Vermont Employment Law Handbook

Practical Information for Vermont Workers
Acknowledgements

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Introduction

We wrote this book to help Vermonters understand their rights and responsibilities at work. We hope the information here will help you make better decisions in the workplace and lead to more rewarding employment.

Vermont is an “at will” employment state. Most non-unionized Vermont workers have fewer rights than workers in other Western countries. There is more information about at-will employment, contracts, collective bargaining, and employee handbooks in the chapters that follow.

Nothing in this book is intended as legal advice. Only a lawyer can fully explain all of the pros and cons of your particular legal problem. If you have a legal problem, you should talk to a lawyer if you can. If you have a low income you may be able to get free legal help. Call Vermont Legal Aid at 1.800.889.2047. Find more legal information at www.vtlawhelp.org. If you do not qualify for free legal help you can get help to find a private attorney by calling the Vermont Bar Association Lawyer Referral Service at 1.800.639.7036 or the Vermont Trial Lawyer’s Association at 1.802.223.0501.
Getting Fired

Introduction

In Vermont, employees who do not have employment contracts are considered at will employees. In other words, if you do not have an employment contract, you are employed at will and your employer or you can end your employment at any time for almost any reason.

Job Security

Contracts provide job security. If you are working under a contract the rules in the contract about terminating your employment must be followed. In addition, employers must follow the rules set out in Vermont and federal employment laws.

Federal and Vermont laws make it illegal for employers to fire workers or treat them unfairly because of their sex, race, color, religion, place of national origin, place of birth, ancestry, age, sexual orientation, or because they are pregnant, have a physical or mental disability, or have had a positive HIV blood test.

The National Labor Relations Act protects your right to organize and try to form a union. Employers may not retaliate against their workers or try to fire them because they want a union and are trying to organize.

Employers may not retaliate against workers for asserting most legally protected rights. For example, your employer may not fire you because you demand being paid the minimum wage, or because you file a worker’s compensation claim or report safety violations in the workplace. The employer may not fire you because you filed a claim under the Fair Labor Standards Act, the Occupational Safety and Health Act or Title VII of the Civil Rights Act. You cannot be fired for refusing to break the law, or for taking family or medical leave that the employer is required to provide. You cannot be fired for refusing to take a lie detector test or because your wages are subject to an order to pay child support or other wage garnishment. You cannot be fired for serving on a jury or for engaging in military training with the reserves.

The Vermont Workers’ Center is a member-run organization that works to defend and expand the rights of all working Vermonters.

They support workers throughout the state who are trying to improve their wages, benefits, rights on the job, working conditions and their communities.

The Vermont Workers' Center runs a confidential hotline to help workers with job questions or problems.

Toll-free: 866-229-0009; Central Vermont: 802-229-0009;
www.workerscenter.org
Employee Handbooks

Many employers provide employee handbooks that set out workplace rules such as when employees can be disciplined or terminated and what rights they have to challenge an employer’s actions by filing a grievance. These handbooks may be treated as contracts between employers and workers that must be followed by employers. In other words if an employer tried to fire or discipline you without following the rules set out in the employee handbook, you may be able to sue them in court and win damages. If you have an employee handbook read it over carefully so that you understand your rights.

Some employee handbooks contain disclaimers that say that the handbook is not a contract and that you may not enforce its terms. If a disclaimer is clear enough it may prevent you from forcing your employer to follow what it says.

Job Security Promises

If an employer promises job security, even if it is not in writing, you may have some protection against a firing that is not for a good cause. Sometimes an employer will try to get an applicant to take a job by promising that the job will be there "as long as you keep doing good work." Employers also make promises to workers who are thinking about leaving, telling them that their job is safe if they stay. A court may enforce a promise like this against the employer if you can prove that the promise was clear and that you relied on it and that you will be seriously harmed if it is not enforced.

Constructive Discharge

Sometimes an employer will try to get rid of a worker without firing them (and paying more for unemployment insurance) by making the workplace difficult for them or supervising them to death. Cutting a worker’s hours is one way employers try to get people to leave. When an employer changes the rules to force a worker to leave, it may be called a constructive discharge. If it would have been illegal to fire the person under these circumstances it may be illegal to constructively discharge them. These cases are hard to prove in court. It is dangerous to quit a job, particularly a job with security, because you may lose rights, like unemployment compensation or grievance rights, that you would have if you were fired.

Plant Closings and Layoffs

There are no state laws in Vermont about plant closings, but Federal law requires employers of one hundred or more workers to give employees sixty days notice of a plant closing, mass firings or cutbacks, or mass layoffs of more than six months. Employers must also notify state employment officials and the highest elected official of the town where the layoffs or plant closing is to take place. The U.S. Department of Labor enforces these laws in Vermont.
Severance Pay

Severance pay is money that an employer pays to a worker who has lost his or her job, in addition to salary or wages that are owed. There is no law that requires employers to pay severance pay. You may have a right to severance pay if it is provided in a contract or employee handbook. If you have a claim that you were fired illegally you may be able to negotiate severance pay in exchange for giving up your claim.

Firing or Layoff

Firing is permanent. A lay off is often temporary. Some employers call a firing a lay off to make it sound better or to make it clear that the termination of your employment was not your fault. If you are laid off get as much information about when your employer expects to start rehiring. Find out if your employer will hire you back. Union contracts often require an employer to rehire laid off workers if the work picture improves. If you are laid off, be sure to apply for unemployment benefits to tide you over while you are waiting to be recalled.

Unlawful Firing

Federal and Vermont laws make it illegal for employers to treat workers unfairly because of their sex, race, color, religion, place of national origin, place of birth, ancestry, age, sexual orientation, or because they are pregnant, have a physical or mental disability, or have had a positive HIV blood test. More information about your right not to be discriminated against at work can be found in the chapter on Discrimination and Harassment at Work.

Whistle blower laws protect you from retaliation by an employer if you have reported them for an illegal activity. Vermont does not have a general whistle blower protection law. Federal laws protect workers in certain industries such as some miners and truck drivers. They also protect workers who report violations of some environmental laws.

Quitting Your Job

Unless you have a contract that says otherwise you can quit your job for any reason, with or without notice. If you quit you may lose some rights such as grievance rights or severance pay. Unless you quit for a good reason based on something serious that your employer has done, you will not be able to collect unemployment insurance benefits while you are looking for another job. There is more information on this in the chapter on Unemployment Compensation.
Getting Hired

Job Advertisements

If you are looking for a job Vermont law protects you from illegal discrimination. An employer may not advertise a job by saying that the employer is looking for someone of any particular race, color, religion, age, sex, sexual orientation, national origin or ancestry, place of birth, or that the employer does not want someone with a physical or mental disability.

Applications and Resumes

You must be truthful and accurate on a job application and resume. False statements can be used later as a reason to fire you even if you are doing a good job.

Employment Discrimination

An employer may not hire or refuse to hire someone based on their race, color, religion, age, sex, sexual orientation, national origin or ancestry, place of birth, or physical or mental disability. If you believe you have been discriminated against in this way you may complain to the Vermont Attorney General's Office, Civil Rights Division at (802) 828-3657 and the Federal Equal Employment Opportunity Commission at 1-800-669-4000.

Interviews and Hiring

At a job interview you may be asked a broad range of questions about your work background and history, where you live, skills, education and abilities. If the employer is a government contractor you may be asked if you wish to identify yourself as female, handicapped, a minority, or a veteran in order to satisfy the employer's affirmative action requirements. You may be asked if you have been convicted of a crime. If physical strength or ability are required for the job you may be asked to take a physical agility test. If a physical agility test is required of you it should also be required of all the other job applicants.

