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As a woman, you need to be aware of the many state and federal legal rights that are relevant to various stages in your employment.

These include discrimination, harassment, parental and family leave, pregnancy and breastfeeding, drug testing, minimum wage, overtime, military and National Guard duty, unemployment compensation, workers' compensation, labor trafficking as well as others.

In general, Vermont law applies to more employers than federal law does. If you suspect discrimination in the workplace, contact the Civil Rights Division of the Vermont Attorney General's Office. If you are a state employee, contact the Vermont Human Rights Commission. ([See VCW's Resource Directory – Employment section for contact information.](#))

Discrimination and Harassment

Employment discrimination is unlawful under a number of different federal laws if the discrimination is based on a **person's sex, pregnancy, race, color, religion, national origin, physical or mental disability, or age**. The four significant federal laws are Title VII of the federal Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Americans with Disabilities Act and the Age Discrimination in Employment Act.

The Vermont law is referred to as the **Fair Employment Practices Act**.

In addition to the above-listed **protected categories**, it is against the law in Vermont to discriminate in employment on the basis of **sexual orientation, gender identity, place of birth, ancestry, having a positive HIV-related blood test, or asserting a claim to worker's compensation**. Under Vermont's Fair Employment Practices Act, **all employers, regardless of the number of employees, are covered**.

The federal law prohibits discrimination on the basis of sex, race, color, religion and national origin only for employers with **ten or more employees**. If the discrimination is on the basis of disability, the employer must have **fifteen** or more employees, and if it is on the basis of age, the employer must have **twenty** or more employees **for the federal law to apply**.

Under the federal Executive Orders 11246 and 11375, if you are employed by a company or institution that has a contract or grant of \$10,000 or more from the federal government, you may also have additional rights against discrimination on the basis of sex, race, color, religion and national origin.

Sex Discrimination

Unlawful sex discrimination can occur at any stage of the employment process. You should consider whether you have been treated unequally or subjected to different terms or conditions of employment because of being a woman in any of the following areas of employment:

- **recruitment** (for example, only recruiting from male-dominated fields);
- **hiring** (for example, discouraging women from applying; not giving equal consideration to or refusing to hire);
- **firing** (for example, using different standards for women and men in deciding whether to terminate);
- **training** (for example, not providing equal training opportunities to women and men);
- **job assignments** (for example, making assumptions about what work women can do);
- **promotions** (for example, promoting a man over a more qualified woman; routinely passing over women for promotion);
- **pay** (for example, paying women at a different rate than men for the same or substantially similar work);
- **benefits** (for example, providing different benefits to women than men, such as pension and life insurance plans, health insurance and dates of optional retirement);
- **lay offs** (for example, applying sexist and unequal standards when making lay-off decisions, such as thinking it would be harder on a family for a man to lose his job than a woman to lose hers);
- **leave** (for example, not allowing women to take leaves in the same way or for the same reasons as men);
- **treatment** on the job, e.g. discipline, harassment (see the section on Sexual Harassment later in this chapter);
- **all other employment-related activities**

Pay Discrimination

Pay discrimination occurs when an employer pays lower wages to an employee on the basis of sex. If you earn less than a male coworker for equal work that requires equal skill, effort, and responsibility, and is performed under similar work conditions, your employer may be engaging in pay discrimination.

Vermont's Fair Employment Practices Act, Title VII of the federal Civil Rights Act of 1964 and the federal Equal Pay Act of 1963 all offer protection from pay discrimination, depending on the circumstances of your case. The federal government also passed the Lilly Ledbetter Fair Pay Act of 2009. This Act gives employees a new cause of action against their employer each time discriminatory wages or compensation is paid. It allows victims of pay discrimination to challenge unequal wages well after the employee was first hired.

Vermont law also prohibits employers from denying their employees the **right to disclose wages**. An employer cannot require you to sign a statement as a condition of employment that you will not

disclose your wages to anyone. Likewise they cannot put a clause in their personnel manual that forbids you from discussing your salary with other employees.

Any attempt to punish or silence you or another employee, regardless of their sex, for disclosing wages is also considered pay discrimination.

Employers may pay different wages based on seniority, merits, or other earning systems, but cannot arbitrarily pay women less than men.

Sexual Harassment

Sexual harassment is a particular form of sex discrimination. You should not have to put up with sexual harassment and employers are responsible for maintaining a **workplace free of sexual harassment**.

