employer and the employee mutually agree that either:
 - (1) the employee will work an equivalent number of hours as the number of hours for which the employee is absent during the same pay period; or
 - (2) the employee will trade hours with a second employee so that the second employee works during the hours for which the employee is absent and the employee works an equivalent number of hours in place of the second employee during the same pay period.
- (j) An employer may adopt a policy that requires an employee to use earned sick time for an absence from work for a reason listed in subsection (c) of this section.

Section 7. Payment of Earned Sick Time.

- (a) Earned sick time shall be paid on the same schedule and in the same paycheck as regular wages are paid. An employer shall not delay compensating an employee for earned sick time.
- (b) An employer may pay an employee for any hours of unused earned sick time at the end of the annual period or when the employee leaves employment. If an employer chooses to pay unused sick time at the end of an annual period, then the sick time that is paid out shall not carry over into the subsequent annual period.

Vermont Earned Sick Time Rules

- (c) An employee who voluntarily separates from employment without good cause attributable to the employer shall forfeit all accrued earned sick time and any accrued earned sick time shall not transfer if the employee is subsequently hired by another employer.
- (d) An employer is not allowed to interrupt insurance benefits for an employee during the use of earned sick time. Group insurance benefits shall continue during the period an employee uses earned sick time at the same level and conditions that coverage would be provided for normal work hours. The employer may require that the employee contribute to the cost of the benefits during the use of earned sick time at the existing rate of employee contribution.
- (e) If an employee is compensated on an hourly basis, the normal hourly rate means the amount that an employee is regularly paid for each hour of work.
- (f) If an employee receives different pay rates for hourly work from the same employer, the normal hourly rate means either:
 - (1) the wages the employee would have been paid for the hours absent during use of earned sick time if the employee had worked; or
 - (2) the blended rate, determined by taking the weighted average of all regular rates of pay over the previous pay period, month, quarter or other established period of time the employer customarily uses to calculate blended rates for similar purposes.
 - (3) Regardless of the method the employer elects to determine the normal hourly rate, the employer shall use a consistent method for all his or her employees throughout an annual period.

Vermont Earned Sick Time Rules

- (g) If an employee is paid a salary, the normal hourly rate means the employee's total earnings in the previous pay period divided by the total hours worked during the previous pay period. For determining total hours worked during the previous pay period, an employee who is exempt from overtime requirements under the Fair Labor Standards Act (29 U.S.C. § 213(a) (1)), shall be presumed to work 40 hours each week unless his or her normal work week is less than 40 hours, in which case the normal hourly rate shall be calculated based on the employee's normal work week. Regardless of the basis used, the normal hourly rate shall not be less than the effective minimum wage established by 21 V.S.A. § 384.
- (h) If an employee is paid on commission (whether base wage plus commission or commission only), the normal hourly rate means the greater of the base wage or the effective minimum wage established by 21 V.S.A. § 384.
- (i) For a tipped employee who ordinarily receives the tipped wage rate under 21 V.S.A. § 384, the normal hourly rate means the non-tipped minimum wage rate established by 21 V.S.A. § 384.
- (j) As used in this section, the normal hourly rate shall not include:
- (1) sums paid as commissions, drawing accounts, bonuses, or other incentive pay based on sales or production;
 - (2) sums excluded under 29 U.S.C. § 207(e), including contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance, and any other employee benefit plans; and

Vermont Earned Sick Time Rules

- (3) overtime, holiday pay, or other premium rates. However, where an employee's regular hourly rate is a "differential rate," meaning a different wage rate paid for the same work performed under differing conditions (e.g. a night shift), the "differential rate" is not a premium.

Section 8. One Year Waiting Period.

- (a) A newly hired employee. An employee begins accruing earned sick time on the first date of actual work. An employer may require a waiting period for a newly hired employee of up to one year. During this waiting period, an employee shall accrue earned sick time pursuant to the Act, but an employer may prohibit the use of earned sick time until after the employee has completed the waiting period.
- (b) An existing employee. An employer may require for an existing employee on January 1, 2017, a waiting period of up to one year. The waiting period shall begin on January 1, 2017, and shall end on or before December 31, 2017. During this waiting period, an employee shall accrue earned sick time but an employer may prohibit the use of earned sick time until after the employee has completed the waiting period.
- (c) A small employer. A small employer need not comply with the Act until January 1, 2018. The waiting period for small employers shall begin on January 1, 2018, and shall end on or before December 31, 2018. During this waiting period, an employee shall accrue earned sick time but an employer may prohibit the use of earned sick time until after the employee has completed the waiting period.
- (d) An employee who is discharged by his or her employer after he or she has completed a waiting period, and is subsequently rehired by the same employer within 12 months after the discharge from employment shall begin to accrue and may use earned sick time

Vermont Earned Sick Time Rules

without a waiting period. However, the employee shall not be entitled to retain any earned sick time that accrued before the time of his or her discharge unless agreed to by the employer.

- (e) An employee who is discharged prior to completing his or her waiting period and is subsequently rehired by the same employer within 12 months after the discharge from employment, shall have the same time remaining in his or her waiting period as on the date of discharge.²
- (f) An employee that voluntarily separates from employment after he or she has completed a waiting period, and is subsequently rehired by the same employer within 12 months after the separation from employment shall not be entitled to use previously accrued sick time and may be required to begin a new waiting period unless waived by the employer.

Section 9. Notice of Use of Earned Sick Time.

- (a) An employer may require an employee planning to use earned sick time to make reasonable efforts to avoid scheduling routine or preventive health care during regular work hours, or to notify the employer as soon as practicable of the intent to take earned sick time and the expected duration of the employee's absence.
- (b) An employer may require an employee to provide reasonable notice before using earned sick time.
- (c) The notice required to be given for unforeseeable absences is what is reasonable under the circumstances, recognizing that there are certain situations such as accidents or sudden illness for which advance notice might be infeasible.

² For example, if a person worked for eight months and was laid off and rehired two months later he or she will only have four months left until he or she has completed the waiting period.

Vermont Earned Sick Time Rules

- (d) 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.
- (e) An employer may require an employee to give notice in a manner the employee customarily uses to communicate with the employer for reporting absences or requesting leave.
- (f) An employee who is required to give notice shall specify that he or she is using earned sick time.
- (g) An employer may require an employee to provide reasonable proof that the employee's use of earned sick time is for one of the purposes allowed by the Act.

Section 10. Allowable Substitution of Employers' Paid Leave Policies.

- (a) An employer may have their own sick time or paid leave policies, as long as all employees can use at least the same amount of leave, for the same purposes, under the same conditions, and with the same job protections provided in the Act.
- (b) An employer may have different paid leave policies for different groups of employees, as long as each policy meets the minimum requirements provided in the Act.
- (c) An employer that provides paid time off in amounts consistent with the Act that also may be used as earned sick time shall not be required to provide additional sick time to an employee.³

³ For example, a sporting goods store provides its employees with 40 hours of paid vacation time that can also be used as earned sick time, consistent with the Act. Does the store need to provide any separate sick time? No. The sporting goods store does not need to provide additional sick time, but the store would be well advised to notify the employees that if they use all of their hours for vacation, there will be no additional paid sick time available.