In a job interview an employer should stay away from some areas that are considered private. Some questions should not be asked. Employers should not ask questions to reveal your race, color, religion, age, sex, sexual orientation, national origin or ancestry, place of birth, or physical or mental disability. For example employers should not ask:

If you work for the State of Vermont and believe you have been discriminated against in the workplace you may complain to:

Human Rights Commission
135 State Street, Drawer 33
Montpelier, Vermont 05633-6301
human.rights@state.vt.us
(800) 416-2010 Voice/TTY
(802) 828-2480 Voice/TTY
(802) 828-2481 Facsimile
• Where you were born or whether you are a naturalized citizen;

• About your religion;

• Your nationality, ancestry, or native language;

• Questions about your race;

• Questions about your sexual preferences;

• If you get welfare benefits;

• If you have a disability;

• If you have ever been a member of a union.

**Citizenship and Authorization to Work**

Vermont employers may only hire workers who are legally authorized to work in the U.S. When hiring a new person, the employer will ask for proof of their identity and proof of their authorization to work in the U.S. In other words, a new worker must give their employer proof of citizenship or of their authorization to work in the U.S. Employers may not discriminate against you based on whether or not you are a citizen.

**Background and Other Pre-employment Investigations**

**Credit checks**

Many employers investigate job applicants before hiring them. For example, an employer may want to check your credit. The Fair Credit Reporting Act requires an employer to notify you in writing if they plan to ask a credit reporting agency for information about you. The notice must tell you that a credit investigation will be made and that you have the right to ask the employer to disclose the nature and scope of the investigation. You may ask to receive information about what the credit check found. You should be told if the credit report plays a part in a decision to deny you a job.

**Polygraph (lie detector) tests**

Vermont law permits some employers to require that an applicant for employment submit to a polygraph test. These employers include:
• The Department of Public Safety and the Department of Motor Vehicles for law enforcement positions;

• Municipal police departments and county sheriffs for police officers and deputy sheriffs;

• Employers whose primary business is the sale of precious metal, gems or jewelry;

• Employers whose business includes the manufacture or sale of certain regulated drugs (if the job applicant will come into contact with these drugs).

Medical examinations

Employers may require a general physical examination after making an employment offer. All employees in the same job category should be subject to the same exam and your medical information should be kept confidential except where it is needed for certain accommodations. Medical information can only be used to deny you a job if the medical condition directly relates to the ability to do the job and shows that you could not do the job, even with a reasonable accommodation. If your employer requires that you have a medical examination as a condition of employment they must pay all of the costs.

Drug Testing

An employer may offer you a job but require you to pass a drug test first. The employer must give you a written notice of the drug testing procedure and a list of drugs to be tested. The notice must explain that therapeutic levels of medically-prescribed drugs will not be reported.

Random or company-wide drug tests are forbidden. An employer may ask an employee to submit to a drug test only if they have a good reason to believe that the employee is using or is under the influence of a drug on the job. The employer must have a bona fide alcohol or drug abuse rehabilitation program available for employees through the employee’s health insurance policy or under contract with a non-profit hospital service. If an employee tests positive they may not be terminated if they agree to participate in and successfully complete the rehabilitation program.

An employer should not fire you for entering a treatment program but they can suspend you from work during the period of your treatment. If, after completing a rehabilitation program, an employee tests positive a second time the employee may be terminated.

Criminal Convictions

A criminal record can be a difficult barrier to employment. Many job applications ask whether you have been charged with or convicted of a crime. A dishonest answer to this question could be grounds for firing if the truth is discovered, even if you have been a good worker on the job. Even if you are not asked about a criminal background, many employers conduct criminal background checks. In some jobs, such as child care, school employment or security, background checks are required.
Your Right to Join a Union

Introduction

One of the most important rights workers have is the right to join with other workers and form a union. Once a union is formed and recognized it represents all of the workers and negotiates with the employer to establish the rules at the workplace, such as work schedules, wages, hours, time off, discipline, safety rules, retirement, benefits, and lay offs.

A union is a group of people in the workplace who come together to support each other and bargain an employment contract with their employer. Unions belong to the workers. As a union member, you have a voice in the decisions at your workplace that affect your job. Your workplace union may be affiliated with a larger organization in order to work together with people in other places. If you are part of a larger union you will have access to an organization that can provide help such as lawyers, contract negotiators, lobbyists or educators.

In Vermont, most workers are at will employees. An at will employee can be fired without any reason as long as it is not because of sex, race, color, religion, place of national origin, place of birth, ancestry, age, sexual orientation, or because they are pregnant, have a physical or mental disability, or have had a positive HIV blood test. If there is a union in the workplace, workers can negotiate for rights that protect their jobs.

Bargaining Units

The basic building block of a union is called a bargaining unit. A bargaining unit is a group of employees who perform similar work, share a common work area and have the same interests in issues like pay, hours of work and workplace conditions. A bargaining unit can be part of a larger union or it can be a union by itself. A bargaining unit is not limited to people who work in one building or for one company. For example, workers in several small independent granite sheds in Barre, Vermont are members of the same union bargaining unit. Some workplaces have many different bargaining units who are part of one union or different unions.

Most unions have elected representatives and officers. For example your union can elect a President, Vice President, Secretary, Treasurer etc. Also, your bargaining unit can elect union stewards. Union stewards are union representatives who help with questions about the contract, represent you in disciplinary cases and go through a grievance process with you. Your union may also have committees that work on specific issues such as an educational committee to provide education about safety on the job.

There are different ways to organize a workplace, which are negotiated in the contract. In an open shop there is a bargaining unit and you are not required to pay dues or to join it. In an agency shop, you can decide whether or not you want to be part of the union but if you decide not to be in the union you will still have to pay most dues and the union will represent you in
some labor problems and disciplinary processes. In a union shop (also called a closed shop) everyone who works in your workplace is part of the union. Everyone pays dues, everyone has a vote in decisions and everyone gets the same representation. It makes your bargaining unit stronger if more people are members and everyone speaks with one voice.

If you are hired at a workplace with a closed shop, you will be required to join the union and you will automatically get all the benefits of a contract. If you refuse to be in the union, your employer must fire you after the union expels you for not paying dues. In an open shop or agency shop, you will have the opportunity to join the union after you are hired.

**National Labor Relations Board**

The National Labor Relations Board was created by the National Labor Relations Act in 1935. It is a federal agency. The National Labor Relations Board (NLRB) was created to police the relationships among employees, their unions and their employers. A union files a petition with the NLRB to be recognized as the representative of your bargaining unit after you have won an election or been recognized by your employer. The NLRB supervises union elections and resolves disagreements or disputes between a union and the employer if requested. The NLRB also has the power to prosecute employers who break the law. The Vermont Labor Relations Board plays a similar role in disputes involving relations between employers and employees under the Board’s jurisdiction - i.e., State of Vermont, Vermont State Colleges, University of Vermont, municipalities, school districts, and small private operations.

**The Right to Organize a Union**

It is your right under the National Labor Relations Act to organize, join, or support a union. This means that you can:

- Attend meetings to discuss joining or organizing a union, read, distribute, and discuss union literature--as long as you do this in non-work areas during non-work times, such as during breaks or lunch.

- Encourage other employees to join a union. This can happen in both work and non-work areas, but only during non-work times.

