

Vermont's earned sick time law, 21 V.S.A. §§ 481 et seq., requires Vermont employers to provide many of their employees with at least one hour of paid sick leave for every 52 hours worked. Employees must be allowed to use this paid leave for five specific reasons. Some categories of employees are excluded from coverage. Employers may choose to be more generous than the law's provisions require.

The law contains many details about the ways in which paid leave is awarded, the ways in which it may be used, and how leave must carry over from one year to another. These FAQs have been drafted by the VLCT Municipal Assistance Center to assist municipal employers with implementation of the sick leave law. While every effort is made to provide members with the most accurate information possible, this document does not constitute legal advice.

Contact the VLCT Municipal Assistance Center at info@vlct.org or 800-649-7915 for individual assistance with the leave provisions of your town's personnel policy.

1. What does the "Earned Sick Time Law" do?

The law establishes a minimum amount of paid leave that must be provided to certain employees. The law also sets certain requirements for how leave may be used, and how employers must handle an employee's accrued leave. Many municipal employers already provide paid leave at a level that exceeds the amount required by the law. However, even those that provide paid leave must now ensure that paid leave is allowed for the five reasons specified in 21 V.S.A. § 483 and described below.

2. When did the law go into effect?

The law went into effect on January 1, 2017 for employers with six or more employees who work 30 hours or more per week. The law goes into effect on January 1, 2018 for employers with five or fewer employees who work 30 hours or more per week.

2. Are employers required to notify employees of this new law?

Yes. Employers are required to post a notice about the Earned Sick Time Law where employees are likely to see it. The VDOL has such a poster on its website: www.labor.vermont.gov. Employees should also be given a copy of the municipal personnel policy when it is updated to comply with the law.

FREQUENTLY ASKED QUESTIONS ABOUT VERMONT'S PAID SICK LEAVE LAW

3. Does the law apply to all workers?

No. The law only applies to individuals who meet the definition of "eligible employee." That definition includes any worker who meets all of the following criteria:

- is age 18 or over;
- works an average of 18 or more hours per week during the year; and
- is expected to work more than 20 weeks in a 12-month period.

This definition includes newly-hired employees and employees that are still in their probationary period of employment.

The law does not cover bona fide independent contractors. Nor does the law apply to employees and municipal officials who meet at least one of the following criteria:

- are under age 18; or
- work an average of fewer than 18 hours per week; or
- are expected to work 20 weeks or fewer per year.

4. Are elected and appointed officials covered by the law?

Yes, if they work at least 18 hours per week for more than 20 weeks during the year.

5. How much paid leave are employers required to provide? May an employer provide more leave than the law requires?

The law requires that eligible employees receive at least 1 hour of paid leave for every 52 hours actually worked, including overtime. Employees that are exempt from overtime requirements under the federal Fair Labor Standards Act are assumed to work 40 hours in each work week unless the job worked specifies a lower number of hours per week. The law only establishes the minimum amount of leave that must be provided. As such, an employer is free to provide more generous leave than the law requires.

6. Does the law allow an employer to limit the amount of leave that an employee accrues?

Yes. The law allows an employer to limit the amount of leave that accrues to an employee in an annual period. In 2017 and 2018, an employer may limit the amount of leave that accrues to an employee in an annual period to 24 hours per year. In 2019 and beyond, the limit that may be imposed is 40 hours. Note however, that an employer is not allowed to limit the total number of hours that the employee accrues over multiple years.

For instance, an employer's personnel policy may state that: (1) in 2017 and 2018, employees will earn up to 24 hours of leave in an annual period, at a rate of 1 hour of sick leave for every 52 hours worked; and (2) In 2019 and beyond employees will earn up to 40 hours of leave in an annual period, at a rate of 1 hour of sick leave for every 52 hours worked.

FREQUENTLY ASKED QUESTIONS ABOUT VERMONT'S PAID SICK LEAVE LAW

7. Does the law allow an employer to limit the amount of leave that an employee uses?

Yes. An employer may limit the number of hours of leave that may be used by an employee in an annual period. However, an employee must be allowed to use at least 24 hours of his or her accrued leave during the annual periods of 2017 and 2018 (assuming that he or she has earned that many hours). Starting on January 1, 2019, an employee must be allowed to use 40 hours of his or her accrued leave (assuming that he or she has earned that many hours).

8. When does a newly-hired employee start to accrue paid leave?

An eligible employee must start to accrue leave as soon as he or she starts working. However, the employer may impose a waiting period of up to one year before the employee may use accrued leave. As such, an employer may prohibit the use of accrued leave during the employee's probationary period.

9. Is an employer required to provide leave in a specific way?

Yes. An employer may provide paid leave in one of the following ways: Employees may accrue time as they work or may be provided with a lump sum at the beginning of the annual period. Note that the employer's decision about how leave will be provided will impact the employer's obligation to allow unused leave to be carried over from one year to the following year. If leave is awarded in a lump sum at the beginning of the annual period, any leave that remains unused at the end of the annual period does not have to be carried over into the next annual period. On the other hand, if leave is provided through hourly accrual the employer must either allow carryover of all unused leave or pay the employee for unused leave at the end of the year.