Vermont Earned Sick Time Rules

- (d) Nothing in these rules shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or paid time off policy that provides greater earned sick time rights than the rights provided by the Act.
- (e) A collective bargaining agreement or paid time off policy may not diminish the rights provided by the Act.

Section 11. Retaliation Prohibited.

- (a) An employer shall not discharge or in any other manner retaliate against an employee because:
 - (1) the employee has exercised his or her rights under the Act;
 - (2) the employee lodged a complaint of a violation of the Act;
 - (3) the employee has cooperated with the Commissioner in an investigation of a violation of the Act; or
 - (4) the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of the Act.
- (b) Any person aggrieved by a violation of this section may bring an action in the Civil Division of the Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.
- (c) Notwithstanding subsection (a), an employer may discipline an employee for using his or her earned sick time for reasons not consistent with the Act.

Section 12. Recordkeeping and Disclosure.

Vermont Earned Sick Time Rules

- (a) An employer shall keep true and accurate records of the accrual and use of earned sick time pursuant to 21 V.S.A. § 393.
- (b) An employer shall maintain such records for a period of three years and shall provide copies within 10 days upon demand by the Commissioner. An employee who requests his or her records shall be provided with a copy within 5 days and shall be allowed to inspect the original paper or electronic records at a reasonable time and place.

Section 13. Violations of the Earned Sick Time Law.

- (a) An employer who violates 21 V.S.A. § 482 or § 483 shall be fined not more than \$5,000.00 per violation.
- (b) An employee may file a complaint with the Commissioner in the manner prescribed by the Commissioner. The Commissioner shall investigate and enforce any violations in accordance with 21 V.S.A. § 342a.
- (c) In addition to recovery of earned sick time pay, the Commissioner may assess a civil penalty of not more than \$5,000.00 per violation.

Section 14. Severability of Provisions.

If any provision of these rules or the application of such provision to any person or circumstances shall be held invalid, the remainder of these rules and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Section 15. New Employers.

Vermont Earned Sick Time Rules

- (a) Notwithstanding any provision of the Act to the contrary, new employers shall not be subject to the provisions of the Act for a period of one year after the employer hires its first employee.
- (b) For purposes of enforcement, an employer shall be presumed to be subject to the provisions of the Act unless the employer proves that a period of no more than one year elapsed between the date on which the employer hired its first employee and the date on which the employer is alleged to have violated the provisions of the Act.
- (c) No employer shall transfer an employee to a second employer with whom there is, at the time of the transfer, substantially common ownership, management, or control for the purposes of either employer claiming an exemption pursuant to these rules.

Section 16. Effective Dates.

These rules shall take effect on January 1, 2017.

**Vermont Department of Labor
Proposed Administrative Rule
Vermont Earned Sick Time Rules
Summary of Public Comment
November 11, 2016**

The Department of Labor held three public hearings on the proposed rule: November 2, 2016, in Rutland; November 3, 2016, in Montpelier; and November 4, 2016, in Burlington. The Department solicited comment on the proposed rule through November 11, 2016. The comments that the Department received, the Department's decision whether to amend the proposed rule in response to the comments, and the Department's reasons therefor, are summarized below.

Section 3 (1) - Annual Period Definition

The Department of Aging and Independent Living (DAIL), through its general counsel, stated that they would prefer that the definition of annual period mean a continuous 12-month period that begins on the first day of the state fiscal year/ participant's new budget year. They believe this will make administration of the paid leave law easier.

Department's Response: The Department has chosen not to change the definition of annual period. The definition in the proposed rule was based on input from many employers who already have fixed leave years, and who expressed concern about disruption to existing processes. Making the change suggested by DAIL would have a limited benefit to certain state agencies who administer federal funds on behalf of qualified recipients.

Section 3 (7) - Definition of Part-Time Employee- Calculating Exempt Part-Time Employees Quarterly vs. Annually

Jim Harrison of the Vermont Retail and Grocers Association (VRGA) said that the Act specifically uses the phrase "during a year", not quarterly, and therefore the part-time employee exemption should be based on an annual, not a quarterly average.

Pauline of T&P Gas Holding Inc. pointed out that calculating part-time employees quarterly versus annually would mean that a part time employee that works more than 18 hours per week during the summer would accrue sick time during the summer, but not during the other quarters.

Heather Shouldice representing Vermont Association of Chain Drug Stores says that Act 69 was based on the employee's yearly average hours, therefore changing to quarterly increments goes beyond the legislative intent.

Lindsay DesLauriers of Main Street Alliance supports the quarterly lookback for the definition of part time employee. She states it seems to be a fair and administratively reasonable solution to accommodate people whose employment fluctuates throughout the year.

Kendal Smith of the Vermont Chamber of Commerce states that a quarterly calculation was not discussed when drafting the law and the statute clearly points to an average being based on a 12-month timeframe.

DAIL wants to know how the apparent inconsistencies between the Act and the Rules will be reconciled, specifically the yearly versus quarterly question. DAIL also states the quarterly part-time exemption look-back period could create conflicts between the accrual and the allowable use of earned sick time.

Department Response: The Department has changed the definition of part-time employee so that the calculation is based on a yearly, rather than a quarterly average. In addition to reflecting the majority of public comment, this change would seem to comport more closely with legislative intent.

Section 3 (7) (B) - Employee Definition of Seasonal Employees

DAIL believes that further clarification is required because there are situations where both requirements of this definition may not be meant. I.E. Employer dies or goes to a nursing facility and employee has only worked 15 weeks but was scheduled to work 22 weeks.

Department's Response: The Department has not changed the proposed rule, because the language of proposed Rule 3(7)(B) is taken verbatim from the Act.

Section 3 (12) - Quarterly vs. Yearly for Small Employer Definition

Jim Harrison of VRGA states that the Act does not state that the definition of small employer should be calculated on the last quarter of 2016. The Act uses the language "for an average of no less than 30 hours per week." The reference to the last quarter of 2016 should be deleted and replaced with during the past year.

Lindsay DesLauriers of Main Street Alliance supports this section of the Rule as written, but would also support the businesses choosing use either the last quarter or the past 12-month period overall to determine eligibility as a small business.

Kendal Smith of the Vermont Chamber of Commerce states that the time period in the proposed rules was not included in the small employer definition of Act 69 so for consistency and to not penalize seasonal employers, the Chamber asks the Department to change the time frame to 30 hours a week during the year.

Department's Response: The Department has changed the proposed rule so that that the calculation for determining small employer status is based on the calendar year 2016, rather than the last quarter of 2016. This change will ensure that seasonal employers are not treated differently based on their seasonal fluctuations. In addition to reflecting the majority of public comment, this change would seem to comport more closely with legislative intent.