- Wear union buttons, T-shirts, stickers, hats, or other items on the job.

- Sign a union membership card asking your employer to recognize and bargain with your union.

- Sign petitions or file grievances about wages, hours, working conditions, and other job issues.

- Ask other employees to support the union, to sign union cards or petitions, or to file grievances.
Protection from Anti-Union Employers

Some employers try to stop workers from organizing a union and winning an election. Some employers may resort to illegal tactics such as intimidation, threats, or lies about the union. An employer may not:

- Threaten to or actually fire, lay off, discipline, harass, transfer, or reassign employees because they support the union, vote for the union or join a union.
- Favor employees who don't support the union over those who do in promotions, job assignments, wage, hours, enforcement of rules, or any other working condition.
- Shut down the work site or take away any benefits or privileges employees already enjoy in order to discourage union activity.
- Question employees about their union activities or membership in a way that could restrain or coerce the employee.
- Grant wage increases deliberately timed to discourage employees from forming or joining a union.
- Try to help a union that the employer favors with special treatment in order to prevent another union from being voted in.

If your employer violates the law, the union can help you file an unfair labor practice charge with the National Labor Relations Board or the Vermont Labor Relations Board. The Labor Board has the power to stop an employer from interfering with employee rights, to provide back pay, and to reverse any action taken against workers for union activity. However, this is a notoriously slow process. Your best defense against anti-union tactics may be to build a strong organization where you work. If employers are met with a united front, they will understand that 'divide-and-conquer' tactics will not work. You can help protect yourself by keeping written notes of any incidents of illegal conduct by your employer. You should also immediately tell the organizing committee in your workplace and any union staffers you may be working with about questionable or suspicious incidents.

Union Elections

To establish a union in a workplace, a majority of employees in your bargaining unit must express support for the union. Usually this is done by signing union membership cards, but it can be done in other ways.

Once a majority of workers support the union, the employer can choose to recognize the union based on the membership cards. The employer and the union may agree on a third party who will check the names of employees who signed cards against a list of employees and verify that a majority of the employees do support a union. It is more common to hold a union election by secret ballot to see if a majority of employees support the union. The election is conducted by the National Labor Relations Board or the Vermont Labor Relations Board.
If the union wins the election the employer must bargain a written contract covering wages, hours, and other working conditions in "good faith". Your employer cannot refuse to bargain.

**Collective Bargaining**

Collective bargaining describes people in your bargaining unit getting together with the employer and developing a contract. This is also called negotiating a contract. Your bargaining unit can choose a negotiating committee to represent the bargaining unit. Both sides must negotiate fairly and in good faith. This requires listening to and giving reasonable consideration to the other side’s requests.

When the bargaining committee and the employer reach an agreement it will be considered by all bargaining unit members and everyone can vote on whether to accept it or try to negotiate a better agreement.

**Union Contracts**

A contract is an agreement between your union and your employer that describes the terms and conditions of your employment. The contract can include agreements about wages, scheduled wage increases, hours, holidays, overtime, vacations, seniority, fair treatment, job security and benefits.

The contract sets out a fair and orderly system for settling disagreements or disputes between you and your employer. This is often called the grievance process. With a written contract, nobody has to guess about what their rights are and how to protect them.

**Grievances, Arbitration, Unfair Labor Practices**

A grievance is what happens when there is a misunderstanding or disagreement about how your labor contract is understood or implemented. A grievance is the process you use if you believe your employer violated the rights you have in the contract. A grievance is also the process you use to challenge an action your employer wants to take against you. The procedure and time frame for grievances will be in your contract. You can ask a union representative to help you file your grievance and represent you at meetings with your employer.

Many contracts allow arbitration if your disagreement cannot be resolved using the grievance process. In arbitration an impartial arbitrator either helps the two sides negotiate a solution or decides the case him or herself. An arbitrator may hold a hearing where you, your representative and the employer present their side of the story and any evidence or witnesses they may have. The arbitrator listens to both sides and makes the decision about what to do about the problem.

An Unfair Labor Practice (ULP) charge can be made against your employer or against your union if either one violates the rules of the National Labor Relations Act or the Vermont labor laws. Unfair labor practice charges are made through the NLRB or the Vermont Labor Relations Board and the Board decides, after considering both sides and the evidence, if someone has broken the law and how to punish them.
Union Dues

Dues are collected by unions to support the work that they do. Dues are collected to pay for things like legal fees, negotiating contracts, supplies, strike funds, or lobbying costs. Your union contract may say how dues are to be paid. Most union contracts allow workers to have union dues taken directly from your paycheck and forwarded to your union. Depending on your contract, you can also send your dues directly to your union. There are strict accounting rules for union funds. Union members approve union expenses through a democratic process.

Rights of Unionized Workers

You have the right to have a union representative at any interview with your employer (or their representative such as a manager or supervisor) if you think that you may be disciplined. You also have the right to consult with a union representative before the meeting. It is your responsibility to request that a representative be there with you. If you do not have a representative with you, the decision or disciplinary action is still valid.

Most employees in union workplaces have the right to go on strike to achieve better working conditions. There may be some procedural requirements such as cooling-off periods or giving advance notice before a strike.

Unless you have agreed differently, you have the right to give out information about a labor dispute. You can do this by advertising, boycott, speaking or any other method that does not involve fraud or violence.

You have the right to be radical. You can voice your opinions and beliefs freely and still be eligible to run for elected positions in your union. You cannot be removed from an elected position in your union for speaking your mind.

You have the right to obtain any information from your employer that is relevant to grievances, to monitor compliance with the contract, to investigate the presence of a grievance, to prepare for arbitration or for bargaining a contract. You can do this with the help of the union steward.

Unionized workers are entitled to all the rights that are included in the union contract such as the right to receive benefits, the right to a grievance process and a right to just cause for dismissal (they have to have a good reason to fire you) assuming these are part of your union contract.

The Rights of Union Stewards

Union stewards are usually elected union representatives. (See your contract for info about how to become a union steward in your local union.) They represent you in grievances, go to disciplinary meetings with you, help you if you have problems understanding the contract. Stewards have the right to know what an interview is about.
before the interview so that they can advise and assist the union member they are representing. Stewards can have a private meeting with the employee before the meeting and can speak and ask questions during the interview. When you need help, the union steward will advocate for you. This may put the union steward into a confrontation with the employer. National Labor Relations Act (NLRA) rules protect union stewards because of their role on behalf of workers. When stewards are representing someone they are considered equals with management. Stewards cannot act in a violent or threatening manner but they can speak openly without risking discipline.

**Strikes**

A strike happens when your bargaining unit decides to withhold labor to try to resolve a dispute with your employer. Under certain circumstances your bargaining unit may have the right to go on strike to get better working conditions. Strikes are difficult and sometimes painful for employers and for union members and are usually a last resort. The decision to strike may be an attempt by the union to balance the power struggle between workers and their employer. Unionized workers have power that comes from their right to decide not to work. Typically, no single union member or official can make the decision to go on strike. The decision to go on strike is usually a democratic decision made by a vote of the members of a union.

A strike is powerful for settling disagreements because your employer may not be able to run the business without you. Under some circumstances your employer may have the right to permanently replace striking workers. Most negotiations lead to agreements without a strike. Strikes are controversial and often make the news but they are not common.