The Equal Employment Opportunity Commission (EEOC) publishes Guidelines on Sexual Harassment. These guidelines help form the basis of sexual harassment law that has been developing in state and federal courts.

The Vermont law defines **sexual harassment** as follows:

“Sexual harassment” is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to that conduct is made either explicitly or implicitly a term or condition of employment; or
- (2) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- (3) the conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment.

There are **two forms** of sexual harassment:

(1.) **“Quid pro quo”** (“this for that”) sexual harassment involves situations where an employer or supervisory level employee requests or requires a person (most often a woman) to exchange sexual favors for some job benefit (for example, being hired, promoted, getting some fringe benefit) or to prevent some negative job-related action (for example, being fired, getting a bad evaluation, not being allowed to go for special training). An employer will be held responsible for quid pro quo harassment whether or not the employer was aware that it had occurred.

(2.) **“Hostile environment”** sexual harassment involves situations where the conduct or behavior must be:

- either sexual in nature or directed at only one sex; and
- frequent or repeated behavior, or a single severe incident (otherwise referred to as either “severe or pervasive”); and
- unwelcome; and
- unreasonably interfering with a person’s ability to perform work or creating an abusive environment within which to work.

You do not need to be the “victim” of the harassment in order to claim a “hostile environment.”

An employer will usually be held responsible for harassment that is committed by a supervisor or manager, especially if some adverse action happens to you or another employee as part of the harassment or as punishment for not giving in to the harassment. If harassment by a supervisor/manager has occurred, but there hasn't been any adverse action by the supervisor/manager, the employer can only escape liability if it has taken reasonable steps to prevent harassment, has promptly and appropriately addressed claims of harassment, and the victim unreasonably fails to use the employer's grievance or complaint process.

If the harassment is caused by a co-worker, the employer may be held liable if the employer knew or should have known of the harassment and failed to take prompt and appropriate action in response to this knowledge.

Under **Vermont's Sexual Harassment in Employment Act**, all employers are required to have a **sexual harassment policy**. Employers must provide it to every employee and display it on a poster that describes the employer's policy against sexual harassment. The policy and poster also must include a description of how an employee could file a complaint with an appropriate state and federal agency. If the employer has **more than five employees**, the policy and poster are also required to provide a description of how an employee could file an internal complaint with the employer.

Pregnancy Discrimination

Discrimination that is directed at women because they are pregnant is another form of unlawful sex discrimination in employment. Congress enacted the Pregnancy Discrimination Act, making it clear that a woman cannot be discriminated against in employment simply because she is pregnant. This means that an employer cannot make assumptions about what types of jobs a pregnant woman is capable of performing, cannot refuse to hire a pregnant woman and cannot fire a woman because she is pregnant.

The Vermont Supreme Court specifically recognized that sex discrimination under Vermont's Fair Employment Practices Act also covers discrimination on the basis of pregnancy.

Nursing Mothers in the Workplace

Vermont law protects nursing mothers in the workplace for up to three years following the birth of a child. **Employers must provide a reasonable time and place for mothers to express breast milk in privacy throughout the day**, unless it would substantially disrupt the employer's operations. A reasonable place does not include a bathroom stall. Whether the breaks are compensated is left to the employer's discretion, unless modified by a collective bargaining agreement.

Other Forms of Employment Discrimination

The same legal rights that make it unlawful to discriminate against or to harass people on the basis of sex also apply to people who experience discrimination or harassment because of their sexual orientation or gender identity. Vermont extends protection of many anti-discrimination laws, including the Fair Employment Practices Act, to cover gays, lesbians, bisexuals, and those suffering gender identity discrimination.

In addition to sex and sexual orientation, it is important to understand that the law prohibits discrimination or harassment in hiring, pay, work conditions, promotions, discipline, treatment on the job, etc., against any person because of:

- **race** (for example, African American, Asian American, Native American);
- **color** (any type of skin color);
- **national origin** (being from outside the U.S.);
- **religion** (an employer has to make reasonable accommodations for an employee's religious practices or beliefs);
- **gender identity** (whether you identify yourself, or are perceived as, male or female, regardless of your assigned sex at birth);
- **ancestry** (your family background or heritage);
- **place of birth** (where you were born, inside or outside the U.S.);
- **age** (18 years of age or older - can be because you are young or because you are older);
- having a **positive HIV**-related blood test;
- **physical or mental disability**;
- **retaliation**.