Section 4(b) - Location of Work

Jim Harrison of VRGA and Heather Shouldice representing the Vermont Association of Chain Drug Stores said that Section 4 (b) is inconsistent with existing labor laws and should be deleted. Employers should not have to comply with several state labor laws at the same time. Work performed in other states should not be counted toward earned sick time accrual in Vermont.

Department Response: The Department has not changed the proposed rule. The Department believes the intent of the legislature was to provide sick leave benefits to all Vermonters, even when temporarily working out of state.

Section 5 (e) - Accrual on Hours Paid vs. Hours Worked

Dyllan Winters of First Light Technologies and Andrea Coppola of Housing Trust of Rutland County both commented that employees are getting "sick time" twice. They are accruing sick time while using sick time, or being out on vacation.

Jim Harrison of VRGA and Heather Shouldice representing Vermont Association of Chain Drug Stores believes Section 5(e) conflicts with Act 69, and that therefore it should be deleted from the Rules.

John Dubie of Pearl Street Beverage, believes that the proposed rules are misinterpreting legislation that was clearly written. Time should accrue on hours worked, not on hours paid.

April Paulin of Paulin Inc. states that accruing on hours paid versus hours worked would create an even bigger hardship than the law already creates. Bill as passed would have allowed for accrual on hours worked only.

Crystal Carrier of Vermont Public Power Supply states that Section (5)(e) (accrual on hours paid) contradicts (5)(a) and (5)(b) (accrual on hours worked). She believes that Section (5)(e) also contradicts the Act.

Pauline of T&P Gas Holding Inc. pointed out that the law as passed allows only accrual of sick time for hours worked, not hours paid.

Heather Belcher of Sweet Clover Market states that calculating benefits on hours worked and not hours paid makes life much easier in the world of payroll and benefits administration.

Timothy Casey of Hinesburg Sand and Gravel Co. states that employees should not accrue sick time while they are out using sick time.

Ray Bouffard of Georgia Market states that he will be forced to change his pay strategy for employees and therefore it will not be fair to employer or the employees. He states that if hours paid stays this will result in businesses reducing employees and giving the employees they have fewer hours.

Lindsay DesLauriers of Main Street Alliance acknowledges that concern has been raised about accrual on hours worked versus hours paid. This rule would seem to require that employees accrue sick

time during their leave regardless of the length of the leave, which presumably would be a disincentive for an employer to offer a long-term leave program.

Kendal Smith of Vermont Chamber of Commerce believes that earning sick time while using sick time is contrary to the intent of the law.

Department's Response: The Department will delete Section (e) so that accrual of paid leave is on hours worked only. In addition to reflecting the majority of public comment, this change would seem to comport more closely with legislative intent.

Section 5 (h) - Accrual Cap

Deb Miner of Miner Construction & Rebecca Gardner of First Light Technologies states that there needs to be an accrual cap at some maximum amount of hours, because employers are not required to allow the use of more than 40 hours of earned sick time in an annual period.

Crystal Currier of Vermont Public Power Supply states that some type of accrual cap should be put in place. Most employers have some type of cap that allows employees to carry forward only a certain amount of time from one annual period to the next.

Department's Response: The Department has not changed the rule to include a cap on accrual of earned sick time. The Department acknowledges that public comment ran in favor of doing so. However, the legislature did not place a cap on accrual in the Act itself. The imposition of a cap by the Department in the absence of legislative guidance could be perceived as being beyond the Department's authority.

Section 5 (h) - Carry Over Exception

Benjamin Traverse, attorney at Downs Rachlin Martin PLLC, suggests that a new subsection be added to Section 5 of the proposed rules to address carry over of time for employers that provide a lump sum to their employees at the beginning of the year. He believes that it should state that if an employer provides a lump sum at the beginning of the annual period, then any unused hours will not carry over into the next annual period. This is consistent with the Act, at 21 V.S.A. § 484(a)(2).

Department's Response: The Department has added a new subsection (g) clarifying that if an employer chooses to provide a lump sum of time at the beginning of an annual period then any unused hours need not carry over to the next annual period.

Section 6 (b) - Use of Earned Sick Time

DAIL states that small employers should have the same adjustment period as other employers and not have to be required to give an employee the full 40 hours of accrual the first year they become subject to the Act. Instead, small employers should be allowed to cap accrual at 24 hours the first year the employee can use it (2019, if the small employer imposes a one year waiting period).

Department's Response: The Department has not changed the proposed rule. The Department believes that amending the rule as requested would be inconsistent with the plain language of the Act.

Section 6 (h) - Finding a replacement

Jim Harrison states that there should be clarification that an employee must only be excused from finding a replacement when using "sick time" for one of the purposes authorized by the Act. He expressed concern that the subsection could be read to prohibit an employer from asking an employee to find a replacement when the employee was taking time off for *any* purpose.

Department's Response: The Department has changed this subsection so that there is clarification on when an employee must be excused from finding a replacement.

Section 7(c) - Transfer of Accrued Sick Time

DAIL believes that the last part of subsection (c) can be deleted if accrued sick time is not legally transferrable to another employer.

Department's Response: The Department has not changed subsection 7 (c). While the comment correctly points out that the subsection is somewhat redundant, the Department sees no harm in leaving it as is.

Section 7 (f)- Calculating rate of an Employee that receives different rates of Pay

DAIL believes that the rules should address the rate of pay for home care providers who receive both a daily "respite" rate and an hourly rate depending upon the work performed.

Department's Response: The Department has not changed this section. The Department believes the alternate methods of calculating sick time pay already included in the proposed rule should be sufficient to address the commenter's concerns.

Section 10 (c)- Notification Requirements

Benjamin Traverse, attorney at Downs Rachlin Martin PLLC, states that the footnote to Section 10(c) of the proposed rules should be amended to delete the end of the note starting with "but the store must notify..." He states that the provisions of the Act do not require the employer to notify an employee that if the employee uses all their time off as vacation time, there will be no additional paid sick time available to them.

Department's Response: The Department made a small change to the footnote to Section 10 (c) of the Rules, changing "must" in the footnote to "would be well advised". The Department feels that this better represents the intent of the Act.

Section 13- Penalties

Timothy Casey of Hinesburg Sand & Gravel believes it is inequitable to impose penalties on employers for violating the Act, without providing for potential penalties for employees as well. He believes this means that there will be no deterrent to employees for violating the provisions of the Act.

Department's Response: The Department had made no change to Section 13 of the Rules. Creating a substantive employee penalty when none is contemplated by the Act is beyond the authority of the Department.