**Limitations on Unions**

The National Labor Relations Act and Vermont labor laws outline limitations on your union. Your union cannot restrain or coerce you from exercising your rights. Your union cannot encourage your employer to illegally discriminate against a particular employee or group of employees. Your union cannot interfere in your right to freely express your opinions. Your union cannot refuse to bargain with your employer in good faith and your union cannot prevent you from going to work.
Wages and Hours

Introduction

The Federal government and the State of Vermont both have laws about wages and hours. The most important Federal law on wages and hours is the Fair Labor Standards Act (FLSA). It provides for a minimum wage, establishes overtime rules, and regulates child labor. The FLSA applies to all employers with at least 2 employees who are engaged in interstate commerce and do more than $500,000 worth of business a year. Another Federal law, the Equal Pay Act, requires equal pay for men and women who do similar work.

Vermont provides some rights and protections to employees that are greater than what is provided for in the FLSA. For example, Vermont’s wage and hour law applies to all Vermont employers with two or more employees no matter how much business they do. Vermont law also requires a higher minimum wage than the FLSA.

Minimum Wage

The minimum wage law covers most workers in Vermont. The minimum wage set by the federal government is currently $5.15 per hour. Vermont has a higher minimum wage of $7.25 per hour. All Vermont employers with two or more workers must pay at least the minimum wage.

If you are paid a salary or fixed rate per week or pay period, you must be paid an amount equal to or more than the minimum wage times the hours in your pay period. You must also be paid for all the time you work which usually includes all of the time you spend on the employer's premises or at another location as required by the employer, whether or not there is work to be done. Some professional, technical and managerial employees are exempt from overtime pay requirements.

On-Call Pay

Under Federal law, if you are able to do whatever you want during on-call time without restrictions, your employer does not have to pay you for on-call time. If on-call time is restricted, however, the employer must pay wages for that time. For example if you are required to be on-call at a work site, you must be paid even if you are not actually working.

If an employer says that you are exempt and do not have to be paid the minimum wage, contact the Wage and Hour Division at the Vermont Department of Labor or call a lawyer who knows employment law. On the web you can find wage and hour information at www.state.vt.us/labind/wagehr.htm.
24 Hour Shifts

If you must be at work for more than 24 hours at a time, like ambulance drivers, live-in housekeepers, or residential home workers, your employer does not have to pay you for a specific eight-hour period that is understood as sleep or free time. However, if your free time is interrupted for work, the employer must pay you for that time. If sleep periods are allowed for a less than 24 hour shift, you must be paid for that time. An employee required to be on duty for 24 hours or more may agree with the employer to exclude regularly scheduled sleeping periods of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

Learning Wage

In some situations, an employer can pay a “learning wage” during your first thirty (30) working days while you are being trained, up to a maximum of 240 hours. The learning wage is 85% of the minimum wage. The learning wage only applies to workers in retail, wholesale, or service establishments. It does not apply if you work in a hotel, motel, restaurant, or tourist place industry.

An employer cannot pay you the learning wage more than once. For example, if an employer wants to retrain you to switch to another job, and you have already received the learning wage for your current job, you cannot be paid the learning wage again. An employer must have at least one experienced worker to employ a learner. The total number of learners cannot be more than 10% of the number of regular workers.

Service or Tipped Employees

If you regularly receive more than $30 per month in tips, and you work in the hotel, motel, tourist or restaurant industry, you must be paid at least the current minimum wage. Your employer is allowed to credit some tips towards the hourly wage, which is called a tip credit. The tip credit plus the hourly wage paid by the employer must equal at least the minimum wage. If it does not, the employer must make up the difference. You must keep your employer informed of the amount of tips you receive and you must claim all tips above the minimum wage as income at tax time. It is important to keep careful records of time worked and tips received.

The employer is not allowed to keep any portion of your tips except when those tips taken are part of a valid tip pooling system.

Piece Rate and Commission

Some employers, like orchards, pay by piece rate. Other employers pay a commission for the amount of products sold. These payment arrangements are still covered by minimum wage laws. If you receive commissions or piece rate, you must be paid at least the minimum wage for the hours you work.
Travel Time

If your employer requires that you travel from one specific location to another, this travel time is considered work time and must be paid by the employer. Ordinary driving to and from work is not counted as time worked.

Work Expenses

Employers do not have to pay for mileage or travel expenses unless it is required by a written agreement or policy. Employers can require you to wear and maintain a uniform. Employers can also require you to purchase specific equipment as a condition of employment. They do not need to pay for equipment or uniforms unless they are required to do so by some other law or by a written agreement or policy. For example, in some instances, the employer may be required to provide safety equipment to protect you. If an employer provides a uniform, the cost may be deducted from your pay.

Overtime and compensatory time

State and federal laws require employers to pay you one and one-half times your average hourly rate of pay for each hour actually worked over 40 hours in a work week. A work week is seven (7) calendar days in a row, or 168 consecutive calendar hours. It can begin on any day or hour of the week, as designated by your employer. The FLSA does not limit the hours an adult may be required to work in a week.

Many employers avoid paying overtime by offering “comp time”. In other words, employers may ask you to work a couple of extra hours this week and take a couple of hours off next week, without paying overtime. Federal law generally does not permit this practice except in a few situations.

Equal Pay

The Federal Equal Pay Act requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal. Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex.

When and How Wages Must Be Paid

An employer can pay wages every week, every other week, or twice a month. Employers must give their employees notice before changing the payroll period. You must be paid within six (6) days of the end of the pay period. If you have been fired or laid off, you must be paid within
seventy-two (72) hours of the termination. If you quit your job, you must be paid on the next regular payday or, if there is no regular payday, on the Friday following the day of the quit.

The employer must provide a wage statement with each payment of wages. The wage statement must show the number of hours worked, rate of pay, and all deductions.

**Deductions From Wages**

Employers must make deductions from paychecks for federal and state income taxes, Social Security and Medicare taxes. Other deductions, such as payments on loans your employer made to you, are permitted. If the employer has provided goods or services, the cost can be deducted from wages if you have agreed to it. Federal law prohibits any deductions that would bring a covered employee’s wages below minimum wage.

Employers may not deduct money for any of the following reasons:

- Because you fail to sign a document;
- Because you refuse to accept wages in person;
- Because of poor quality work;
- Because of suspected shortages, damages to the employer’s property, theft, or missing property or uniforms.

**Wage Garnishments and Exemptions**

Courts can order garnishment or trustee process against wages to pay debts you owe to someone else. A wage garnishment means the money you owe is taken directly from your paycheck and sent to the person you owe it to. For example, if a credit card company sues you in court they may get a judgment for money you owe. If the judgment is not paid, the court may schedule a hearing to decide if some of your pay can be taken out of your check and paid to your creditor. Federal and Vermont laws prohibit employers from firing you because your wages are garnished.

At a trustee process hearing you can try to convince the judge that you need all of your earnings to support yourself and your family. Some of your earnings cannot be taken because the law says they are exempt from garnishment. The law sets the maximum amount that may be garnished in any workweek or pay period, even if you have more than one garnishment order. The weekly garnishment amount may not be more than 25 percent of your disposable earnings (after deductions for taxes, medicare, social security, etc.). The weekly garnishment amount also may not be more than the amount by which your disposable earnings are greater than 30 times the federal minimum wage (currently $5.15 an hour).
For example, if the pay period is weekly and disposable earnings are $154.50 ($5.15 X 30) or less, there can be no garnishment. If disposable earnings are more than $154.50 but less than $206.00, the amount above $154.50 can be garnished, unless your reasonable family expenses are greater than the amount that would be exempt. If disposable earnings are more than $206.00, no more than 25 percent can be garnished, unless your reasonable family expenses are greater than the amount that would be exempt.

