



VERMONT

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

Vermont is an at-will employment state. An employee may be discharged at any time with or without cause unless there is a clear and compelling public policy against the reason for the discharge or if the relationship has been modified, such as via an express or implied contract (including employer policies). *Jones v. Keogh*, 137 Vt. 562, 564, 409 A.2d 581, 582 (Vt.1979); *Boynton v. ClearChoiceMD, MSO, LLC*, 2019 VT 49, ¶ 6, 210 Vt. 454, 458, 216 A.3d 1243, 1246 (VT Sup. Ct. 2019). An employee hired for an indefinite period is presumed to be at will. *Dulude v. Fletcher Allen Health Care, Inc.*, 174 Vt. 74, 80, 807 A.2d 390, 395 (2VT Sup. Ct. 2002).

Immigration Verification

Vermont places no additional employment verification procedures on employers beyond federal I-9 compliance. 8 U.S.C. 1324a. There is no requirement to use E-Verify under Vermont state laws.

Drug Testing

Vermont's Drug Testing Act limits the drug testing of applicants and employees. 21 V.S.A. § 511 *et seq.* Vermont has different standards for an applicant and an employee.

Applicant

Testing is allowed only if: (1) the applicant is given an offer of employment conditioned on a negative test result; (2) the applicant received a written notice listing the drugs to be tested and testing procedures, and stating that therapeutic levels of prescription drugs are not reported; and (3) the drug testing is administered as required by statutes 21 V.S.A § 514 and 21 V.S.A § 512.

Employee

Any employer may require an employee to submit to a drug test if all the following conditions are met:

1. The employer has probable cause to believe the employee is using or is under the influence of a drug on the job;
2. The employer has a bona fide rehabilitation program for alcohol or drug abuse and such a program is provided by the employer;
3. The employer may not terminate the employee if the test result is positive and if the employee agrees to participate in, and then successfully completes the rehabilitation program. Note, however, that the employee may be terminated if, after completion of the program, the employee subsequently tests positive; and
4. The drug test is administered in accordance with 21 V.S.A § 514.

An employer shall not request, require, or conduct random or company-wide drug testing except when required by federal law or regulation. 21 V.S.A § 513.

Test Administration

To test, the employer must:

1. Administer a test only to detect the presence of alcohol or drugs at nontherapeutic levels;
2. Establish a written policy and provide it to the person who is being tested;
3. Refrain from requesting or requiring a blood sample;
4. Use a lab designated by the Department of Health;
5. Establish a chain of custody procedure;
6. Where urinalysis is used, require confirmation tests for positive results and offer tested individuals the opportunity to have a blood sample drawn;
7. Ensure that a positive sample is preserved for accurate retesting for no less than 90 days after the individual receives the result; and
8. Contract with or employ a certified medical review officer to review and evaluate all drug test results, ensure compliance with applicable laws, report all drug test results to the individual tested, and report only confirmed drug test results to the employer.

21 V.S.A § 514.

Employers are required to pay for the original drug test for both applicants and employees. 21 V.S.A. § 301. However, an applicant or employee who receives a positive result shall be given the opportunity to retest at an independent laboratory at the individual's expense. 21 V.S.A § 515.

Jury Duty and Court Leave

It is unlawful for an employer to discharge an employee by reason of their service as a juror or appearance as a witness in a court or other tribunal pursuant to a summons, or to penalize the employee or deprive them of any right, privilege, or benefit on a basis that discriminates between such employee and other employees not serving as jurors or appearing as witnesses. 21 V.S.A. § 499.

Employees must be considered in the service of their employer when serving as jurors or appearing as witnesses for purposes of determining seniority, fringe benefits, credit toward vacations, and other rights, privileges, and benefits of employment. 21 V.S.A. § 499.

As detailed below, Vermont also requires leave for crime victims to attend depositions or court proceedings for themselves or family members. Likewise, leave applies to employees who must comply with subpoenas related to the same. 21 V.S.A. § 472c; 13 V.S.A. § 5313.

Voting Leave

Vermont has no requirement for employers to grant time off to vote.

Earned Sick Leave

Vermont enacted an Earned Sick Time law, 21 V.S.A §481 *et seq.* The State requires employers to provide paid leave under a system in which employees earn and use the leave for enumerated reasons. In particular, employers must provide employees who are otherwise eligible with earned sick time to: care for their own or their family members' illness or injury; receive medical care; attend family member long term care appointments; attend/obtain social, and legal services, or counseling for themselves or their family members when they or their family members are victims of domestic violence, sexual assault, or stalking; or care for family members when their school or business closes for public health or safety reasons. 21 V.S.A. § 483. "Family members" include an employee's parent, grandparent, spouse, child, sibling, parent-in-law, grandchild, or foster child.