Vermont Department of Labor

Compilation of Public Comment Received on Proposed
Earned Sick Time Rules

(Secretary of State Rule #16P-053)

Public Comment Period Closed November 11, 2016

Attendees at Rutland Public Hearing

November 2, 2016

Name

Business

Deb Miner	Miner Construction, Inc.
Dylan Winters	First Light Technologies, Inc.
Rebecca Gardner	First Light Technologies
Juli Reidinger	Rochester Community Care Home
Kaycie Miltonberger	Main Street Alliance of VT
Andrea Capoue	Housing Trust - 

Attendees at Burlington Public Hearing

November 4, 2016

Name

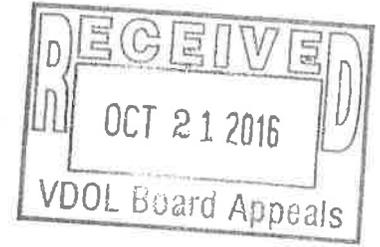
Business

Name	Business
Mark Pidgeon	SB Collins Inc
Brenda Sabin	Hickok Boardman AR Intelligence/
Heather Moreau	maley and maley
Jessica Hart	A.N. Deringer
Marisa Amgren	PayData
Laune Lagasse	Pay data
Lynn Trajan	pay data
Kelly Edmonds	PayData
Ashley Moore	organization - Mainstreet Alliance of VT

Green
mtn Payroll
Assoc

of VT

HINESBURG SAND & GRAVEL CO., INC.
14818 Route 116
Hinesburg, Vermont 05461
Telephone (802) 482-2342
Fax (802) 482-3107



October 19, 2016

Mr. Dirk Anderson
Vermont Department of Labor
PO Box 488
Montpelier, VT 05601-0488

RE: Proposed Earned Sick Time Rules

Dear Mr. Anderson:

I have reviewed the proposed Vermont Earned Sick Time Rules and as a Vermont business owner, have the following comments on these rules:

- 1) Section 5(e). I do not feel that employees should accrue sick time while they are out using accrued sick time. Earned accruals should be done on hours while the employee is actually working.
- 2) Section 13. I notice that as an employer, I am subject to fines for any violations of the Rules, whereas, there are no such penalties for violations on the part of the employees. I can see real opportunity existing for abuse of the Rules on the part of the employees, and whereas, the employers face financial penalty, there are no such deterrents for the employees.

Thank you for the opportunity to express a few of the concerns that I have regarding this new proposal.

Sincerely,


TIMOTHY M. CASEY
President

TMC/ahc



Vermont Association of Chain Drug Stores

To: Vermont Department of Labor
Date: November 8, 2016
RE: Proposed Rule on Earned Sick Time; 16-P-05

On behalf of the Vermont Association of Chain Drug Stores (VACDS), we appreciate the opportunity to file formal written comments regarding the proposed rule for Earned Sick Time, rule 16-P-05. VACDS requests that the Vermont Department of Labor clarify the rules to ensure that all retailers are operating consistently and in a manner, that is easy to apply for small retailers as well as those that have human resources departments operating in many different jurisdictions.

Section 3. Definitions

(7) "Employee" ... has worked an average of 18 hours per week an employer shall, on a quarterly basis...

Act 69 was based on the employee's yearly average. Changing to shorter increments like quarterly goes beyond legislative intent.

REQUEST: strike quarterly and replace with on an annual basis.

Section 4. Eligibility to Earn Sick Time

(b) If an employee is eligible to accrue and use earned sick time, then all hours the employee works shall be applied toward accrual of earned sick time regardless of the location of the work.

Our members operate in multiple states and comply with the labor laws of each state. Employees may move from state to state for advancement or employment, training, or to fill gaps in schedules. In those instances, our members will comply and follow the laws within that state but employers should not have to comply with several state labor laws at the same time. This is overly burdensome. This too goes beyond legislative intent and is inconsistent with existing labor laws.

REQUEST: Subsection (b) should be deleted.

Section 5. Accrual of Earned Sick Time

(e) An employee shall accrue earned sick time on hours paid

Subsection (e) is in conflict to subsection (a) and Act 69 and should be deleted. See definition § 482. EARNED SICK TIME; (a) An employee shall accrue not less than one hour of earned sick time for every 52 hours worked.

Earned sick pay accrual is based on hours worked not paid such as vacation, paid time off or earned sick time. These two sections are conflicting.

REQUEST: delete subsection (e)



Response to Proposed Rules for Act 069

Submitted by Main Street Alliance of Vermont

Contact: Lindsay DesLauriers; Lindsay@mainstreetalliance.org; 802-343-7423

November 8, 2016

1. Sec 3 – Definition of Employee: quarterly look back for part-time provision. We support this interpretation and believe that it is consistent with the intent of the law. The language of Act 069 reads “during a year” – and does not specify that time should be averaged over a 12- month period. A quarterly calculations seem like a fair and administratively reasonable solution to accommodate people whose employment fluctuates throughout the year, but who work an average of more than 18 hours during substantial portions of the year and therefore ought be permitted to accrue time.

Act 069 is clear that people who work more than 20 weeks in a year should be able to earn paid sick time. To average the hours a person who works 30 weeks a year across 52 weeks would be counter to the intent of the law, as we understand it. Likewise, it makes sense to permit people who increase their hours seasonally to accrue during the quarters that they are meeting the part-time threshold.

We appreciate that you are asking for a look-back period that is consistent with other required reporting (i.e. quarterly) so that it will not add additional administrative record keeping for employers.

2. Sec 3 – Definition of small employer – regarding your interpretation of the look back period to determine eligibility as a small employer for the purpose of the one year delay in implementation – we understand that there has been some concern about Oct-Dec as the look back period given holiday staffing increases. We appreciate that a quarterly look back is considered sufficient for this eligibility determination and believe that for many this will be the simplest way to assess their eligibility. We do acknowledge, however, that some businesses increase their staffing during the holiday period and so, while we are satisfied with the rule as it is written and would not recommend a change, we would also support permitting the business to choose either the last quarter or the past 12- month period over all to determine their eligibility as a small business, should you wish to make a change.
3. Sec 5 – Regarding the accrual of earned sick time for hours paid instead of worked. We do have some concerns about this interpretation. If an employer is, for example, proving an extended paid leave benefit to an employee according to a long-term parental, personal disability, or family leave policy, this rule would seem to require that the employee continue to accrue sick time during the duration of their leave – even if that leave is extended over the course of months.

Comments on Rule 16P05 (Earned Sick Time)

November 3, 2016

Vermont Retail & Grocers Association

Thank you for the opportunity to comment on proposed rule 16P05. VRGA represents over 800 retail stores in Vermont as well as many industry suppliers. We participated in many of the discussion on Act 69 during that past legislative session and have a good understanding of the intent of the new law.

Comments and suggested changes:

Section 3. Definitions

(7) “Employee” ... has worked an average of 18 hours per week an employer shall, on a quarterly basis...

There is no provision in statute for looking at hours worked by quarter. This could have some employees working more than 18 hours during certain periods like holidays or summer. We do not believe intent was to capture them unless they average more than 18 hours for an entire year as defined below in Act 69. Quarterly above should be changed to annually.