You may be able to increase the amount of your wages that are exempt from garnishment if your family expenses are greater than the exemption amount using the formula. At the garnishment hearing you can present the judge with a list of your family’s expenses and ask him to reduce the garnishment amount.

Other restrictions apply to court orders for child support or alimony.

The US Department of Education can collect unpaid student loans through wage garnishment up to 10% of the former student’s net pay – if the student is in default – without going to court. They must notify you in writing at least thirty (30) days before the garnishment begins. The notice must say how much is owed, how to obtain a copy of the records, how to set up voluntary repayment and avoid wage garnishment, and how to request a hearing.

The Internal Revenue Service (IRS) can collect back taxes by taking the money it is owed from a paycheck. The IRS will send the employer a notice called a wage levy. The employer must give a copy to you immediately. You must fill out the exemption claim form on the back of the notice, and send it to the IRS within three (3) days. This will let the IRS know how many dependents you have so there will be enough left in your paycheck to live on. If the exemption claim form is not sent to the IRS within three days they will take as much out of your pay check as the law allows.

Where to Get Information and Help

For assistance with an issue involving wages or hours contact:

Vermont Department of Labor (VT DOL)
PO Box 488, 5 Green Mountain Drive
Montpelier, VT 05601-0488
Phone: (802) 828-4000
FAX: (802) 828-4022
www.labor.vermont.gov

U.S. Department of Labor
Wage and Hour Division, 1750 Elm Street, Suite 111, Manchester, NH 03104-2907
603-666-7716
Website: www.dol.gov/dol/esa/public/whd_org.htm

U.S. Equal Employment Opportunity Commission
33 Whitehall Street
New York, New York 10004
Phone: 212-336-3620
TTY: 212-336-3622
www.eeoc.gov
Employee Benefits

Introduction

Most Vermont employers are required by law to provide workers compensation, parental leave, family medical leave, military leave, leave for jury duty and legislative leave. Employers may provide additional benefits to employees which are not required by law.

Family & Parental Leave

Employers must allow workers in Vermont to take time away from their jobs for the birth or adoption of a child, serious illness of the worker or a family member, some medical appointments and some school activities. Your employer may provide more generous leave than what the law requires. Your employer must display a poster describing your leave rights.

Parental Leave

Parental leave is time you may take off from work if you are pregnant, or after the birth of your child, or within a year after the initial placement of a child in your home for adoption. You may take up to 12 weeks of parental leave in any twelve month period. Parental leave covers both mothers and fathers. You do not have to be unable to work to qualify for parental leave.

Every Vermont employer with ten or more employees who work an average of thirty or more hours per week must provide parental leave. To qualify for parental leave you must be employed by your employer for at least twelve months before the beginning of your leave. During those twelve months, you must have worked an average of thirty hours per week.

Your employer is not required to pay you during parental leave. You may use other paid leave you have earned, such as sick or vacation leave, during your parental leave, up to six weeks unless your employer allows more. Your employer may not require you to use up your other leave before using parental leave. If you use paid leave during your parental leave period, it does not extend the overall parental leave time you are allowed.

The employer must continue to provide all employee benefits unchanged during your leave period, but may require you to contribute to the cost at the existing rate of employee contribution.

- You can figure out your average hours per week for a year by adding up all the hours you worked that year (including paid vacation and sick time) and dividing by 52. The result is the average number of hours per week that you worked. For example, if you worked 1600 hours in a year, your weekly average is 1600 divided by 52 or a little more than 30 hours a week.
When you return from leave your employer must offer you the job you held or a comparable one at equal pay, benefits, and seniority.

**Family Medical Leave**

Family leave is time off from work that you may take for a serious illness of you, your child, stepchild, ward who lives with you, foster child, parent, spouse, or parent of your spouse. Family leave can be taken for up to 12 weeks during any twelve month period of time.

Every Vermont employer with ten or more employees who work an average of thirty or more hours per week must provide family leave. To qualify for family leave you must have worked for your employer for at least twelve months before the beginning of your leave, and have worked an average of at least thirty hours per week during that year.

Family leave is available for serious illness. Your employer can require a health care provider’s certification of the serious illness and the expected length of the leave required. Once the serious illness is over you must return to work unless your employer provides additional leave.

Like Parental Leave, Medical or Family Leave can be taken for up to 12 weeks during a twelve month period. You do not have to take the twelve weeks all at once.

**Short-Term Family Leave**

In Vermont you are entitled to short-term family leave of up to 4 hours in any 30 day period (but not more than 24 hours in any 12 month period) of unpaid leave:

- to participate in preschool or school activities directly related to the academic advancement of your child, stepchild, foster child or ward who lives with you;
- to attend or accompany your child, stepchild, foster child or ward who lives with you or your parent, spouse or parent-in-law to routine medical or dental appointments;
- to accompany your parent, spouse, or parent-in-law to other appointments for professional services related to their care and well-being;
- to respond to a medical emergency involving your child, stepchild, foster child or ward who lives with you or your parent, spouse or parent-in-law.

**Parental Leave, Family Leave and Short-Term Family Leave**

You must give reasonable written notice of intent to take family or parental leave, including the dates the leave will start and end. For short-term family leave, you must give notice as early as possible, at least seven days before the leave is to be taken unless waiting seven days could have a significant adverse impact on your family member.

If you use paid leave time together with unpaid leave like family leave, short-term leave or
parental leave, the Vermont law does not extend the amount of leave time that you are entitled to.

The employer must continue to provide all employee benefits unchanged during your leave period, but may require you to contribute to the cost at the existing rate of employee contribution.

There are exceptions where an employer can refuse to give you leave. You are not entitled to leave under the Parental and Family Leave Act if:

- you would have been fired or laid off for reasons unrelated to the leave; or
- you performed unique services and hiring a permanent replacement during the leave was the employer's only available alternative to prevent substantial and grievous economic injury.

This law sets a minimum standard for parental and family leave rights. It does not prevent your employer from offering a more generous leave policy and does not reduce an employer's obligation under a collective bargaining agreement or existing program that provides greater leave rights than the law requires.

The leave law does not change your eligibility to receive compensation under any existing disability income insurance plan that you may have.

If Your Employer Violates Your Right to Parental or Family Leave

- 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 if you are an employee of a state agency;
- Contact the U.S. Department of Labor, Wage and Hour Division for violations of the FMLA if you work for an employer that has 50 or more employees;
- Consult with a private attorney.

Military Leave

If you are a member of the armed forces reserves or part of the National Guard and you have a job, your employer must give you leave for active duty or to receive military training. You should notify your employer 30 days before your date of departure or as soon as possible after being called into service. Your employer does not have to pay you during military duty. When you return your employer should give you the same job you had before you left with the same pay, status and seniority. If you are in the reserves, Vermont law requires your employer to
allow you to take up to fifteen unpaid days off per year for military training.

Being away for military training or active duty should not affect your vacation time, sick leave, bonuses, advancement in your job or any other benefit that your employer usually gives.

**Benefits Offered by Your Employer**

Some employers provide benefits that are not required, like paid vacation, pensions, and health insurance. These benefits should be in writing, like a union contract, employee handbook, memo or letter that describes the benefits. An employer may make rules about when and how you must use your benefits or how you could lose benefits. For example, an employer can require that you work for six months before you are entitled to receive paid vacation. Employers can also pro-rate benefits for part-time employees. For example, an employer can require a part-time worker to pay a larger share of their health care. An employer can also change what benefits they offer, but they must give you notice of the change.