Discrimination on any of these bases is unlawful and can be addressed through the same avenues as sex discrimination.

Disability

People with physical or mental disabilities face particular challenges in the workplace that require not only equal treatment but additional safeguards. Vermont's **Fair Employment Practices Act** (covering **all Vermont employees**) and **Title I of the federal Americans with Disabilities Act** (if you work for an employer with **15 or more employees**) both provide safeguards against disability discrimination.

It is against the law for a “**qualified person with a disability**” to be discriminated against in employment. A “qualified person with a disability” is a **person with a disability who is capable of performing the essential functions of the job with or without a reasonable accommodation made for the disability**.

People are considered to have a disability if they have, are regarded as having, or have a history of, a physical or mental impairment that substantially limits their ability to do such things as walking, talking, seeing, hearing, speaking, learning or working. **Federal law also bans discrimination against employees for being associated with a person with a disability**. For example, a company cannot refuse to hire you because you have a disabled child or another person who has high health costs and would be eligible to be covered under the company's employee health plan.

Federal and State law require employers to make **reasonable accommodations** at the job that would enable a person to perform the job's essential functions or tasks. For example, provision of particular devices to assist in doing the job, modifications to office space, job restructuring or modified work schedules. **An employee must ask for the reasonable accommodation**. An

employer might refuse to grant the request if it can show that the request is not reasonable or if it would cause an undue hardship to the employer, e.g. excessive cost or disruption.

The **Americans with Disabilities Act** also prohibits employers from asking job applicants if they have a disability or asking specifics about a disability, unless it relates to an employee or prospective employee's request for a reasonable accommodation.

A **“reasonable accommodation”** is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodations may include:

- provision or modification of equipment or devices;
- job restructuring;
- part-time or modified work schedules;
- reassignment to a vacant position;
- adjustment or modification of examinations, training materials, or policies;
- provision of readers and interpreters;
- provision of readily accessible and usable workplaces for people with disabilities.

Employers may not withdraw an employment offer based on the information obtained in a medical examination, unless it is job-related or necessary for the conduct of the employer's business. **The job offer may also be withdrawn if the employee's disability constitutes a "direct threat" to the health and safety of the employee and others and no reasonable accommodation is available.**

Retaliation and Whistleblower Protection

Employers are prohibited by both Vermont and federal employment discrimination laws from taking **any retaliatory action against an employee who complains of discrimination or harassment to an employer or to a state or federal enforcement agency.** This protection also applies to employees who cooperate with, or provide support to, an investigation into a claim of discrimination or harassment.

Vermont law also **protects hospital and nursing home employees against employer retaliation.** If you work in a hospital or nursing home, your employer may not retaliate against you for reporting any activity or policy you reasonably believe violates the law, or any activity or policy you reasonably believe constitutes improper patient care. Your employer may not retaliate against you for refusing to participate in any activity you reasonably believe illegal or constitutes improper patient care. You must report the alleged violation to a supervisor, and give your employer a reasonable opportunity to address the problem.

Polygraph Protection

Vermont employers are generally prohibited from subjecting you to a polygraph (or “lie detector”) test. Employers cannot refuse to hire, promote, or change your status of employment if you refuse a polygraph test.

Please note however, the following employers **are allowed** to administer polygraph tests:

- Department of Public Safety;
- DMV applicants for law enforcement positions;
- Police and Sherriff's Departments, for sworn officers of the law;
- Employers whose primary business is in the sale of precious metals or jewelry;
- Employers whose business includes the manufacture or sale of certain regulated drugs, as only to the employees in direct contact with those drugs;
- Employers required to administer polygraph tests under federal law.

Worker's Compensation Retaliation

It is also against the law in Vermont for an employer to fire or to discriminate against you for filing a worker's compensation claim. See section later in this chapter on Worker's Compensation.

Testifying in a Criminal Matter

If you or a family member has been a victim of a listed crime, or you are a representative of a victim, your employer may not discharge or discipline you for honoring a subpoena to testify.

