

## Vermont

### Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

#### Topics

#### **I. Discrimination**

##### **National Guard Protections**

Vermont law prohibits discrimination against, and provides reemployment rights and other benefits for, members of the U.S. armed forces reserves, the ready reserve, or the Vermont National Guard who must leave employment to perform Vermont state duty or military duty. The law protects a service member's right to take unpaid leave for up to 15 days per calendar year and prohibits employers from requiring the service member to use vacation or other accrued leave for the period of military service. The law also protects a service member's right to reinstatement to private employment after the period of military service is completed. In addition, the law protects a service member's option to continue his or her civilian health insurance under the same terms and conditions that were in effect prior to the member's call to duty. This amendment extends the leave of absence, reinstatement, continuation of benefits, and discrimination protections to members of the National Guards of other U.S. states who are called into active service. Thus, a Vermont employee who is a member of the National Guard of another state is entitled to the employment protections and other benefits afforded under the statute.

21 V.S.A. § 491 and 21 V.S.A. § 492 (Effective Date 07/01/2016).

#### **II. Pre-Employment Inquiry Guidelines**

##### **Criminal Background Inquiries**

Vermont prohibits employers from requesting criminal history information on an initial employee application form. Further, an employer may only inquire about an applicant's criminal history during an interview or once the applicant has been deemed otherwise qualified for the position.

Exceptions apply. Employers may inquire about criminal convictions on an initial employee application form if:

- the prospective employee is applying for a position for which any federal or state law or regulation creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses; or
- the employer or an affiliate of the employer is subject to an obligation imposed by any federal or state law or regulation not to employ individuals who have been convicted of one or more types of criminal offenses; and
- the questions on the application form are limited to the types of criminal offenses creating the disqualification or obligation.

If an applicant is still eligible for a position per applicable federal or state law, the employer must allow the applicant to explain the circumstances of any convictions, including post-conviction rehabilitation. Employers that violate this statute will incur a civil penalty of up to \$100.00 for each violation.

*Tammy D. McCutchen, principal with Littler Mendelson PC, oversaw the firm's review and update of this state employment law workbook addendum.*

21 V.S.A. § 495j (Effective Date 7/1/2017).

### III. **Family and Medical Leave**

#### **Paid Sick Leave**

Under Vermont's new paid sick leave law, beginning on January 1, 2017, employers must allow employees to accrue and use at least 24 hours (or three days) of earned sick time in a 12-month period. Employers with five or fewer employees who are employed for an average of at least 30 hours per week do not have to comply with the new law until January 1, 2018. Beginning January 1, 2019, employers must allow employees to accrue and use at least 40 hours (or five days) of earned sick time in a 12-month period.

Employers may impose a one-year waiting period on a new employee's ability to use sick time, though the employee will accrue sick time during this period. Unused leave carries over to the following year unless employees are paid out at year's end or an employer frontloads the full amount of leave at the beginning of each 12-month period. Employees using sick leave receive their normal hourly wage rate or the state minimum wage, whichever is greater. An employer is not required to pay out unused sick time when employment ends.

Leave is not limited to "sick time" -- the leave may also be used for "safe time" purposes connected to domestic violence, sexual assault, or stalking, or public health or safety reasons.

Employees must make reasonable efforts to avoid scheduling routine or preventive health care during regular work hours and notify the employer as soon as practicable of the need to take sick time and the leave's expected duration.

Employers must conspicuously post a notice about the law, and notify employees about the law at the time of hiring. Employers must also calculate the amount of sick time accrued and used during each pay period or on a quarterly basis.

21 V.S.A. §§ 481 - 486.

### IV. **Wage and Hour Laws**

No new laws or regulations enacted in 2015 or 2016.

### V. **Drug Testing**

No new laws or regulations enacted in 2015 or 2016.

### VI. **Noncompete and Other Employment Agreements**

No new laws or regulations enacted in 2015 or 2016.

### VII. **Workplace Safety**

No new laws or regulations enacted in 2015 or 2016.