§ 481. DEFINITIONS

(5) “Employee” means a person who, in consideration of direct or indirect gain or profit, is employed by an employer for an average of no less than 18 hours per week during a year.

###

(12) “Small Employer” means an employer who on January 1, 2017 has five or fewer employees who averaged 30 hours or more per week during the period from October 1, 2016 to December 31, 2016.

There is no provision in statute for defining small business as just using the last quarter of the year as small employer. This could be unfair to small businesses that increases hours worked during holiday season. Act 69 defines small businesses with five or fewer employees who average at least 30 hours per week during a year. The reference to the last quarter of 2016 should be deleted and replaced with “during the past year”.

From Section 6a of Act 69:

...five or fewer employees who are employed for an average of no less than 30 hours per week during a year...

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Section 4. Eligibility to Earn Sick Time

(b) If an employee is eligible to accrue and use earned sick time, then all hours the employee works shall be applied toward accrual of earned sick time regardless of the location of the work. A multi-state business would be required to provide earned sick time to the employee even if they worked out of state for a day. This is inconsistent with existing labor laws and not addressed

in Act 69. When an employee works in New Hampshire or New York, for example, they are subject to the respective state minimum wage and other pertinent laws, not Vermont's.

Subsection (b) should be deleted.

###

Section 5. Accrual of Earned Sick Time

(e) An employee shall accrue earned sick time on hours paid

Subsection (e) is in conflict to subsection (a) and Act 69 and should be deleted.

§ 482. EARNED SICK TIME

(a) An employee shall accrue not less than one hour of earned sick time for every 52 hours worked.

###

Section 6. Use of Earned Sick Time.

(h) An employer shall not require an employee to find a replacement for the employee's absences, including absences for professional diagnostic, preventive, routine, or therapeutic health care.

While we acknowledge this language is contained in Act 69, it should be clarified nonetheless, that subsection (h) is for leave under this law and not to be confused with other leave, such as taking off time for a baseball game. Under that scenario, an employer should still have the option to indicate to the employee that they need to find another employee to work their shift.

November 10, 2016

Via Email

Benjamin J. Traverse
Tel: (802) 846-8337
btraverse@drm.com

Dirk Anderson
Vermont Department of Labor
P.O. Box 488
Montpelier, Vermont 05601-0488
Dirk.anderson@vermont.gov

Dear Mr. Anderson:

I am an attorney with the Labor & Employment Law practice of Downs Rachlin Martin PLLC. The purpose of my writing is to comment on the proposed "Earned Sick Time Rules," posted by the Vermont Department of Labor ("DOL") on September 28, 2016. Specifically, I write regarding two issues: (1) the apparent absence of any language in the proposed rules regarding employers that choose to provide employees with a lump sum of paid time off from work at the beginning of an annual period, rather than through an accrual system; and (2) whether employers complying with the new law by substituting their own paid time off policies are required to notify employees that their use of paid time off is to the exception of additional paid sick time.

Preliminarily, allow me to highlight the fact that the stated intent of the General Assembly in enacting the earned sick time law was that:

[A]ll employers that currently offer any type of paid time off from work that may, at a minimum, be used by the employer's employees in the amounts and for the purposes required pursuant to this act **shall not be required to change their paid time off policy** or offer additional paid leave.

Act 69, § 2(b)(2) (2016) (emphasis added). Emphasis is due in this above-quoted excerpt because, notwithstanding the expressed intent of the General Assembly, many Vermont employers that already offer generous paid time off policies are, in fact, having to make substantial changes to their policies in order to comply with the detailed provisions of the new law.

I. Providing Employees A Lump Sum Of Paid Time Off And Its Effect On Carry Over Requirements

Among the employers preparing for the new law's impending effective date are those that have elected to provide employees a lump sum of paid time off at the beginning of an annual period. These employers are specifically contemplated by the earned sick law under the section entitled,

“COMPLIANCE WITH EARNED SICK TIME REQUIREMENT,” which reads in pertinent part as follows:

An employer shall be in compliance with this subchapter if ... [t]he employer offers a paid time off policy or is a party to a collective bargaining agreement that provides the employee with at least the full amount of paid time off from work required pursuant to sections 482 and 483 of this subchapter at the beginning of each annual period and the employee may use it at any time during the annual period for the reasons set forth in subsection 483(a) of this subchapter.

Id., Sec. 3 (adding 21 V.S.A. § 484(a)(2)).

In reviewing the proposed “Earned Sick Time Rules,” there is no reference made to employers that choose to provide paid time off as a lump sum, rather than through an accrual system. The effect of this apparent omission is most notable with respect to the requirements for carrying over unused time from one annual period to the next. With respect to carry over, applicable provisions of the new law read that:

If the employer provides an employee with the full amount of paid time off at the beginning of each annual period, the paid time off shall not carry over from one annual period to the next as provided in subdivision 483(d)(1) of this subchapter.

Id. In the posted “Earned Sick Time Rules,” however, the proposed language states that:

Except as otherwise provided in section seven of these rules, earned sick time that remains unused at the end of an annual period shall be carried over to the next annual period and the employee shall continue to accrue earned sick time at the same rate established in the Act. However, nothing in this subsection shall be construed to permit an employee to use more earned sick time during an annual period than any limit on the use of earned sick time that is established by his or her employer pursuant to the Act.

Earned Sick Time Rules, § 5(h). And, in the aforementioned Section 7, the proposed language states only that:

If an employer chooses to pay unused sick time at the end of an annual period, then the sick time that is paid out shall not carry over into the subsequent annual period.

Earned Sick Time Rules, § 7(b). These excerpts from the “Earned Sick Time Rules” represent the whole extent of the proposed regulatory language on carrying over unused earned sick time from year-to-year. The proposed rules are silent as to the fact that an employer should also be excepted from any carry over requirement if it “provides an employee with the full amount of paid time off at the beginning of each annual period.”

Accordingly, it is respectfully requested that the DOL consider amending Section 5 of the proposed rules, entitled “Accrual of Earned Sick Time,” as follows:

Add new subsection (h):

(h) An employer shall be in compliance with this section if it provides the employee with at least the full amount of sick time required pursuant to subsections (a) and (b) of this section at the beginning of each annual period. If the employer provides an employee with the full amount of sick time at the beginning of each annual period, any hours of unused earned sick time at the end of the annual period shall not carry over into the subsequent annual period.

Amend existing subsection (h) to subsection (i), and add the following language:

Except as otherwise provided in **subsection (h) of this section and section seven** of these rules, earned sick time that remains unused at the end of an annual period shall be carried over ...