To be eligible, an employee must work an average of 18 hours per week in a year. A range of employees not covered includes federal and some state employees, temporary employees, per diem workers, certain executive-level employees, and minors, among others. 21 V.S.A §481.

New employers are not subject to this law until a year after hiring the first employee, and new employees may not be eligible for a year, depending on the employer's discretion. Employees accrue at least one hour of sick time for every 52 hours worked. Accrual and use can be limited to 40 hours in a 12-month period. The amount of leave used in a single workday must be in the smallest time increment for payroll time accounting or under the paid time-off policy, but such time can be no less than an hour. Leave must be carried over year to year unless the employer's policies provide leave equal to or greater than what the law requires at the beginning of the year, or the employer chooses to pay for accrued but unused leave annually. Sick leave is compensated at a rate equal to the greater of the employee's normal rate or Vermont's minimum wage. 21 V.S.A §482; 21 V.S.A. § 483.

Employers are required to post a notice advising employees of their rights and to notify employees of these sick leave provisions at the time of hire. 21 V.S.A. § 483.

Vermont provides alternatives for compliance, including certain reliance on paid time-off policies that provide leave accrual and use at a rate that comports with the sick leave requirements. The scope and breadth of the alternatives and general sick-time policy requirements for employers necessitate a close review for each employer to ensure compliance.

Retaliation for use of sick leave is prohibited by the minimum wage statute. 21 V.S.A. § 397.

Parental/Family Leave (Including Pregnancy and Childbirth)

Vermont employers with the requisite number of “employees” – people who have been continuously employed by the same employer for a period of one year for an average of at least 30 hours per week – are required to provide certain amounts of family and parental leave. 21 V.S.A. § 471.

Family leave encompasses leave for a serious illness (an illness posing imminent danger of death, requiring hospitalization or in-home care under a physician’s direction) of the employee, their child (including a stepchild, ward, or foster child), spouse, parent, or parent-in-law. This leave is available if the employer has 15 or more employees as defined above. 21 V.S.A. § 471.

Parental leave encompasses leave for the birth of the employee’s child or placement of a child aged 16 or under for the purpose of adoption. This leave is available if the employer has ten or more employees as defined above. 21 V.S.A. § 471.

Eligible employees may take up to 12 weeks of family or parental leave in a 12-month period. Employees are entitled to benefits continuation during such leave but can be required to continue contributing to the cost at the existing contribution rate. 21 V.S.A. § 472.

These types of leave are unpaid, but employees may use up to six weeks of accrued paid leave. Employees must provide reasonable, written notice of intent to take leave and the expected period for the leave. Physician verification may be required for serious illnesses. 21 V.S.A. § 472.

Employers may not mandate that employees give notice more than six weeks prior to the anticipated commencement of an employee’s leave in the case of an adoption or childbirth. 21 V.S.A. § 472

Employees are entitled to be restored to their positions or comparable positions at the same pay, benefits, and seniority, but restatement entitlement is not applicable if the employer can demonstrate by clear and convincing evidence, that the job would have been terminated or the employee laid off for grounds unrelated to the leave, or their services were so unique as to require replacement of the employee to avoid substantial and grievous economic harm, as long as notice of intent to do so is given. 21 V.S.A. § 472.

Employers may provide broader leave benefits than required by the state. 21 V.S.A. § 472.

Employers must post and maintain, in a conspicuous place, the printed notices required for leave under this provision. 21 V.S.A. § 472.

Vermont’s law covers more employees than the Family and Medical Leave Act (FMLA), which requires at least 50 employees within 75 miles of the worksite. Vermont bases eligibility on hours per week versus the 1,250 hours in the prior 12 months that are required by the FMLA. 21 V.S.A. § 471. Vermont does not cover placement of foster children; however, that is covered by the FMLA. The FMLA permits employers to require a medical certification and provides a second-opinion process, unlike Vermont’s law.

Short-term Family Leave

In addition to family and parental leave, eligible employees are also entitled to take “short-term family leave” to:

- Attend a child’s preschool/school activities, such as a parent-teacher conference, that directly relates to academic educational advancement;
- Attend a child’s or family member’s routine medical or dental appointments;
- Accompany a parent, spouse, or parent-in-law to appointments for professional services related to care and well-being; and
- To respond to a medical emergency involving a child or family member.

“Child,” as referenced above, means the employee’s child, stepchild, foster child, or ward who lives with the employee. “Family member” means parent, spouse, or parent-in-law.