**Health Insurance**

No federal or state law requires your employer to give you health insurance. In fact, there are millions of people across the country who are working and have no health insurance. Your employer can provide health insurance but make you pay part of the premiums. Your employer can offer less insurance coverage to part-time employees and can choose what sort of health insurance to offer or stop offering health insurance altogether. Vermont does require, however, that Vermont employers who provide health insurance must provide certain minimum coverage. For example, employers with health insurance plans must cover treatment of mental illness in the same manner as any other physical illness.

**Continuing Health Insurance (COBRA)**

COBRA is a federal law that allows employees to continue health insurance for themselves and their families after they have left their job. COBRA requires that you pay a monthly premium for health insurance after you leave your work. Employers must offer COBRA benefits if they have more than 20 employees to people who have worked there for at least three months.

**Breaks and Voting**

Your employer must give you a “reasonable opportunity” to eat and go to the bathroom but there is no law that says you are entitled to breaks. Your employer does not have to offer you time off to vote or attend Town Meeting.

**Social Security**

All employers and employees are required to contribute to Social Security. If you have worked and have paid Social Security taxes (FICA) for 40 quarters (approximately 10 years), you are eligible for benefits if you become disabled or reach the age of 62. Once you start receiving Social Security benefits you become eligible for a cost-of-living increase in your benefits every January.
You can continue to work after you begin collecting Social Security benefits but the Social Security Administration will subtract money from your social security benefits if you earn over a certain amount of money per year. The longer you wait to start collecting benefits, the larger your benefit will be. You can get a statement in writing from the Social Security Administration that shows your earning record and how much your monthly benefits are expected to be when you are eligible to receive them.

If you are disabled or over 65 and you do not qualify for Social Security Retirement benefits because you have not worked enough you may still qualify for Supplemental Security Income.

You can apply for Social Security Retirement benefits and/or Supplemental Security Income benefits by calling the Social Security Administration at 1-800-772-1213.

**Employer Sponsored Retirement Plans and Pensions**

Some employers offer retirement plans and pensions. Your employer does not have to give you a pension but if they do it must treat employees fairly and not discriminate. A federal law called the Employee Retirement Income Security Act of 1974 (ERISA) sets out requirements for pension plans to protect employees. For example, your employer must provide a summary of the plan (including information about how to claim your benefits) within 90 days after you begin participation in the plan and must inform you if the plan changes. There are specific procedures about when you have to be notified after you file a claim and appeal processes if your claim is denied. For information about ERISA contact:

U.S. Department of Labor  
Public Disclosure Room  
Tel 202.693.8673

Toll-Free Employee & Employer Hotline  
Tel 1.866.444.EBSA (3272)

Toll-Free EFAST Help Line  
Tel 1.866.463.3278 Questions (202) 254-7013.

If your employer stops your pension plan, he or she must notify you in writing at least 60 days before the plan ends. The pension plan administrator should explain how the money in your plan will be paid to you and what choices you have.

Once you have reached the retirement age set by your retirement plan and you have begun to claim your benefits you are free to leave your job. You can work for another employer or for yourself and still receive your pension but if you work for the employer who established your pension plan, your payments can be suspended or delayed for as long as you continue to work there.
Health and Safety

Introduction

Employers must provide safe and healthful working conditions. This means a workplace that is free from hazards that could cause death or severe physical harm. The Occupational Safety and Health Act (OSHA) is a federal law which says that every employer must furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Every workplace should display an OSHA poster to provide employees with the information on their safety and health rights.

Filing a Complaint

If you believe that working conditions are not safe or unhealthy, notify your supervisor. Ask that the problem be corrected. If the problem is not corrected, you may file a complaint with OSHA or VOSHA. You can complain in person, by telephone, by fax, by mail or electronically through the OSHA website. You have the right to refuse a job if you believe that there is an imminent danger. Imminent danger is a condition that could cause death or serious physical harm immediately or before the danger can be eliminated. An employee in this situation may want to have a witness or union representative present when talking to a supervisor about an imminent danger. We also recommend that workers not walk off the job but ask for another job and stay at the work site until the problem is resolved or other work is offered.

OSHA is the Occupational Safety and Health Administration. OSHA is responsible for making sure that workers have a safe and healthful workplace. OSHA works to reduce workplace hazards and improve or introduce safety and health programs. OSHA also develops and enforces safety and health standards on the job and monitors job-related injuries.

VOSHA is the Vermont Occupational Safety and Health Administration. It is part of the Vermont Department of Labor and is responsible for enforcing the Occupational Safety and Health Act in Vermont. People who work in Vermont for private employers or for State or local governments are covered by VOSHA. People who work for the federal government are covered by their agencies who must provide the same health and safety standards as private employers. It covers all employers except some non-hazardous industries and agriculture. VOSHA only covers employers who have ten or more employees.
Health and Safety Standards

OSHA has standards for health and safety for every workplace. Here is a summary of some common standards. They do not represent all the current standards or their entire content. Full standards are available on the OSHA website at www.osha.gov.

Ventilation

Proper ventilation is required when air polluting job activities are taking place such as abrasive blasting, blast-cleaning enclosures, grinding, polishing.

Loud Noise

When you come into contact with loud workplace noise you must be protected. The employer must provide workers with personnel protective equipment such as ear protectors to be used to reduce sound levels. In noisy workplaces where the employee's exposure may equal or exceed an 8-hour time-weighted average of 85 decibels, the employer must develop and implement a monitoring program.

Chemical Hazards

All hazardous containers must be labeled. All employers who have hazardous chemicals must have a Hazard Communication Plan which describes the chemicals and how the employer plans to protect the employees. All companies must have a Material Safety Data Sheet (MSDS) for each chemical, that lists properties, dangers, proper handling, medical treatment if exposed, and disposal. Employees must be given access to the Hazard Communication Plan and the MSDS.

Fire Safety

Every workplace must have proper exits, firefighting equipment, employee training and emergency action plans.

Hazardous Materials

There are specific standards for hazardous materials. These standards apply to compressed gases, flammable and combustible liquids, explosive and blasting agents, storage and handling, process safety management of hazardous chemicals, hazardous waste operations and emergency response.

Personnel Protective Equipment

Employers must look for workplace hazards that could be made safer by providing protective equipment. When injury can be prevented the employer is responsible for training workers in how to use protective equipment and making sure they use it.
Blood Borne Pathogen Standard

Where this is a risk that employees will come in contact with blood or other potentially infectious materials, employers must develop and implement a written exposure control plan. Universal Precautions must be in place that assume that all body fluids are infectious. Procedures must be in place that provide for safe collection, labeling, transport, storage, and disposal of body fluids/tissue. Hepatitis B vaccine must be available free of cost to the employee. Following an exposure or sharp injury, there must be protocols in place for testing for infection (Hepatitis B, Hepatitis C, HIV) and providing any necessary medical treatment. Training programs must be in place.

General Environmental Controls

The workplace must be kept clean. Floors must be kept dry. Waste containers must be leakproof and sanitary. Drinking water must be safe. Employers must provide toilet facilities, sanitary washing facilities, lavatories with hot and cold or tepid running water. Cleaning agents and drying methods must be provided.