Addressing Discrimination and Retaliation

If you believe you have suffered discrimination, harassment or retaliation in employment, you have a number of options. You may choose more than one of the following options:

- follow your employer's internal complaint procedures;
- file a complaint with the Vermont Attorney General's Office, Civil Rights Unit;
- file a complaint with the Vermont Human Rights Commission (only if you are an employee of a state agency);
- file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC);
- file a complaint with the Office of Federal Contract Compliance (only if you believe your employer receives some federal funding);
- file a complaint with the U.S. Dept. of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices (if your complaint involves national origin or citizenship discrimination);
- consult with a private attorney.

At the state level, **potential remedies** may include: reinstatement to your job; back wages and benefits; emotional distress damage; reasonable cost of your attorney's fees; and particular requirements that must be met by your employer.

If you bring your case in federal court, the 1991 Civil Rights Act enables employees who have suffered intentional discrimination or harassment to be awarded money damages. But this federal law also places a limit on the amount of money that can be awarded by a court. For example, an individual can only recover up to \$50,000 if the employer has 100 or fewer employees; up to \$100,000 if it has 101 to 200 employees; up to \$200,000 if it has 201 to 500 employees; and up to \$300,000 if it has more than 500 employees.

Parental and Family Leave and other Leave Entitlements

Federal and State law ensures that employees have the legal right to take long-term and short-term leaves from their jobs. Under **the Family and Medical Leave Act (FMLA)** and **Vermont's Parental and Family Leave Act**, covered employers must provide leave for pregnancy, the birth or adoption of a child, serious illness of yourself or a family member, some school activities and some medical appointments. **Since federal and state law differ, especially on their application to employers of different sizes and for different kinds of leave, it is important to read the following descriptions carefully.**

Parental Leave

If you have worked for your current employer for an average of at least 30 hours a week for twelve months and your employer has at least **10 employees** who work a minimum average of 30 hours per week during a year, you are entitled to take a parental leave. You can take a parental leave at any of the following times: during your pregnancy, following the birth of your child, or within a year after a child up to the age of 16 years has been placed in your home for adoption.

Family (Medical) Leave

If you have worked for your current employer for an average of at least 30 hours a week for twelve months and your employer has at least **15 employees** who work a minimum average of 30 hours per week during a year, you are entitled to take a family (medical) leave.

You can take a family leave for **your own serious illness or the serious illness of your child, stepchild, ward who lives with you, foster child, parent, spouse, or your spouse's parent**. The U.S. Department of Labor clarified the definition of "son and daughter" under the Family and Medical Leave Act to ensure that an employee who assumes the role of caring for a child receives parental rights to family leave regardless of the legal or biological relationship. A "serious illness" is defined in the Vermont law as an accident, disease or physical or mental condition that poses imminent danger of death, requires inpatient care in a hospital or requires continuing in-home care under the direction of a physician.

Length and Conditions of Parental or Family Leave

Parental or family leave can be taken for **up to 12 weeks during any 12 month period**. You can take more than one leave during a 12-month period but you are not entitled to take more than a total of 12 weeks unless your employer is willing to give it to you.

Vermont law only requires that your employer provide you with an unpaid leave, unless you would otherwise be entitled to take paid leave under existing policies or collective bargaining agreements. In addition, if you have any unused leave time coming to you at work (whether it is accrued vacation, sick leave, or other form of paid leave) you have the right to use up to **six weeks of that paid leave** as part of your parental or family leave. After six weeks, it is up to the employer to choose whether or not to apply accumulated paid leave time.

Both parental leave and family leave run concurrently, allowing you a maximum of 12 weeks leave between both categories.

It is important that **you give reasonable written notice** to your employer that you want to take a leave, including when you want the leave to start and when you plan to return to work. If you are taking a leave due to serious illness, and your employer requests it, you are required to provide information from a certified health provider explaining why you need to take the leave and for how long. Your employer may also ask your health provider for certification that you are fit to return to work.

Your employer is required to  **continue your employment benefits while you are on leave and under the same conditions as if you had been working.** However, your employer can require you to pay the “employee’s contribution” to those benefits, which is the amount that would normally come out of your paycheck. When you return to work, you are entitled to the same or comparable job that you left.

If you work for an employer who employs 50 or more employees, you might have some additional rights under the federal Family and Medical Leave Act.