10. What is the "annual period" for tracking accrual, use, and carryover of leave?

The "annual period" is any consecutive 12 month period of time, as determined by the employer, as long as accrual begins upon hire.

11. What are the reasons employees are allowed to use paid leave?

Employees must be allowed to use paid leave for at least the following reasons:

1. The employee is ill or injured.
2. The employee obtains professional diagnostic, preventive, routine, or therapeutic health care.
3. The employee cares for a 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.
4. The employee is 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-

FREQUENTLY ASKED QUESTIONS ABOUT VERMONT'S PAID SICK LEAVE LAW

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 violence, sexual assault, or stalking. As used in this section, "domestic violence," "sexual assault," and "stalking" shall have the same meanings as in 15 V.S.A. § 1151.

5. The employee cares 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.

Employers may allow the use of paid leave for additional reasons as well. In addition to the five reasons listed above, VLCT recommends allowing employees to use paid leave for additional purposes to provide them with the flexibility to meet outside obligations. Such flexibility can contribute to employee engagement and retention. For example, employers may allow the use of paid leave for an appointment or event authorized in advance by the employee's supervisor such a real estate closing or a funeral.

12. Can we require that an employee provide proof they used paid leave for an allowable purpose?

According to the Vermont Department of Labor, an employer may require an employee to provide "reasonable proof" that they used earned sick time for allowable purposes. However, an employer may not require further information about the details of a medical condition or domestic violence. Nor may an employer withhold payment for the use of sick leave until the employer receives documentation.

13. What happens when an employee does not use all of his or her accrued paid leave by the end of the year? Can the unused time be carried over to the next year?

In some instances, the employer must allow unused leave to carry over into the next year. An employer is not required to allow the carryover of accrued leave if (a) the employer awards paid leave in a lump sum at the beginning of the year; or (b) the employer pays out for unused time. Otherwise, the employer must allow the employee to carry forward all unused leave which the employee accrued under this law. Keep in mind that if the employer provides additional paid leave (e.g. vacation leave, or additional sick leave) above and beyond the minimum required under this law, the employer may limit the amount of the additional leave time that carries over. Also keep in mind that an employer may still limit the number of hours of accrued leave that may be used by an employee in an annual period, regardless of how many hours of leave have actually accrued.

14. Our town has a personnel policy. Will we need to update it?

Yes. You need to ensure that, by the effective dates indicated above (in the answer to question #2), your policy provides paid sick leave to all "eligible employees," and that it adheres to the other requirements of the law.

FREQUENTLY ASKED QUESTIONS ABOUT VERMONT'S PAID SICK LEAVE LAW

15. Can an employer meet the requirements of the law with a paid time off (PTO) or combined time off (CTO) policy?

Yes. Although the Vermont Department of Labor (VDOL) refers to the law as "Vermont's Earned Sick Time Law," the law merely requires "paid leave" for certain purposes. Therefore, an employer may provide for this legally-required leave in any form such as paid vacation, personal days, combined time off (CTO), paid time off (PTO), etc. However, the employer must still assure that leave is provided to all individuals who meet the definition of "eligible employee" and that leave is allowed to carryover as required by the law.

16. What if an employee uses all of their paid time off and then gets sick? Must the employer provide additional paid leave?

No. As long as it has been made clear to employees that their paid time off may be used for the reasons listed in the law, employees are not entitled to additional leave if they need it later in the year.

17. What increments of paid leave time can an employee use?

Employees must be allowed to use increments as small as one hour. However, an employer may choose to allow employees to use their accrued leave in "the smallest time increments that the employer's payroll system uses to account for other absences."

18. Can employees be required to schedule medical appointments outside their regular work shift?

Employers may require employees to make reasonable efforts to avoid scheduling routine or preventive health care during regular work hours. They may also require employees to notify the employer as soon as practicable of their intent to take their earned sick time. These requirements should be articulated in the employer's personnel policy.

19. What if a union contract does not mention the reasons for leave that are specified in this law? Do the requirements of the law still apply?

A union contract does not alleviate an employer's responsibilities to follow the paid sick leave law. Some union contracts defer to an employer's personnel policy regarding areas not covered by the collective bargaining agreement (CBA) and most outline a process for making any changes to the contract. The employer should work with the union(s) to insert appropriate language into the CBA.

20. Does an employer have to keep track of the accrual and use of paid leave?

Yes. Employers must keep track of sick time accrued and sick time used and provide this information to employees upon request. However, the law does not require that an employer provide sick leave

FREQUENTLY ASKED QUESTIONS ABOUT VERMONT'S PAID SICK LEAVE LAW

information on wage statements. An employer may track accrued leave on a quarterly basis, but an employee must still be allowed to use that leave as it accrues unless you have imposed a waiting period for usage.

21. What if an employee separates from employment and is later re-hired. How should his or her accruals be handled?

It depends on: (a) whether the separation is voluntary or not; (b) whether the employer has imposed a waiting period before accrued leave may be used; and (c) the timing between the last date employed and the date re-hired. Below is the chart provided by the Vermont Department of Labor:

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

22. Does an employee have to be compensated for accrued sick leave upon separation from employment?

No. There is no requirement to compensate employees for their accrued leave upon separation. Your personnel policy should state whether compensation will be provided.