### VIII. **Workers' Compensation**

Vermont has overhauled its workers' compensation regulations. In addition to reorganizing the rules to more closely reflect the chronology of a workers' compensation claim, the amendments make substantive and procedural changes. Highlights include:

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- A new index of commonly used forms.
- New rules regarding reporting and claiming first-aid only injuries.
- Clarification and expansion of the rule requiring parties to a claim to disclose discoverable information.
- Codification of a Vermont Department of Labor decision holding that the statute of limitations for a subsequent claim for benefits in a timely filed work-related injury claim is within six years of the date on which the benefits accrue (as opposed to the three-year limitations period for filing the initial claim).
- An injured worker may receive assistance – not legal representation -- during a contested claim by a collective bargaining unit representative.
- An insured employer must appear at a formal claims hearing by way of legal counsel appointed for that purpose by its workers' compensation insurance carrier.
- Clarification of the scope of claims subject to arbitration.
- An injured worker has the right to make an audio or video recording of an independent medical examination at his or her own expense, and cannot be penalized for exercising this right.
- Additional grounds for an employer or insurer to discontinue payment of temporary disability benefits to a claimant.
- New rules permitting the parties to enter into a compromise agreement to resolve a claim.
- Expanded rules and procedures for third-party liability actions.

CVR 24-010-003 (Effective Date 08/01/2015).

## **IX. Miscellaneous**

### **A. Contraceptive Coverage**

Vermont's law requires health insurance plans to provide contraceptive coverage. The amendments require health insurance plans to provide contraceptive coverage with no deductible, coinsurance, co-payment, or other cost-sharing for at least one drug, device, or other product in each contraceptive method for women identified by the U.S. Food and Drug Administration. The amendments also require plans to provide coverage for a 12-month supply of prescribed contraceptives, which may be dispensed all at once or over the course of the 12 months at the health care provider's discretion. Health insurance plans also must provide coverage for voluntary sterilization procedures for men and women with no cost-sharing, except where the coverage would disqualify a high-deductible health plan from eligibility for a health savings account under the federal tax code.

The above provisions take effect on October 1, 2016, and apply to health insurance plans on or after October 1, 2016, on such date as a health insurer issues, offers, or renews the health insurance plan, but in no event later than October 1, 2017.

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Finally, the amendments also require health insurance plans offered through the Vermont Health Benefit Exchange to allow a pregnant woman and her family to enroll at any time after her pregnancy begins, with coverage starting on the first of the month after she selects a health plan. This provision takes effect on July 1, 2016.

8 V.S.A. § 4099c and 33 V.S.A. § 1811 (Effective Date 10/01/2016).

## **B. Electronic Smoking Devices**

Vermont has extended its statutory provisions related to smoking tobacco in public and in the workplace to the use of tobacco substitutes. Previously, Vermont law prohibited the use of lighted tobacco products in the workplace. The amendments prohibit the possession of lighted tobacco products and the use of tobacco substitutes in the workplace. "Tobacco substitute" means a product, including electronic cigarettes or other electronic or battery-powered devices, that contains and is designed to deliver nicotine or other substances into the body through inhaled vapor, and that has not been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes.

The amendments provide an exception to the ban on workplace use of tobacco substitutes for businesses that provide a setting for patrons to purchase and use tobacco substitutes and related paraphernalia (such as vaping lounges), but do not sell food or drink.

The amendments also prohibit the use of tobacco substitutes in the same public places in which Vermont law already prohibits the possession of lighted tobacco products. The amendments provide for the same enforcement procedures.

The amendments clarify that persons holding a tobacco license may display and store tobacco or tobacco substitutes, but only behind a sales counter or other area that is inaccessible to the public or in a locked container.

The amendments are codified at title 7 section 1003; title 18, sections 1421, 1741, and 1753; title 18 section 1745; and title 23 section 1134b of the Vermont Statutes Annotated.

7 V.S.A. § 1003, 18 V.S.A. § 1421, 18 V.S.A. § 1741, 18 V.S.A. § 1752, and 23 V.S.A. § 1134b (Effective Date 07/01/2016).

## **C. Mini-WARN Regulations**

The federal Worker Adjustment and Retraining Notification (WARN) Act requires employers to provide notice to covered employees, unions, and government officials prior to a "plant closing" or "mass layoff." Vermont enacted its own mini-WARN Act, which took effect January 15, 2015. Shortly after the law took effect, the Vermont Department of Labor adopted regulations implementing the law, which cover:

- Definitions;
- Employer requirements;
- Service of mini-WARN notice;
- Contents of mini-WARN notice;
- Exceptions to the mini-WARN notice requirements;
- Labor Department investigations;

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- Labor Department administrative hearings;
- Violations;
- Administrative penalties; and
- Appeals.

The new regulations will be codified at Code of Vermont Rules, title 24, chapter 10, section 13, rules 1 through 13.

CVR 24-010-013 (Effective Date 05/22/2015).