This leave is limited to four hours in a 30-day period and a total of 24 hours in a 12-month period. Leave is unpaid, but employees may use accrued paid leave. Employers may require employees to take leave in a minimum of two-hour segments. Notice of the need for leave should be provided as early as possible, but generally no later than seven days before the leave is needed unless providing advanced notice could have an adverse impact on the family member. 21 V.S.A. § 472a.

Other Leave

Vermont provides for several other types of leave, including:

- **Crime-victim leave:** Employees who have been continuously employed by the same employer for at least 20 hours per week over six months have the right to take unpaid leave for attendance at court proceedings and depositions. This leave is unpaid, but employees may use accrued sick leave, vacation leave, or any other accrued paid leave. Eligible employees are entitled to leave to attend: a criminal proceeding, when the employee is an alleged victim, and the employee has a right or obligation to appear at the proceeding; a relief from abuse proceeding; a hearing concerning an order against stalking or sexual assault; or a relief from an abuse, neglect, or exploitation hearing. Employers must post a notice related to this leave. 21 V.S.A. § 472c;
- **Town meeting leave:** Employees have the right to take unpaid leave for the purpose of attending their annual town meetings, provided the employee notifies the employer at least seven days prior to the date of the town meeting. 21 V.S.A. § 472b(a);
- **Military leave:** Qualified members of the U.S. Armed Forces reserve components, Ready Reserve, or any state’s National Guard, including the Vermont National Guard, may receive paid or unpaid leave at the employer’s discretion. Depending on the order period or call-up time, benefits may continue at the employee’s choice with cost sharing for up to 30 days and thereafter, with cost-sharing or Vermont’s payment of the employer share. Discrimination for leave use is prohibited and violations can subject employers to penalties, including via state legal action or employee suits. 21 V.S.A. § 491 *et seq.*; and **Legislative leave:** Employees who work full-time at an employer with at least six employees and who serve as a member of the Vermont General Assembly may take a temporary or partial leave of absence for the purpose of performing official duties in connection with his or her elected office. Such a leave of absence shall not cause loss of job status, seniority, or loss of benefits. If an employee fails to provide appropriate notice to the employer, the employee waives the right to take this leave. 21 V.S.A. § 496.

Smoking/Tobacco Laws

Vermont prohibits lighted tobacco products in any workplace. Except for a school, a workplace does not include areas commonly open to the public. 18 V.S.A. § 1421. Vermont prohibits the discharge of or discrimination against an employee in retaliation for assisting in the enforcement of Vermont laws concerning smoking in the workplace. 18 V.S.A. § 1427. Lighted tobacco products and the use of tobacco substitutes are prohibited in common areas of enclosed places of public and publicly owned buildings, designated smoke-free areas owned or leased by the state or municipality, or any other area within 25 feet of a state-owned building. 18 V.S.A. §§ 1741-2.

Break Time to Express Milk

Employers are required to provide “reasonable time” to nursing mothers to express breast milk for a nursing child for three years after the child’s birth. The employer has the discretion to decide if the time is paid or unpaid (absent a collective bargaining agreement that modifies this). A reasonable accommodation to provide “appropriate private space” is required; the space cannot be a bathroom stall.

Employers may be exempted if providing time or an appropriate private space would “substantially disrupt” operations. 21 V.S.A. § 305.

Meal Breaks

Vermont employers must provide employees with reasonable opportunities during work periods to eat and to use toilet facilities to protect the health and hygiene of employees. 21 V.S.A. § 304.

Minimum Wage, Overtime, and Wage Recordkeeping

Beginning January 1, 2024, Vermont's minimum wage is \$13.67 per hour, with tipped employee wages paid at \$6.84 per hour as long as the employee's tips bring the total hourly wage up to the state minimum wage. Vermont law provides for mandatory minimum wage increases every year on January 1st. Employers must still comply with federal wage laws and regulations. 21 V.S.A. § 384(a).

Commissioned employees must make at least the current minimum wage for all hours worked, even if on straight commission, or receive a wage/commission payment.

Certain minimum wage exemptions apply to, among others, students, agriculture workers, taxi drivers, outside salespersons, domestic service, and federal employees. 21 V.S.A. § 383.

Generally, if an employee works more than 40 hours in a workweek, they must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed. However, there is a range of exemptions. 21 V.S.A. § 384(b).

Vermont law does not address on-call or travel time. Various training attendance must be compensated.

See Vermont's Department of Labor site: [A Summary of Vermont Wage and Hour Laws](#).

Final Payments

Vermont requires wage payments to discharged employees within 72 hours of discharge. 21 V.S.A. § 342(b)(2).

A range of requirements governs final payments, deductions, notification, and bonus pay. 21 V.S.A. §§ 341-342.

Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the Vermont Department of Labor (VDOL), and additional information regarding the benefits may be accessed at labor.vermont.gov/unemployment-insurance.

Workers' Compensation

Workers' Compensation is available to every employer in Vermont. Employees who suffer injuries (including aggravation of a condition) and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits. The Vermont Department of Labor and additional information may be accessed at labor.vermont.gov/workers'-compensation.

Vermont recognizes a private cause of action for discrimination and retaliation for the assertion of a claim. 21 V.S.A. § 601 *et seq.* Further, covered employees who recover from a work-related injury within two years after its onset must be reinstated in the first available position suitable for the employee given the position the employee held at the time of the injury. 21 V.S.A. § 643b.

Child Labor

Children under 14 are generally prohibited from performing any non-agricultural work. Children between 14 and 16 are prohibited from working in an extensive list of occupations, and their hours are restricted. These children may not be employed:

- During school hours (certain exceptions apply);
- Before 7 a.m. or after 7 p.m. (9 p.m. between June 1 and Labor Day);
- More than three hours per day on school days;
- More than eight hours per day on non-school days;
- More than 18 hours per week in school weeks;
- More than 40 hours per week in non-school weeks; and
- More than six days a week.

Children between 16 and 18 are prohibited from working in certain hazardous occupations. These children may not be employed in a manufacturing or mechanical establishment for more than nine hours on any one day or more than 50 hours in any one week. 21 V.S.A. 430 *et seq.*

Gun Laws

Vermont has not enacted legislation to protect gun ownership and possession in the workplace. Employers are therefore free to prohibit gun possession at work.

Additional Laws and Regulations

Employee v. Independent Contractor

To determine whether a worker is an employee or an independent contractor, for purposes of determining whether an alleged employer may be liable for the worker's torts, Vermont courts rely primarily on the "right to control" test. Under this test, a worker is an employee if the party for whom work is being done can prescribe the result and direct the means and methods by which it shall be performed. *Hathaway Executrix v. Tucker Casella*, 2010 VT 114, 189 Vt. 126, 137, 14 A.3d 968, 976 (Vt. 2010).

Polygraph Testing

Except as set forth below, Vermont prohibits employers from conditioning employment, promotion, or change in status on requiring an employee or applicant to submit to a polygraph; administering, causing to be administered, threatening, or attempting to administer a polygraph; or requesting or requiring a waiver of these prohibitions. Likewise, an employer shall not refuse to hire, promote, or change the status of an applicant because they refuse or decline an examination. 21 V.S.A. § 494a.

The following employers may require polygraph examinations:

- Department of Public Safety and the Department of Motor Vehicles, for applicants for law enforcement positions;
- Department of Fish and Wildlife, for applicants for law enforcement positions;
- Department of Liquor and Lottery and Board of Liquor and Lottery, for applicants for investigator positions;
- Municipal police departments and county sheriffs, as to sworn police officers and deputy sheriffs;
- Employers whose primary business is the wholesale or retail sale of precious metals or gems and jewelry, or items made from precious metals or gems;
- Employers whose business includes the manufacture or wholesale or retail sale of regulated drugs, provided that only employees who come in contact with such regulated drugs may be required to take a polygraph examination; and
- Employers who are authorized or required under federal law or regulations to administer a polygraph examination.

21 V.S.A. § 494b.

Civil Rights – Includes Gender, Disability, and Equal Pay

Vermont's Fair Employment Practices Act (FEPA) makes it unlawful to discriminate based on race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, age, physical or mental condition, or a positive test result from an HIV-related blood test.

FEPA prohibits discriminating against applicants or employees based on a protected characteristic; retaliating against an employee because the employee filed a complaint of discrimination or has cooperated with the attorney general or state attorney in an investigation of same or the employer believes the employee may lodge such a complaint; requiring an applicant or employee to submit to an HIV-related blood test as a condition of employment; and sexual harassment.

FEPA prohibits discrimination in pay based on sex for equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions. It likewise prohibits requiring an employee to refrain from disclosing the amounts of their wages. 21 V.S.A. § 495 *et seq.*

Sexual Harassment

Every employer must adopt a policy against sexual harassment that includes: (A) a statement that sexual harassment in the workplace is unlawful; (B) a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment; (C) a description and examples of sexual harassment; (D) a statement of the range of consequences for employees who commit sexual harassment; (E) if the employer has more than five employees, a description of the process for filing internal complaints about sexual harassment and the names, addresses, and telephone numbers of the person or people to whom complaints should be made; and (F) the complaint process of the appropriate state and federal employment discrimination enforcement agencies, and directions for how to contact those agencies. Employers must post, in a prominent and accessible location, a poster providing, at a minimum, the elements of the sexual harassment policy outlined above. All employees must be provided with a copy of the policy, including when the policy is changed.