II. Notification Requirements For Employers Complying With The Law By Substituting Their Own Paid Time Off Policies

Section 10 of the proposed rules, entitled “Allowable Substitution of Employers’ Paid Leave Policies,” permits that: “An employer may have their own sick time or paid leave policies, as long as all employees can use at least the same amount of leave, for the same purposes, under the same conditions, and with the same job protections provided in the Act.” Earned Sick Time Rules, § 10(a). As is pertinent to this comment, the proposed rules go on to state that: “An employer that provides paid time off in amounts consistent with the Act that also may be used as earned sick time shall not be required to provide additional sick time to an employee.” *Id.*, § 10(c). A footnote to subsection (c) then sets forth the following guidance:

For example, a sporting goods store provides its employees with 40 hours of paid vacation time that can also be used as earned sick time, consistent with the Act. Does the store need to provide any separate sick time? No. The sporting goods store does not need to provide additional sick time; **but the store must notify the**

employees that if they use all of their hours for vacation, there will be no additional paid sick time available.

Id., § 10(c) n.4 (emphasis added). Emphasis is placed on the language regarding the example store's obligation to notify employees because, with the exception of this footnote, neither the proposed rules nor the provisions of the underlying law otherwise require that employees provide such notice. Indeed, the express notification requirements of both the underlying law and the proposed rules are limited to the following:

An employer shall post notice of the provisions of the Act in a form provided by the Commissioner, and in a place conspicuous to an employee at the employer's place of business. An employer shall also notify an employee of the provisions of the Act at the time the employee is hired.

Id., § 6(f); see also Act 69, § 3 (2016) (adding 21 V.S.A. § 483(j)). To reiterate, the "provisions of the Act" do not require that employers substituting their own paid time off policies notify employees that their use of paid time off will be to the exception of additional paid sick time. Thus, to properly conform with the stated notification requirements of the proposed rules and underlying provisions of the law, it is respectfully requested that the DOL consider amending the footnote excerpted above as follows:

For example, a sporting goods store provides its employees with 40 hours of paid vacation time that can also be used as earned sick time, consistent with the Act. Does the store need to provide any separate sick time? No. The sporting goods store does not need to provide additional sick time, ~~but the store must notify the employees that if they use all of their hours for vacation, there will be no additional paid sick time available.~~

Thank you for your consideration of this comment. If you have any questions regarding this comment, please do not hesitate to contact me at your convenience.

Very truly yours,



Benjamin J. Traverse



November 11, 2016.

Dirk Anderson
Vermont Department of Labor
PO Box 488
Montpelier, VT 05601

Mr. Dirk Anderson,

The statewide Vermont Chamber of Commerce represents 1,500 businesses representing all regions of the state and sectors of the economy. Mandating paid sick leave was discussed for a number of years before the passage of Act 69 and the Vermont Chamber continually voiced opposition as we believe Vermont employers best understand the benefit preferences of their employees and have a long history of maintaining the flexibility needed to meet their employees' unique needs and situations. Recognizing that this legislation was going to pass during the 2016 legislative session, the Vermont Chamber worked diligently with lawmakers to achieve an outcome for our members that would not be overly burdensome.

There are areas of proposed rule 16P053 where we would like to offer suggested changes to better align the rules with the statute.

The Vermont Chamber recommends the following changes:

- In the definitions of Act 69, employee is defined as a person who, in consideration of direct or indirect gain or profit, is employed by an employer for an average of no less than 18 hours per week during a year. Proposed rule 16P053 contains language in the definition of employee that would make the calculation of 18 hours per week be based on a quarterly analysis. This quarterly calculation to our recollection was not discussed during the drafting of the law, and we believe the statute clearly points to an average being based on a 12 month (year) timeframe.
- Proposed rule 16P053 contains a definition of small employer as a business that has five or fewer employees who average 30 hours or more per week during the period from October 1, 2016 to December 31, 2016. This time period is not included when speaking about small employers in Act 69. For consistency and to not penalize seasonal employers, we would ask that this time frame be changed to 30 hours per week during the year, as can be found in Section 6a of Act 69.

- Lastly, Act 69 states that an employee shall accrue not less than one hour of earned sick time for every 52 hours worked. Proposed rule 16P053 calls for the accrual of earned sick time on hours paid. This does not account for bonuses or other monetary benefits that may be awarded to employees. How would you reconcile this situation? We also believe that earning paid sick time, while using paid sick time, is contrary to the intent of the law.

Our members are engaged with your work on this issue and thank you for considering our input.

Sincerely,

Kendal Smith
Government Affairs Specialist
Vermont Chamber of Commerce

Shattuck, Krystal

From: Anderson, Dirk
Sent: Monday, October 31, 2016 4:31 PM
To: Shattuck, Krystal; Hoyt, Michael
Subject: FW: Sick Time Law

See below

Dirk Anderson
General Counsel
Vermont Department of Labor
P.O. Box 488
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Cell: 802-595-5436
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From: Anderson, Dirk
Sent: Monday, October 31, 2016 4:21 PM
To: 'paulinarl@comcast.net' <paulinarl@comcast.net>
Subject: RE: Sick Time Law

Thank you for your comments, Ms. Paulin. We will certainly address them when we file a final proposed rule.

Dirk Anderson
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From: paulinarl@comcast.net [mailto:paulinarl@comcast.net]

Sent: Monday, October 31, 2016 3:50 PM

To: Anderson, Dirk <Dirk.Anderson@vermont.gov>

Subject: Sick Time Law

Mr. Anderson,

I'm writing to you to address the issue with the sick time law. What the legislation passed and what the DOL is proposing is different. This needs to be clarified to make it easier for business owners to understand and execute.

- **Allow employees to accrue sick time on hours paid, rather than hours worked** - If the employee is using sick time, paid time off, vacation, etc. they would accrue more sick time because they're being paid for that time already. The bill as passed would have allowed for accrual of earned sick time for *hours worked*.

Paid sick time is already a hardship to small businesses like mine but allowing employees to accrue sick time on hours they have not worked adds even more.

Please consider this and consider what the legislation was that was passed when making your final decision.

Thank you for your time and consideration.

Sincerely,

April A. Paulin
Paulin Inc.
Shaftsbury & N. Bennington

Shattuck, Krystal

From: Anderson, Dirk
Sent: Friday, October 28, 2016 11:08 AM
To: Crystal Currier
Cc: Shattuck, Krystal; Hoyt, Michael
Subject: RE: Comments on Rule 16P053

Thank you very much for your comments, Ms. Currier. We will consider them before filing a final proposed rule.

Dirk Anderson
General Counsel
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Montpelier, VT 05601-0488
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From: Crystal Currier [mailto:ccurrier@vppsa.com]
Sent: Friday, October 28, 2016 11:04 AM
To: Anderson, Dirk <Dirk.Anderson@vermont.gov>
Subject: Comments on Rule 16P053

Good Morning,

I have been reviewing the administrative rules the Vt. Department of Labor recently published regarding the new sick leave law and would like to provide comments on those:

Section 3 defines "child" and "foster-child" – this was very helpful as the Act did not include these definitions. Step-child is not included in Section 483 of the Act as an individual that employees can use sick leave for, so this was helpful. Although it might be said, that since step-child is not included in the Act, the administrative rules are contradicting the language in the Act. That said, it seems it was an oversight in the Act.