Posting of Workplace Safety Records

Employers must post a summary of all illnesses and injuries that result in fatalities, lost days of work, transfer to another job, being fired, medical treatment (not including first aid), unconsciousness, or restriction of work. Employers must record these injuries within 6 days of when they happen. Employees must be given access to the log when they request it. Employers must post an annual summary of the illnesses and injuries in the workplace.

Smoking in the Workplace

In Vermont each employer must establish a smoking policy. The smoking policy must be written if there are more than ten employees who work more than fifteen hours per week. The policy must prohibit smoking throughout the workplace or restrict smoking to designated smoking areas. If an employer fails to follow these requirements an employee may complain to the Vermont Department of Health.
Contacts

**Occupational Safety and Health Administration**
John F. Kennedy Federal Building
Room E-340
Boston, MA. 02203
Phone 617-565-9860
Fax 617-565-9827

24 hour Hotline Emergency Number  1-800-321-OSHA
Website Home Page  [www.osha.gov](http://www.osha.gov)

**Vermont Occupational Safety and Health Administration**
Vermont Department of Labor
PO Box 488, 5 Green Mountain Drive
Montpelier, VT 05601-0488
Phone: (802) 828-4000
FAX: (802) 828-4022
Website  [www.labor.vermont.gov](http://www.labor.vermont.gov)

**Vermont Occupational Health Division**
Information on health hazards such as chemical exposures, asbestos, indoor air quality, blood borne pathogens.

Phone  802-865-7730
Privacy at Work

Drug Testing

Drug testing at work is very controversial. Employers say it contributes to efficiency, safety and good health. Others say it is wasteful, unfair and has little or no effect on safety or performance in the workplace. A Vermont employer cannot request, require or conduct random or company-wide drug tests except when such testing is required by federal law or regulation.

Job Applicants

If you are applying for a job, an employer may require you to submit to a drug test only if all of the following conditions are met:

1. The employer has promised to hire you if you pass the drug test;

2. The employer gives you a written notice of the drug testing procedure and a list of drugs to be tested. The notice must also state that therapeutic levels of medically-prescribed drugs will not be reported;

3. The test is administered in accordance with Vermont law.

Current employees

Your employer may require you to submit to a drug test only if all of the following conditions are met:

- Your employer has probable cause to believe that you are using or under the influence of a drug on the job;

- Your employer provides a rehabilitation program for alcohol or drug abuse that is available to you through your health insurance policy or under contract with a non-profit hospital service;

- You will not be terminated if the test result is positive and you agree to participate in and complete the rehabilitation program.

You cannot be fired for entering a treatment program but can be suspended from work during the period of your treatment. If you test positive for drugs after completing the program you can be terminated.
Administration of Drug Tests

When an employer requires a drug test, the testing must meet all of these requirements:

- The test must be only to detect alcohol or drugs specified by Vermont law at non medically-prescribed levels;

- The employer must provide everyone tested with a written drug testing policy which says who may be tested, the drugs to be tested for, a statement that over the counter medications and other substances may result in a positive test, and the consequences of a positive test result;

- An employer may not request or require that a blood sample be drawn for purposes of administering a drug test;

- The employer must use a laboratory approved by the Vermont Department of Health;

- The collector has to establish a procedure to ensure anonymity of the person being tested and verify the identity of each sample and test result;

- Urinalysis procedures require that the laboratory follow testing procedures approved under Vermont law, and that a person giving a urine sample be given an opportunity at his or her request and expense to also provide a blood sample at the same time;

- If a test indicates the detection of a drug at therapeutic levels as defined by the VT Commissioner of Health, the lab must report the test as “Negative”;

- A written lab report must be issued to the medical review officer who must review and discuss it with the individual tested. The written report must contain specific information required by Vermont law;

Polygraph (lie detector) Tests

Vermont law prohibits employers from making you submit to a polygraph examination in order to qualify for a raise, promotion or job change. There are some exceptions. In some types of work the employer may require you to take a polygraph. They are:

- law enforcement officers;

- employers whose primary business is wholesale or retail precious metals or gems;

- employers who manufacture or sell regulated drugs if your job would bring you into contact with the drugs;

- employers authorized or required to require polygraph examinations under federal law or regulation.
Personnel Files

Personnel files belong to the employer. Some employers have a written policy about what kind of information goes into your personnel file and your right to this information. Union or collective bargaining agreements often provide specific information about your right to your personnel files. Vermont law does not require employers to give you access to your personnel file.
Sickness and Injury

Introduction

Illness or an injury can happen to you when you least expect it. While your first priority is to recover or get treatment, it can be confusing to figure out who will pay your medical bills or how you will pay your rent or other expenses if you are out of work.

Workers Compensation

Workers Compensation insures employees who are injured or made ill because of their work. It does not matter whose fault caused the injury. The Workers Compensation Program is run by the Workers Compensation and Safety section of the Vermont Department of Labor. It covers all Vermont employers and provides medical benefits, temporary disability benefits, compensation for permanent disability, vocational rehabilitation and death benefits.

Workers Compensation covers 100% of all reasonably necessary medical services and supplies related to an on-the-job illness or injury. This includes doctors visits and hospital treatment. If other treatment is necessary, Workers Compensation will cover physical therapy, medication, chiropractic treatment and psychological counseling. The medical benefits last as long as care is needed for this injury. Mileage on your car or the cost of transportation when you see a doctor, as well as meals eaten while traveling to an appointment, can be paid for by Workers Compensation as well.

Workers Compensation does not just cover accidents. You are also covered if you get ill from exposure to toxic chemicals or if you suffer back spasms from lifting or suffer a repetitive motion injury such as carpal tunnel syndrome. Some injuries may show up later in life or outside of work. If they are work related they should still be covered.

If you are injured at work or become ill, inform your boss or supervisor right away. Your employer must file a report with the Vermont Department of Labor Workers Compensation section within 72 hours of receiving notice from you of your injury or illness. Your employer should give you a copy of the report they file. If your employer does not report your injury, you may file your own notice by completing a one page form. When a report of illness or injury is filed, your employer's insurance company or carrier is notified and has 21 days to investigate your claim and decide whether or not to pay for it. The insurance company will choose the first doctor you see for this injury. After that visit, however, you can pick your own doctor.

The Workers Compensation section has people, called Specialists, who help workers who are injured on the job. Specialists can assist you with paperwork and look into problems with the case. Sometimes they will mediate a dispute between you and the insurance company. Specialists can order payments on a temporary basis. Although Specialists are helpful, they are not a substitute for a lawyer or legal advice.
**Denials and Appeals**

If you think you are not getting what you should from the carrier or insurance company, you can contact the Specialist assigned to your case and request a hearing. There is a form which you must fill out and submit. The Workers Compensation section will schedule an informal hearing by telephone with the Specialist and the adjuster within 14 days of receiving your request for a hearing. This is an opportunity to see if things can be worked out without having to go to a formal hearing. During the informal hearing, each side has an opportunity to explain their position and give the Specialist any evidence they have. If the insurance carrier does not have a good enough reason to deny benefits, the Specialist can order them to pay until the case goes to a formal hearing. Either way, if the dispute cannot be resolved, a formal in person hearing will be scheduled.

Formal hearings can be complicated. Often there is detailed medical evidence from both sides and witnesses to question. Unlike at the informal hearing, legal rules of evidence and procedure are enforced. If at all possible, workers should be represented by an attorney. Many attorneys who specialize in this work will accept a cut of the winnings as payment for representing the worker. This is known as a contingency fee arrangement. Talk to a lawyer if you get to this point. Even if the lawyer does not represent you, he or she can help you by pointing out the strengths and problems with your claim.

