

Important Workplace Laws

VERMONT EMPLOYERS SHOULD KNOW



FLEXIBLE WORKING ARRANGEMENTS

As of January 2014, Vermont employees have the right to request flexible working arrangements and employers must discuss and consider these requests.

The new law applies to all Vermont employees and gives them the **right to request** a flexible working arrangement for any reason and requires employers to discuss and consider such requests at least twice per calendar year.

The law does not dictate which requests must be granted, but instead **provides a framework for a meaningful workplace dialogue**. Importantly, the law also protects employees who seek such arrangements from retaliation or discrimination.

The law defines “flexible working arrangement” as **“intermediate or long-term changes in the employee’s regular working arrangements, including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing.”**

This new law doesn’t apply to other forms of leave that may already be required by Vermont or federal law, such as parental or family leave, accommodations for disabilities, or workers’ compensation injuries. The law does not diminish rights set forth in labor contracts. It also doesn’t apply to routine shift scheduling or vacation requests.

Employees may make the request verbally or in writing. The request should be as specific as possible, and employees should be prepared to discuss how the arrangement would still allow the employer to meet business needs.

The employer must then discuss the request in good faith. The discussion can take place in person or over the telephone. During the discussion, either party may propose alternatives to the arrangement requested.

The employer has the duty to consider in good faith whether the requested arrangement could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations. The law identifies several factors the employer may consider: (1) the burden of additional costs; (2) the effect on aggregate employee morale; (3) the effect on ability to meet consumer demand; (4) an inability to reorganize work among existing staff; (5) an inability to recruit additional staff; (6) a detrimental impact on business quality or performance; (7) an insufficiency of work during periods the employee proposes to work; and (8) planned structural changes to the business.

The law **requires employers to notify employees of their decision**. If the request was submitted in writing, the employer must state any complete or partial denial of the request in writing.

The law does not change existing legal rights of employers and employees to create, terminate, or modify flexible working arrangements. Instead it provides the framework for meaningful dialogue about whether such arrangements would work for both parties.

Business Case Studies

Flexible Working Arrangements

MASCOMA SAVINGS BANK, in White River Jct., a federal savings bank, mutually owned, with 215 employees

Offers: Job sharing.

Duration: 3 years.

Inspiration: Initiated at the request of young mothers who work for the bank. “The bank has great employees and we did not want to lose them, it worked well for that department.”

Benefits: “It has allowed employees to be more productive, has a positive effect on the bank’s bottom line, and there is no turnover.”

Challenges: None.

Advice: “Employers should make sure the positions truly can accommodate flexible arrangements and that it does not affect customer service, especially considering that when working at a bank, customer service is first priority.”

NORTHEASTERN VERMONT REGIONAL HOSPITAL, in St. Johnsbury, a hospital with 560 employees

Offers: Flexible work schedules, job sharing and some work-from-home options.

Duration: Evolving over the last decade.

Inspiration: Employee requests.

Benefits: Increased independence and cohesion of employee teams to work together to self-schedule (with supervisor oversight). Increased productivity with reduced time to complete tasks. It’s required that a flexible schedule does not increase salary expense or overtime costs. “Happier employees!”

Challenges: “Not a challenge, just a fact. Some positions

are more traditional and must be on-site at certain hours. Some examples: food service, custodial and housekeeping. Some requests may take more time and energy to fashion a schedule that satisfies supervisors, employees and the budget. An example: Filling what had been a full-time position with two part-time positions.”

Advice: “Create a trial period to be sure it will work for everyone involved. Set a check-in date with the expectation that there may need to be adjustments.”

THE BOUTIQUE / STOWE MERCANTILE, in Stowe, retail stores with 15 employees

Offers: Flexible work arrangements.

Duration: 25 years.

Inspiration: “I recognize that everyone has conflicting responsibilities and schedules, it’s just how life is, and I do my best to help our staff meet their needs outside of work. It is very important to our company that employees know they are part of a team and their needs and wants outside of work matter to us. Many go above and beyond to show their appreciation in return. If it had not been for a flexible schedule when I was hired at Stowe Mercantile, I would not have been able to achieve what I have today: running two businesses and starting my own company.”