Short-Term Family Leave

Vermont law also allows you to take a number of short-term leaves each year if they are related to **certain school activities or medical appointments of you or your family members.** The law covering short-term family leaves applies to employees who have worked an average of at least 30 hours a week for a year for an employer that employs **15 or more employees.**

Short-term leaves may be taken by an employee to participate in the **academically-related preschool or school activities** of that person’s child, stepchild, foster child or ward. These include such things as parent-teacher conferences.

An employee may also use a short-term leave to attend routine medical or dental appointments, or to respond to medical emergencies, of their child, stepchild, foster child or ward, and of their parent, spouse or parent-in-law. The law also allows an employee to go with a parent, spouse or parent-in-law to other types of appointments for professional services relating to their care and well-being. Examples might include accompanying the family member to meetings with nursing homes or home health care providers.

The law allows an employee **to take up to four hours of unpaid leave in any 30-day period as long as not more than 24 hours are taken in any 12-month period.** An employee can choose to use any accrued paid vacation or personal leave rather than taking the time off as unpaid leave. An employer can require an employee to take off at least two hours for each requested leave, even if the employee believes the activity or appointment will take less time.

If an employee wishes to take a short-term family leave, after trying to schedule the appointment outside of regular working hours, she must tell her employer as soon as possible. The notice to the employer cannot be less than seven days before the leave is to be taken. This prior notice requirement does not apply in emergencies, when being held to at least a seven-day notice would have a very bad impact on the family member.

Military and National Guard Leave

The **Uniformed Services Employment and Reemployment Rights Act (USERRA)** provides employees who are called up to perform military service with reemployment rights. **If you miss**

work because you are called to military service, USERRA protects you for up to five years.

If your military leave lasts less than 90 days, your employer must promptly return you to the job you would have had during that time. If your leave lasts more than 90 days, your employer may substitute a different job with the same pay, status, and seniority as the job you would have had. You continue to accrue seniority while on military leave and must be given any raises and promotions associated with that seniority. If you have health insurance, your employer must continue to offer it for up to 18 months after military leave, with restrictions on how much your employer can charge for continued coverage.

If you are a member of the reserve components of the armed forces (e.g. National Guard), **Vermont law entitles you to 15 calendar days of employment leave.** Your employer may not deduct sick leave or vacation days during this period. Your employer must reinstate you to the same position, with the same status, pay and seniority as you previously had. **Whether this leave is paid is up to your employer.**

Whether you are a member or reserve member of the armed forces, you must provide your employer with a reasonable notification of your military leave, if possible.

Military Family Leave Entitlements

The Family and Medical Leave Act also provides employment leave for **parents, spouses, and children of members of the armed forces.** The FMLA allows qualified employees to take up to 12 weeks leave in a 12-month period for any “qualifying exigency” arising out of the active duty of their parent, child or spouse. **“Qualifying exigencies” arising out of active duty include:**

- short-notice deployment (deployment on 7 days or less notice);
- military events and related activities;
- childcare and related activities;
- making financial and legal arrangements to address the military member’s absence;
- rest and recuperation before deployment (5 day maximum leave);
- attending qualified post-deployment activities;
- attending counseling arising from the active duty status of the military member.

The FMLA allows qualified employees up to 26 weeks of job-protected leave in a 12 month period to care for a service member with a serious injury or illness. This leave may be used intermittently whenever medically necessary to care for a covered service member.

To qualify for either of the above military family leave entitlements, you must:

- work for a covered employer (all public agencies, local schools, and private employers with 50 or more employees in 20 or more work weeks during the year);
- have worked for the employer for at least 12 months;
- have worked at least 1,250 hours over the last 12 months;
- Work at a location where at least **50 employees are employed within 75 miles of the employer.**

Teacher's Sick Leave

If you are a full-time public school teacher under contract to teach the regular school year, you are allowed a minimum of **ten days' sick leave with full pay during each school year**. Any unused sick leave will accumulate up to a minimum of twenty days, so long as you are employed in the same school district.

Juror and Witness Leave

As a Vermont employee, you are considered employed while serving as a juror, for purposes of determining seniority, fringe benefits, credit toward vacations and other rights, privileges, and benefits of employment. **Your employer cannot discriminate against you or lay you off because of your jury service.** The same law applies to employees serving as witnesses to any legal proceeding at which the state is authorized to hear testimony under oath.

