

Important Workplace Laws

VERMONT WORKERS 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.



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 respect to the position in question; and (c) is based upon a legitimate business consideration.



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.

What To Do If You Suspect Pay Discrimination

Write Down What Happened. Were you offered a lower starting salary, or did you discover that you are being paid less than a co-worker? Were you disciplined or discharged because you disclosed your wage to a co-worker?

Find Out How Others Have Been Treated at Your Workplace. Share information with co-workers on ways to improve pay, benefits, promotion opportunities, work schedules and other working conditions.

Talk to Your Employer. Check your employee handbook for procedures for filing a grievance or resolving a problem. Put your complaint in writing.

Decide Whether to File a Charge. The Vermont Attorney General has the authority to investigate complaints of wage discrimination and to seek civil penalties and damages from employers who violate the equal pay law. The Human Rights Commission has the same authority for state government employees. See Resources section for more information.



FAIR TREATMENT FOR PREGNANT WORKERS

Pregnant employees have federal and state protections.

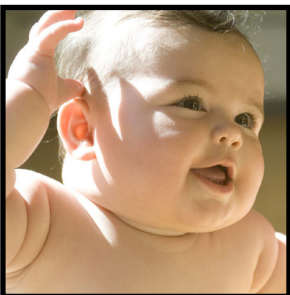
Protections for pregnant workers may arise under several federal laws, including the Pregnancy Discrimination Act (PDA), the Family and Medical Leave Act (FMLA), and in some instances, the Americans with Disabilities Act (ADA). Protections may also arise under state laws, including Vermont's Parental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