Benefits: Less turnover, fewer disciplinary issues and less “behind the scenes” talk and disruptive behavior.

Challenges: “Keeping our stores open every day while accommodating our staff and getting staff to commit to the schedule they request.”

Advice: “We have made changes in the initial hiring process of the company. In our employment application, we added questions pertaining to the applicant’s needs and wants for scheduling.”



WAGE DISCLOSURE

Vermont employees have the right to disclose and discuss their wages and inquire about and discuss the wages of others.

In 2005 Vermont adopted a Wage Disclosure Law and strengthened it in 2013. The law says **employees can**

disclose their own wages and inquire about and discuss others’ wages without fear of discipline, discharge, or retaliation.

Employers cannot require employees to sign a wage non-disclosure agreement or otherwise prevent them from disclosing their own wages, inquiring about others’ wages, or discussing wages in general.

Unless otherwise required by law, Human Resources managers may be prohibited from disclosing the wages of other employees.



EQUAL PAY

Vermont employees have the right to equal pay for equal work.

In 2002 Vermont adopted the Equal Pay Act, and strengthened its provisions in 2013. The law applies to any employer, employment agency, labor organization, or any person hiring Vermont employees.

The law says **it is illegal to pay wages to employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal, but not identical, skill, effort, and responsibility, and is performed under similar working conditions.**

Employees can be paid different wages when the difference is a result of: (1) a seniority system; (2) a merit system; (3) a system in which earnings are based on quantity or quality of production; or (4) a bona fide factor other than sex, provided: (a) it does not perpetuate a sex-based differential in compensation; (b) it is job related with the respect to the position in question; and (c) is based upon a legitimate business consideration.



Equal Pay Self-Audit For Employers

1. Job Descriptions: Are there clear and concise job descriptions with performance standards? Job descriptions should encompass these areas:

- Skill* – What skills are required to perform the job? Skills can be measured by factors such as experience, ability, education, and training.
- Effort* – The physical and/or mental effort needed to perform the job.
- Responsibility* – The degree of accountability required in performing a job.
- Working Conditions* – Do the working conditions require extra skill, effort, or responsibility?

Remember that job titles are not as important as job content when it comes to determining whether the jobs are equal.

2. Compensation: What is the relationship between wage rates and job description?

- Is there a performance rating system, with measurable criteria, that differentiates between levels of performance?
- Is there openness with employees about compensation?
- Are job openings and salary ranges posted in the workplace?

3. Evaluation: Is there an employee evaluation system based on stated goals and performance standards?

- How is the evaluation system applied?
- Is everyone included?
- Is there a regular schedule for evaluations?

4. Awards: Is there an awards, benefits, and merit system?

- Is it based on stated principles?
- How is it applied? How often? Who is eligible?

5. Training: Are managers/supervisors trained in assessment of work performance and company policy on wages?

6. Opportunities: Are there opportunities for advancement and professional development?

- How are employees selected for training, development, and promotion opportunities?
- Are merit raises or bonuses based on objective criteria?
- Are all employees given equal opportunity to earn merit raises or bonuses?
- When employees advance, how does their pay compare with others doing the same work?

From Ten Steps to An Equal Pay Self-Audit for Employers, U.S. Department of Labor, Women's Bureau



FAIR TREATMENT FOR PREGNANT WORKERS

Pregnant employees have federal and state protections.

Protections for pregnant workers may arise under several federal laws, including the Pregnancy Discrimination Act (PDA), the Family and Medical Leave Act (FMLA), and in some instances, the Americans with Disabilities Act (ADA). Protections may also arise under state laws, including Vermont’s Parental and Family Leave Act (PFLA) and Vermont’s Fair Employment Practices Act (FEPA).

Both the PDA and FEPA **forbid employers from acting upon mere assumptions about what types of jobs a pregnant woman is capable of performing. In addition, they cannot refuse to hire a pregnant woman and cannot fire a pregnant woman who is able to perform the major functions of her job.**

Both laws provide that if a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the **employer must make accommodations for her if it has done so with other temporarily disabled employees.** For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant employees if it does so for other temporarily disabled employees.

Under the FMLA and PFLA, **covered employers must provide 12 weeks of unpaid leave and job protection** for certain workers for pregnancy, the birth or adoption of a child, and some medical appointments.