Section 5 (a), (b) & (e) – the language in section (3) "employees shall earn sick leave on hours paid" contradicts sections (a) and (b) that indicates "hours worked". The Act indicates "hours worked" so section (e) seems to contradict the Act as well.

Section 5 (h) – "unused" sick leave at the annual period shall be carried over into the next annual period. In Section 484 (2) of the Act it allows the employer to NOT carry over unused sick leave "if" the employer provides the full amount of annual sick leave at the beginning of the annual period" (it shall not carry over).

First, I believe the Act didn't contemplate the "carry-over" feature as well as it could have. There is no mechanism to "cap" the amount of sick leave that an employee can accrue and carry into future years. From an employer perspective, it could be detrimental to allow employees to accrue and carry forward unused sick leave

indefinitely (most employers who offer sick leave policies have some type of cap that employees can carry forward). The Act does provide a mechanism (section 484-2) that allows the employer to restrict the carry-over BUT only if all the annual sick leave is offered to the employee upfront, on January 1st. The rules do not reference this ability and it should be included. Please note that as an employer, we do not want to remove the ability to carry-over unused sick leave but we do want the ability to cap the amount carried forward; therefore, we anticipate allowing full use of annual sick upfront so that we have the option to restrict "any" carry-over and then provide employees the ability to carry-over at a capped amount (providing employees with a benefit greater than what is required).

Thank you for the opportunity to comment.

Crystal L. Currier

@ Vermont Public Power Supply Authority
Controller
PO Box 126
5195 Waterbury-Stowe Road
Waterbury Ctr., Vermont 05677
(802) 882-8501 (*direct line*)
(802) 244-7678 (*main line*) ext. 228
(802) 839-0709 (*cell phone*)
(802) 244-6889 (*fax*)

Shattuck, Krystal

From: Anderson, Dirk
Sent: Wednesday, November 09, 2016 9:42 AM
To: Shattuck, Krystal
Subject: FW: Paid Sick Leave Concerns

Dirk Anderson
General Counsel
Vermont Department of Labor
P.O. Box 488
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From: Ray Bouffard [mailto:georgiamarketvt@gmail.com]
Sent: Tuesday, November 08, 2016 5:40 PM
To: Anderson, Dirk <Dirk.Anderson@vermont.gov>
Cc: Erin Sigrist <erin@vtrga.org>
Subject: Paid Sick Leave Concerns

Allow employees to accrue sick time on hours paid, rather than hours worked - If the employee is using sick time, paid time off, vacation, etc. they would accrue more sick time because they're being paid for that time already. The bill as passed would have allowed for accrual of earned sick time for *hours worked*.

Dirk :

We already offer all long time employees paid sick time, paid holidays, paid anniversary date, paid vacations - many up to 3 weeks and floaters for working a holiday - and we are one of the few companies (that I know) that actually pay **double time** on the holiday !

We will be forced to change our pay strategy if this plays out as " hours paid" rather than actually worked . This is not fair to employers **nor** employees from where I stand.

There is no doubt that this new burden on business will result in few employees - getting fewer hours.

I, for one, will work more -reducing my payroll - to avoid this "anti-business" regulation.

With all the new regulations-coming from all directions - one must question if Vermont legislators really want businesses to thrive and hire.

Ray Bouffard
Georgia Market

*Department of Disabilities, Aging and Independent Living's
Comments to the State of Vermont's Proposed Earned Sick Time Rules*

<i>Section</i>	<i>Comment</i>
Sec. 3 Definitions (1) “Annual Period...An employer with an existing fixed paid leave year may use such fixed paid leave year as the annual period, provided that all earned sick time accrued pursuant to the act shall be carried over into the fixed paid leave year.	The State currently contracts with ARIS Solutions, Inc. (ARIS) to provide Fiscal Employer/Agent services for numerous participant-/surrogate-directed programs. Specifically, ARIS provides payroll services to approximately 5,000 participant/surrogate employers and 14,000 independent direct support workers. For ease of administration, the State prefers to define the annual period as the continuous 12-month period that begins on the first day of the state fiscal year/participant's new budget year.
Sec. 3 Definitions (7) “Employee”... If an individual has been employed for an average of not less than 18 hours per week in the prior calendar quarter, the individual's accrual of sick time shall be deemed to have commenced on the first day of that quarter.	This type of quarterly calculation will be difficult for employers who self/family-manage services when trying to manage funds within their budget. It will also be very difficult for the fiscal employer/agent (ARIS) to develop the software necessary to support this calculation. It appears this Rule would require ARIS to wait for a quarter to determine if the employee worked an average of at least 18 hours/week and then retroactively determine the number of hours of sick time earned for the quarter. 21 V.S.A. § 482(e) allows the employer to calculate earned sick time either as it accrues during each pay period or on a quarterly basis, provided that an employee may use sick time as he or she accrues it during each quarter. This seems impossible to implement. It will not be possible to know if the employee qualifies to earn sick time and to allow them to use it simultaneously. Would those employers be able to operate on a fixed, planned schedule vs. hours worked so that it is clear which employees are impacted and which employees are not impacted by this provision of the Rule?
Sec. 3 Definitions (7) “Employee” means any person who...is employed...for an average of not less than 18 hours per week.”	The statutory definition states that an employee is one who is employed for an average of no less than 18 hours per week for a full year. The proposed Rule, however, states that the determination as to whether one has worked an average of 18 hours per week is made on a quarterly basis. How is this apparent inconsistency to be reconciled?
Sec. 3 Definitions (7) “Employee”...The term “employee” shall not include ... (B) an individual who is employed by an employer for 20 weeks or fewer in a 12 month period and in a job scheduled to last 20 weeks or fewer.	The following example highlights the need for further clarification regarding the definition of “employee.” If an employer dies or enters a nursing facility after the individual has worked for that employer for an average of no less than 18 hours per week for a period of 15 weeks, and the individual was originally scheduled to work more than 20 weeks, is that individual considered an employee? While the answer appears to be “yes,” because both prongs of (5)(B)(i) and (ii) have not been met, further clarification of the rule would be helpful.
Sec. 5. Accrual of Earned	Shouldn't this date read, “December 31, 2018?”