Town Meeting

Vermont law makes town meeting a holiday for employees of state government. The law also gives Vermont employees the right to take unpaid leave from work for town meeting. You must provide your employer with notice 7 days prior to your absence, and your absence cannot interfere with the essential operations of the business or entity that you work for. Students over 18 also have the right to attend town meeting, unless they are in state custody at a secure facility. These students may not be treated as truants for missing school to attend town meetings.

Addressing an Employer's Violation of the Parental and Family Leave Law

- file a complaint with the Vermont Attorney General's Office, Civil Rights Unit;
- file a complaint with your county's State's Attorney;
- file a complaint with the Vermont Human Rights Commission (only for employees of state agencies);
- file a complaint with the U.S. Department of Labor, Wage and Hour Division (under the federal FMLA, if you work for an employer that has 50 or more employees) ;
- Consult with a private attorney.

Drug Testing

Vermont law prohibits employers from requiring, or even asking, their employees or prospective employees to submit to drug or alcohol testing, except under specific circumstances. (There may be exceptions for some kinds of jobs that are subject to federal regulations.)

If you are applying for a job, employers can only require you to take a drug test if they have offered you a job and then made it contingent on your having a negative drug test as part of a comprehensive medical exam. Don't worry if you are taking a prescription drug or over-the-counter drugs for treatment of an illness or condition, since these are not allowed to be included in the test results.

Employers in Vermont are not allowed to do random or company-wide drug testing of their employees unless a federal law or regulation requires it. An employer can require an employee to undergo a drug test **if all of the following conditions are met:**

- there is a very strong reason (“probable cause”) to believe that the particular employee is using, or under the influence of drugs;
- the employer has an employee assistance program for treatment of drug or alcohol abuse, or make such treatment available through insurance coverage;
- the employer does not terminate the employee for having a positive test result if the employee agrees to attend, and successfully completes, a rehabilitation program (although you can be suspended for up to three months in order to do the program);

If the treatment program is unsuccessful and you later test positive, you can be fired.

Wages

Minimum Wage

The **Federal Fair Labor Standards Act (FLSA)**, and the **Vermont Minimum Wage Act**, set the minimum hourly wage rates for all “covered employees.” Covered employees are all individuals employed or permitted to work by an employer except the following: casual baby sitters and companions for the aged and infirm; executive, administrative, and professional employees; outside sales people; employees of certain small, local retail or service establishments; and some agricultural workers.

The Vermont minimum hourly rate for all covered employees for 2012 is \$8.46. The federal minimum wage is \$7.25.

Tipped Minimum Wage

If you work in a hotel, motel, tourist place or restaurant and customarily and regularly receive **more than \$120 per month in tips for direct and personal customer service** you may be considered a **tipped employee**. Examples of tipped employees include wait staff, bartenders, housekeepers, counter servers and bellhops.

The basic hourly wage for tipped employees in Vermont for 2012 is \$4.10. The tipped workers total earnings from wages and tips during a pay period must equal or be larger than the minimum wage (\$8.46 in 2012). If the combined amount of the basic wage and tips does not meet that requirement, the employer must make up the difference.

Other Wage Regulations

Annual increases in both the state minimum and tipped minimum wage rate are based on increases in the August Consumer Price Index (CPI) or five percent, whichever is smaller. **Vermont law does not allow the minimum wage to go down.**

You should check with the Vermont Department of Labor and Industry to find out if the state or federal rates have been changed by the time you consult this guide.

Under certain conditions, lower rates may be paid to learners, workers with disabilities, and students. A learning wage of 85% of minimum wage may be paid for a total of 240 hours only and the person must be 20 years old or younger. This does not include the hotel,

motel, tourist place, or restaurant industry. Only retail, wholesale, and service establishments are covered.

Both federal and state laws permit lodging, board or other facilities provided by an employer to be considered as a part of wages.

Overtime Pay

Many covered workers are entitled to one and a half times their regular rate of pay when they work more than 40 hours per week. Your employer must pay you overtime wages for any time over 40 hours in a work week and **cannot** require you to take compensatory time or time off at a later time instead.

If your 40 hours includes working on the weekend, this “weekend work” is not entitled to overtime pay. Neither federal nor state law requires time-and-a-half pay for weekends or holiday work or, generally, for daily overtime, if these are part of your basic 40 hours.

Vermont law **exempts from this overtime requirement** employees of:

- retail or service establishments;
- hotels, motels or restaurants;
- the state and political subdivisions of the state;
- certain amusement or recreational establishments;
- certain employees engaged in transportation.