Finally, although pregnancy itself is not a covered “disability” within the meaning of the ADA or FEPA, **certain pregnancy-related conditions, such as gestational diabetes or preeclampsia, may be so serious that they are considered protected disabilities.** In such cases, employees cannot face discrimination for having such disabilities, and employers may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for the disabilities, absent undue hardship for the business.



LACTATION ACCOMMODATION

Vermont employees have the right to request time and space to express breast milk at work.

Both Vermont state labor law and the federal Fair Labor Standards Act (FLSA) provide protections for working mothers and their nursing children, **including time, either paid or unpaid, throughout the day for the employee to express breast milk, and a private space that is not a bathroom in which to do so.** An employer may be exempted from provisions of this law if providing the time or space would substantially disrupt the employer’s operations.

ANTI-RETALIATION

Vermont employees now have stronger protections against employer discipline, discharge, or retaliation when exercising these fair employment and leave rights.

Employees may not face retaliation for exercising, or attempting to exercise, their rights (such as disclosing their wages or asking for statutory leave) opposing unlawful employment practices, lodging complaints of unlawful practices, or cooperating in investigations of such complaints. In addition, employees may not face retaliation merely because the employer believes they are about to engage in any of these legally-protected activities.



FAMILY/ MEDICAL LEAVE

Many Vermont employees are entitled to take up to 12 weeks of job-protected unpaid leave to care for a new child (parental leave) or when a serious health condition affects them or a family member (family/medical leave).

These protections are provided by Vermont's Parental and Family Leave Act (PFLA) and, for those working for larger employers, the federal Family and Medical Leave Act (FMLA).

The PFLA's parental leave provisions apply to employers with 10 or more employees who average at least 30 hours' work per week; its family/medical leave provisions apply to employers with 15 or more employees who

average at least 30 hours' work per week. To be eligible, these employees must have worked continuously at least one year at an average of 30 hours per week.

The federal FMLA's provisions apply to government employers and to businesses with 50 or more workers within a 75 mile radius.

Employees may take leave intermittently in some cases. They are entitled to maintain existing level of benefits, but may be required to contribute to those costs. They are not entitled to earn vacation time while on leave. Employees may choose to use up to six weeks of sick leave, vacation time or any other accrued paid time during the leave. Use of paid leave does not extend overall leave entitlement. With few exceptions, employees returning from leave must be offered their former position or a comparable job with equal pay, benefits, seniority, etc.

Employees should provide advance written notice of their request for leave when possible and should indicate how long they think the leave will last. Employers may seek certification regarding medical leave from a health care provider.

SHORT TERM FAMILY LEAVE

Vermont employees covered by the PFLA's family and medical leave provisions are entitled to take short term family leave of up to 4 hours of unpaid leave in any 30-day period (but not more than 24 hours in any 12-month period).

This leave is: (1) for participation in preschool or school activities related to the academic advancement of your child; (2) to accompany a family member to: (a) routine medical/dental appointments, or (b) other appointments for professional services related to their care and well-being. In most cases, employees should give at least 7 days' advance written notice.

Leave Fact Sheets:

From the Vermont Department of Labor

<http://labor.vermont.gov/wordpress/wp-content/uploads/WH-14-Parental-Family-Leave-Poster.pdf>

From the U.S. Department of Labor

<http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>

Resources Learn More or Get Help

Vermont Attorney General's Civil Rights Unit

888-745-9195 / Enforces state laws prohibiting discrimination in employment.

Equal Employment Opportunity Commission

800-669-4000 / Enforces federal laws prohibiting employment discrimination.

Vermont Human Rights Commission

800-416-2010 / Enforces civil rights laws relating to housing, public accommodations and state government employment.

Vermont Commission on Women

800-881-1561 / Provides publications on topics like nursing mothers, family leave, employment rights, and provides information and referrals to Vermonters.

Vermont Department of Labor, Wage and Hour Division

802-828-0267 / Provides information on wage and employment related issues and attempts to settle employer/employee wage disputes to the satisfaction of all parties.

United States Department of Labor's Women's Bureau

617-565-1988 / Empowers all working women to achieve economic security.