*Department of Disabilities, Aging and Independent Living's
Comments to the State of Vermont's Proposed Earned Sick Time Rules*

<i>Section</i>	<i>Comment</i>
Sick Time... (b) After December 31, 2019, an employee shall accrue earned sick time on all hours worked at a rate of one hour of earned sick time for every 52 hours worked, including overtime hours, up to a cap of 40 hours per annual period.	
Sec. 6. Use of Earned Sick Time...(b)Beginning January 1, 2019, an employee has the right to use up to 40 hours of accrued sick time per annual period.	Although the statute provides that after December 31, 2018, an employer may allow an employee to use up to 40 hours of accrued time in a 12-month period, small employers subject to a delayed implementation date of January 1, 2018, who wish to then impose a waiting period through December 31, 2018, should be entitled to cap their employees' use of earned sick time in Year 1 (i.e., January 1, 2019 through December 31, 2019) to 24 hours. This would allow small employers the same adjustment period as other employers.
Sec. 6. Use of Earned Sick Time...(f) An employer shall post notice of the provisions of the Act in a form provided by the Commissioner, and in a place conspicuous to an employee at the employer's place of business. An employer shall also notify an employee of the provisions of the Act at the time the employee is hired.	Independent direct care workers frequently work in their employers' homes. Are these employers of independent direct care workers exempt from the posting requirement, or must they post the provisions of the Act in their homes?
Sec. 6 Use of Earned Sick Time...(i) If an employee is absent from work for one of the reasons listed in subsection (c) of this section, the employee shall not be required to use earned sick time and the employer will not be required to pay for the time that the employee was absent if the employer and the employee mutually agree that either:	The Rule should clearly state that sick time need not be used if the employee simply wants to take unpaid time.

*Department of Disabilities, Aging and Independent Living's
Comments to the State of Vermont's Proposed Earned Sick Time Rules*

<i>Section</i>	<i>Comment</i>
<p>Sec. 6. Use of Earned Sick Time... (i)(2) the employee will trade hours with a second employee so that the second employee works during the hours for which the employee is absent and the employee works an equivalent number of hours in place of the second employee during the same pay period.</p>	<p>Although this tracks the statutory language, subsection (i)(2) seems to conflict with subsection (h), which provides that employees shall not be required to find a replacement for their absences.</p>
<p>Sec. 7. Payment of Earned Sick time... (c) An employee who voluntarily separates from employment without good cause attributable to the employer shall forfeit all accrued earned sick time and any accrued earned sick time shall not transfer if the employee is subsequently hired by another employer.</p>	<p>Is accrued earned sick time legally transferable to another employer in any employment arrangement? If not, what is the reason for stating, "and any accrued earned sick time shall not transfer if the employee is subsequently hired by another employer"?</p>
<p>Sec. 7 Payment of Earned Sick Time. (f) If an employee receives different pay rates for hourly work from the same employer, the normal hourly rate means either: (1) the wages the employee would have been paid for the hours absent during use of earned sick time if the employee had worked; or (2) the blended rate, determined by taking the weighted average of all regular rates of pay over the previous pay period, month, quarter or other established period of time the employer customarily uses to calculate blended rates for similar</p>	<p>Calculating payment of earned sick time may present an issue where an employer pays both a daily (respite) rate and an hourly rate to the same employee, depending upon the work performed. Perhaps the rule could address this?</p>

*Department of Disabilities, Aging and Independent Living's
Comments to the State of Vermont's Proposed Earned Sick Time Rules*

<i>Section</i>	<i>Comment</i>
purposes. (3) Regardless of the method the employer elects to determine the normal hourly rate, the employer shall use a consistent method for all his or her employees throughout an annual period.	

Shattuck, Krystal

From: Anderson, Dirk
Sent: Monday, October 31, 2016 4:19 PM
To: psb240@myfairpoint.net
Cc: erin@vtrga.org; Shattuck, Krystal; Hoyt, Michael
Subject: RE: Comments on Rule 16P053 (Sick Pay)

Thanks you for your comments, Mr. Dubie. We will certainly address them when we file a final proposed rule.

Dirk Anderson
General Counsel
Vermont Department of Labor
P.O. Box 488
Montpelier, VT 05601-0488
Phone: 802-828-4391
Cell: 802-595-5436
Fax: 802-828-4046
dirk.anderson@vermont.gov

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-----Original Message-----

From: psb240@myfairpoint.net [mailto:psb240@myfairpoint.net]
Sent: Monday, October 31, 2016 3:38 PM
To: Anderson, Dirk <Dirk.Anderson@vermont.gov>
Cc: erin@vtrga.org
Subject: Comments on Rule 16P053 (Sick Pay)

I don't understand how the Department of Labor can impose their own agendas and misinterpret legislation that is clearly written. Example, Act 69, which was clearly written to say sick time would be paid on time worked, not time paid. It was also clear that it was to start the first quarter January 1, 2017, so why would you be using eligibility from the last quarter of this year? This was contentious legislation to begin with, the department of Labor doesn't need to make it more contentious, and should be using the strictest interpretation to impose the law.

Thank you.

John P. Dubie, President
Pearl Street Beverage

Shattuck, Krystal

From: Anderson, Dirk
Sent: Tuesday, October 25, 2016 7:50 AM
To: Nicks Gas
Cc: Shattuck, Krystal; Hoyt, Michael
Subject: RE: Comments on Rule 16P053 (Sick Pay)

Thank you for the comments, Pauline. We will consider them when deciding whether to amend the rule before filing a final proposed rule.

Dirk Anderson
General Counsel
Vermont Department of Labor
P.O. Box 488
Montpelier, VT 05601-0488
Phone: 802-828-4391
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From: Nicks Gas [mailto:nicksgasngo@gmail.com]
Sent: Monday, October 24, 2016 7:42 AM
To: Anderson, Dirk <Dirk.Anderson@vermont.gov>
Subject: Comments on Rule 16P053 (Sick Pay)

Hello,

The proposed Paid Sick Leave Rules include some prescriptions that are broader than those in the law; including:

- **Calculates eligible employees by quarter rather than annually** - *For example, a part time employee who works more than 18 hours per week during the summer would accrue sick time, but not during other quarters if they average less than 18 hours per week.*
- **Allow employees to accrue sick time on hours paid, rather than hours worked** - *If the employee is using sick time, paid time off, vacation, etc. they would accrue more sick time because they're being paid for that time already. The bill as passed would have allowed for accrual of earned sick time for *hours worked*.*

Pauline
T & P Gas Holding Inc

Shattuck, Krystal

From: Anderson, Dirk
Sent: Tuesday, October 25, 2016 7:58 AM
To: heather
Cc: Shattuck, Krystal; Hoyt, Michael
Subject: RE: Comments on Rule 16P053 (Sick Pay)

Thanks for your comments, Ms. Belcher. We will consider whether to incorporate them into our final proposed rule before we file it with the Legislative Committee on Administrative Rules. We appreciate your input.

Dirk Anderson
General Counsel
Vermont Department of Labor
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From: heather [mailto:heather@sweetclovermarket.com]
Sent: Monday, October 24, 2016 11:25 AM
To: Anderson, Dirk <Dirk.Anderson@vermont.gov>
Subject: Comments on Rule 16P053 (Sick Pay)

Hello,

Regarding the proposed Sick Pay Rules, I wanted to comment that calculating benefits based on hours WORKED and not on hours PAID makes life much easier in the world of payroll and benefits administration in our business. I am very generous with my benefits and am grateful that the state is spearheading this effort, but please consider sticking with hours worked instead of hours paid. Thank you! -h

Heather Belcher
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