Employers may not require employees or prospective employees to sign an agreement or waiver as a condition of employment that: (A) prohibits, prevents, or otherwise restricts the employee or prospective employee from opposing, disclosing, reporting, or participating in an investigation of sexual harassment; or (B) except as otherwise permitted by state or federal law, purports to waive a substantive or procedural right or remedy available to the employee with respect to a claim of sexual harassment. Certain limitations apply to any settlement of a claim of sexual harassment. 21 V.S.A. § 495h.

Genetic Information

Vermont provides that no person shall do certain acts as a condition of employment; membership in a labor organization; or professional licensure, certification, or registration:

1. Use the fact that genetic counseling or testing services have been requested or that genetic testing has been performed;
2. Use genetic testing results or genetic information from a person or a member of a person's family;
3. Use the diagnosis of a genetic disease derived from a clinical interview and examination, but not from the results of a genetic test; or
4. Require genetic testing.

18 V.S.A. § 9333.

Marijuana

Vermont allows adult (a person aged 21 years or older) recreational use and medical marijuana/cannabis use. 18 V.S.A. § 4230.

Employers may still bar marijuana from the workplace as well as working under the influence regardless of whether the person has a disability. (18 V.S.A. § 4230a). The drug testing requirements section above is also applicable to marijuana or cannabis testing.

However, caution is warranted since workers with a medical marijuana card and who are qualified as individuals with a disability are protected under Vermont's Fair Employment Practices Act. Employers cannot discriminate against such employees who use cannabis outside of work for treatment purposes.

Ban-the-Box

Employers cannot request criminal history record information, including arrests, convictions, or sentences, on an initial employment application form, unless an exception applies. Employers may inquire about a prospective employee's criminal history record during an interview or once the prospective employee has been deemed otherwise qualified for the position. Employers may likewise inquire about criminal convictions on an initial employment application if either the applicant is seeking a position for which state or federal law creates a disqualification based on a conviction, or the employer is subject to any federal or state law that prohibits it from employing an individual who has been convicted of one or more criminal offenses. 21 V.S.A. § 495j.

Mini-WARN

- Vermont Notice of Potential Layoffs Act (NPLA)
 - Covered employers employing 50 or more full-time employees; 50 or more part-time employees who work at least 1,040 hours per employee per year; or a combination of 50 or more full-time employees and part-time employees as defined above are subject to NPLA.
 - Covered employers must provide written notice to:
 - The Vermont Secretary of Commerce and Community Development and commissioner of Labor at the VDOL 45 days before a closing or mass layoff; and
 - The local chief elected official or administrative officer of the municipality where the business closing/mass layoff is to occur, affected employees, and bargaining agent, if any, 30 days before a closing or mass layoff.
 - 21 V.S.A. §413.
- Vermont Mass Separation Notification Administration Rule
 - All Vermont employers must notify the VDOL if there is a “mass separation,” which is a separation of:
 - 20 percent of the total number of workers in a single establishment;
 - 50 percent of the total number of workers employed in any division or department; or, notwithstanding the foregoing; or
 - 10 or more workers employed in a single establishment.
 - Such notice must be filed no later than 24 hours after separation.
 - 24-001 Code Vt. R. 24-005-001-X, Rule No. 9.

Flexible Working Arrangements

At least twice per year, employers must consider any request by an employee for a flexible working arrangement, including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, working from home, or job sharing. 21 V.S.A. § 309. These changes may be requested on either an intermediate or long-term basis. Employers must consider whether the request can be granted in a manner that is not inconsistent with business operations, which includes considerations such as:

- The burden of any additional costs on the employer;
- An inability to reorganize work among existing staff or an inability to recruit additional staff;
- A detrimental effect on aggregate employee morale, the employer's ability to meet consumer demand, or business quality or performance;
- An insufficiency of work during the periods the employee proposes to work the flexible schedule; or
- Planned structural changes to the business.

Salary History

Employers cannot inquire about or seek information about an applicant's current or past compensation from either the applicant or their current or former employer, require an applicant's current or past compensation to satisfy minimum or maximum criteria, or determine whether to interview an applicant based on their current or past compensation.

However, employers may inquire about an applicant's salary expectations or requirements, or provide information about the wages, benefits, compensation, or salary offered for a position before making an offer. If an applicant voluntarily discloses salary history information, an employer can seek to confirm, or ask the applicant to confirm the information after the employer has made an offer that includes compensation. 21 V.S.A. § 495m.