Wage Supplements/Benefits

An employer is not required to provide you with paid or unpaid holidays (such as Memorial Day or Thanksgiving), paid or unpaid sick leave (except under the Parental, Family Leave Act), paid or unpaid vacation time or severance pay when you leave the business. However, if your employer has given you a **written agreement** in the form of an employee handbook, memorandum, or correspondence, etc, providing for vacation time, sick leave, holidays and/or severance pay, then the employer must give you those benefits.

In the case where benefits and/or wage supplements are offered in a collective bargaining agreement (union contract), you should contact your union representative.

If you have concerns about unpaid retirement or profit sharing plans, you should contact the Employee Benefits Security Administration Division of the U.S. Department of Labor.

Termination and Severance Pay

Vermont is considered an “**at will**” state. You can be terminated from your job or any reason as long as you are over 18 and the termination was not due to your being a member of a “**protected class**” as described in the discrimination section of this chapter, e.g. race, color, national origin, religion, sex, age or mental or physical disability.

Vermont law also prohibits discrimination based on sexual orientation, HIV status, and place of birth. It is also unlawful to retaliate or discriminate against employees or applicants that have alleged

employment discrimination. If you feel you have been discharged due to discrimination, you should contact the Vermont Attorney General's office, Civil Rights Division.

As noted in the previous section, the law does not require discharge notices or severance pay (pay given in place of notice). However, if your Vermont employer has offered vacation, sick, or severance pay to you, in writing, Vermont law will help you enforce these **“wage supplements.”**

Addressing Violations of Minimum Wage and Overtime Law

For help with addressing violations of minimum wage and overtime law violations, you can:

- consult with a private attorney;
- contact the Vermont Department of Labor, Wage and Hour Division;
- contact the U.S. Department of Labor, Wage and Hour Division.

For contact information and other resources, [see VCW's Resource Directory – Employment section](#).

Preference in Hiring of Ex-service Personnel for State Positions

Vermont law requires that ex-service personnel who have a service-connected disability, their spouses, or their spouses who have a disability in their own right, be given preference in hiring and retention for positions funded by state payroll dollars. This preference also extends to the unmarried widows and widowers of ex-service personnel. Preference must also be given to ex-service personnel who were on active duty during a war or campaign for which a campaign badge has been authorized and have been honorably discharged.

Labor Trafficking

In 2011, Vermont became the 42nd state to pass human trafficking legislation. This law includes labor trafficking as well as sex trafficking. **If you feel that you have been forced to stay in a job or perform a service through force, fraud or coercion, you may be a victim of labor trafficking. You do not need to be an immigrant or have moved to Vermont for the job. It does not matter if you originally consented to do the job or signed a contract.**

Examples of labor trafficking may include working as a domestic servant (nanny or maid), in a sweat shop, in the meat packing industry, as a janitor, restaurant or food service worker, a migrant, a farm worker or in the hotel or tourist industry. **An employer may not withhold your identification card or passport or threaten to withhold food or medical care.**

Note that you may be eligible for victim's assistance services and legal help, including immigration assistance, as soon as a law enforcement officer finds there is a probable cause of labor trafficking.

For a full description of this law including the legal definition of coercion, criminal penalties for trafficking, and your rights as a victim including immigration assistance, please [see the Violence Against Women and Children chapter of *The Legal Rights of Women in Vermont*](#).

Unemployment Compensation

You might be eligible to receive unemployment compensation benefits if you have been laid off from your job or, under some circumstances, if you quit or were fired. Whether you can receive unemployment compensation benefits will depend on many factors. These can include why you were terminated, how long you worked and how much you have been paid over a particular time period.

To find out if you qualify for unemployment compensation benefits, contact the Vermont Department of Labor. ([See VCW's Resource Directory – Employment section for contact information.](#))

Domestic and Sexual Violence Transitional Employment Benefits

You may be eligible for up to 26 weeks of unemployment payments (a state-funded program) if:

- you leave your job due to circumstances directly resulting from domestic violence, sexual assault or stalking;
- you fear that the violence will continue at, or on the way to or from work; and
- you intend to move away to protect yourself and/or your family; or
- you are fired from your job because of the violence.

To be eligible you need to try to find reasonable alternatives before quitting, such as asking your employer to transfer you to another (safer) job location.

You also need to provide documentation of the domestic or sexual violence including a sworn statement from you, police records, court records such as a relief from abuse order, or other documentation of the violence from an attorney, clergy person, or health care provider.

If you are denied unemployment benefits and you feel that you qualify under this program, contact the Department of Labor. ([See VCW's Resource Directory – Employment section.](#))

Workers' Compensation

If you have suffered a work-related injury or an occupation-related disease, you might be able to receive workers' compensation benefits. **If you think you might be eligible, you must notify your employer who then has 72 hours to report the injury to the Workers' Compensation Division of the Vermont Department of Labor.** At the same time, your employer's insurance adjuster is notified, who then **has 21 days to investigate and decide whether or not to accept your claim.** If your claim is denied, you have the right to contest it by contacting the Workers' Compensation Division of the Vermont Department of Labor. ([See VCW's Resource Directory – Employment section.](#))

If you are injured on the job, you may be entitled to:

- payment of medical bills associated with that injury, including mileage to and from the doctor;
- temporary total or partial disability payments between the time of your injury and the time you can either return to work or you have improved medically as much as you are going to improve;
- permanent partial or total disability benefits for any permanent injury you have suffered;

- prescription drugs, medical equipment and reasonably necessary assistive devices and modifications to employee's home or car;
- vocational rehabilitation services to help you return to the work force;
- reinstatement to the first suitable, available position when you are able to return to work following your injury (as long as your recovery occurs within two years of the injury and you work for an employer who has at least 10 employees).

Make sure when you seek medical care for your injury or your illness that the doctor/medical facility knows that you believe that your injury/illness is work-related.

Workplace Health and Hygiene

Under Vermont law, your employer must provide you with “reasonable opportunity” to eat and use toilet facilities in order to protect your health and hygiene.

Federal law mandates that if your employer provides a lunch period, it is counted as “hours worked” and must be paid **UNLESS** the lunch period lasts at least thirty minutes and you are completely uninterrupted and free from work.

Relevant Laws

Vermont:

Absence on Military Service and Training, 21 V.S.A. §491 – 493

Drug Testing law, 21 V.S.A. § 511, et seq.

Employment Conditions, 21 V.S.A. § 304

Fair Employment Practices Act, 21 V.S.A. §495, et seq.

Juror and Witness Work Leave, 21 V.S.A. § 499

Town Meeting, 21 V.S.A. §472b.

Military Preference in Appointment to State Jobs, 20 V.S.A. §1543

Minimum Wage and Hour Act, 21 V.S.A. §381, et seq.

Nursing Mothers in the Workplace, 21 V.S.A. §305

Parental and Family Leave, 21 V.S.A. §470, et seq.

Polygraph Testing as Condition for Employment, 21 V.S.A. §494a-b

Sexual Harassment in the Workplace, 21 V.S.A. §495d(13), 495h

Sick Leave, 16 V.S.A. §1755

Subpoena to Testify, 13 V.S.A. §5313

Human Trafficking, 13 V.S.A. §2651, et seq.

Unemployment Benefits for Victims of Domestic and Sexual Violence, 21 V.S.A. §1251

Unemployment Compensation Act, 21 V.S.A. §1302, et seq.

Whistleblower Protection, 28 V.S.A. §507

Workers' Compensation Act, 21 V.S.A. §601, et seq.

Workers' Compensation Act (discrimination), 21 V.S.A. §710

Federal:

Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C.A. §621, et seq.

Americans With Disabilities Act of 1990 (ADA), Title I, 42 U.S.C.A. §12101, et seq.

Civil Rights Act of 1991, Pub.L.102-166 (Amendments to Title VII)

Equal Pay Act of 1963, 29 U.S.C.A. §206(d)(1)
Fair Labor Standards Act, 29 U.S.C.A. §201, et seq.
Family and Medical Leave Act of 1993, 29 U.S.C.A. §2601, et seq.
Pregnancy Discrimination Act of 1978, 42 U.S.C.A. §2000e(k)
Rehabilitation Act of 1973, Section 501, 29 U.S.C.A. §791
Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §4301 – 4335.
Title VII of the Civil Rights Acts of 1964 and 1991, 42 U.S.C.A. §2000e
Lilly Ledbetter Fair Pay Act of 2009, Section 706(e), 42 U.S.C. §2000e

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