After your claim is approved, there can be problems where you and your doctors disagree with the insurance carrier about treatment, how serious your injury is, or whether you are well enough to return to work. The rules for settling these disputes are the same as when your claim is denied at the beginning. You must fill out the form from the Workers Compensation section to request a hearing and participate in an informal telephone hearing. If the problem is not resolved, a formal hearing is scheduled.

**Cash Benefits from Workers Compensation**

Workers Compensation will pay benefits to cover lost wages if you are out of work for more than three days. The first three days you are out of work are a waiting period. You are entitled to start getting a cash benefit on the fourth day you are out of work. If you are out of work for more than a week you will get benefits for all the days you missed from work including the three day waiting period. It can take up to 45 days before you receive your first benefit check.

Your benefits depend on whether your disability is considered total or partial. You will receive total benefits if you are unable to do any work at all. If you can do some work you will receive partial benefits which are less.
Cash benefits can be either temporary or permanent. Workers who expect to get better and return to work receive a temporary benefit. Generally, a temporary total disability benefit is about 2/3 of your average earnings before the accident or illness. If your doctor thinks your injury has healed as much as it ever will but you are not completely recovered, your doctor may report that you have reached an end medical result which means that you are not expected to get better than you are at that point. When you reach an end medical result you will receive a permanent benefit.

Reinstatement

While you receive benefits you must keep your employer informed of your interest in returning to work and be sure they have contact information for you. If you recover from a covered illness or an injury within two years, your employer must offer you the next open position for which you are qualified. You are entitled to full seniority and any unused leave or sick time that you had prior to the injury. Reinstatement is not required if you gave notice of quitting before the injury, or if your employer gave you notice that you would be fired or laid off before the injury.

Vocational Rehabilitation

Vocational Rehabilitation is provided to injured workers as part of the Workers Compensation benefit. You are entitled to voc rehab if you cannot return to work due to your workplace injury. You may be required to go to voc rehab in order to receive benefits.

Vocational Rehabilitation assists workers in returning to work, either the same or different work. At Voc Rehab the worker meets with a counselor to create a plan for getting back to work. Your plan may be to return to the same employer either in the same job (with some changes) or a different job. Or your plan may be to find a different job with a different employer using the same skills. Or it may involve on-the-job training for something completely different, academic or trade schooling, or helping you to become self-employed.

Coverage by Health Insurance or Short- or Long-term Disability

Medical bills are very stressful for a working family. Doctor and hospital bills can pile up while a breadwinner is out of work. It is important to find out as soon as possible if an insurance company or someone else is obligated to pay your medical expenses. If you wait too long to bill the right person or company, it may be more difficult to get your bills covered.
If your injury or illness is not covered by Workers Compensation, find out if you have any other insurance which may cover your medical/health expenses, such as private health insurance provided by your employer or a policy you have purchased on your own. You can find out about your employer’s health insurance plan from the human resources office. You cannot purchase health insurance to cover an injury or illness which already exists.

You may also be covered by a short or long-term disability policy through your employer, which might provide you with some income to cover your expenses. You will need to check with your employer to see if you have this and what the terms are.

Help With Medical Bills, Expenses, and Health Coverage

If you have a low income either because your wages are low or because you are out of work, you may be eligible for health insurance from the State of Vermont, Department of Children and Families (DCF). Vermont offers two insurance programs for adults: Medicaid and Vermont Health Access Program (VHAP). To get Medicaid, you must be disabled and have low income. VHAP also has income guidelines, but they are not as low as Medicaid. You do not have to be disabled to get VHAP. If you are denied, contact the Office of Health Care Ombudsman at Vermont Legal Aid to learn about your appeal rights.

If you have minor children you may be eligible for Emergency Assistance from DCF to cover emergency medical needs. For people without children, the General Assistance program from DCF may pay for emergency medical needs. You may apply for both of these programs at your local DCF office.

Family Leave: How to Get Time Off From Work Without Losing Your Job

If you need time away from work because of your or a family member’s serious illness you may be eligible for time off under the federal or Vermont Family Leave Act. See the Chapter on Employee Benefits for information on family leave.

Disability Insurance

Some employers provide disability insurance to their workers. There are many different plans. Short term disability pays a percentage of salary to workers who become temporarily disabled and unable to work due to sickness or injury. Some employers provide long term disability insurance which picks up where short term disability ends. A typical policy provides a weekly portion of your salary. Employers who provide disability insurance may pay all or some of the premium or may make the insurance available to workers who pay the premium out of their paycheck.
**Reach Up Financial Assistance**

If you have minor children, have little or no income, and are unable to work, you may be eligible for Reach Up Financial Assistance through the Department of Children and Families (DCF). Reach Up Financial Assistance gives you money to live on. When you apply for Reach Up, you will need to let DCF know that you are unable to work because of your illness or injury. There is usually a work requirement in order to receive assistance, but you can get the work requirement reduced, postponed or waived completely if you are ill or injured.

**Food Stamps**

The Food Stamp program helps families purchase food and you may need this help if you lose a job because of illness or injury. If you are eligible you will be given an electronic swipe card, like a credit card or ATM card, to use for food at the grocery store. Single people and families can get food stamps. Single people are often required to register for work but you should be able to get a deferment if you are sick or injured. You apply for Food Stamps at DCF.

**Unemployment Compensation**

To be eligible for unemployment benefits you must be able and available for work. If you are unable to work because you are sick or injured you will not qualify for unemployment.

**Social Security Disability and SSI**

If you are unable to work because of a disability and have a work history of ten years or more, you may be able to collect Social Security Disability Insurance (SSDI) benefits. You begin the application process by calling Social Security at 1(800) 772-1213. The amount of your benefit will depend on how much you have already earned during your lifetime. If your benefit is very low, you may be able to receive Supplemental Security Income (SSI) benefits in addition to SSDI benefits.

It often takes several months to prove you are eligible for social security disability benefits so it is good to get started as soon as it seems likely that you will be unable to go back to work. It is common for people to be denied when they first apply. It is important to appeal each step of the process. If you win you will get a check for benefits back to the time you applied.

If you are unable to work for at least 30 days or if you have an emergency medical need you may be eligible for General Assistance (GA).
from DCF. You will need a letter from your doctor. GA can also help you with rent or mortgage payments and you can receive a very small amount of cash for personal needs.

**Americans with Disabilities Act**

If a qualified worker with a disability is capable of performing the essential functions of a job so long as a reasonable accommodation is made for the worker's disability, then the employer must provide that reasonable accommodation to the worker. In other words, the Americans with Disabilities Act requires employers to make reasonable accommodations in the work place to enable a worker with a disability to perform the job. Reasonable accommodations may include:

- providing you with special equipment used for work;
- allowing changes to your work schedule;
- reassigning you to a vacant position;
- providing an interpreter or reader;
- changing some work-place policies.

For a more detailed discussion of disability rights see the Chapter on Discrimination and Harassment.
Non-Citizens and Undocumented Workers

Introduction

Not everyone who works in the United States is a U.S. citizen. Civil wars, violence, natural disasters, failing economies, and oppression have always brought people to the United States, legally or otherwise, with hopes of creating a better life than the one left behind.

Citizens and Aliens

A U.S. citizen may be someone who was born in the United States, someone who was born in another country to U.S. citizens, or someone who became a citizen after coming here from somewhere else. People who are here but are not citizens are described in the law as aliens. Aliens who are allowed to stay in the U.S. permanently are considered immigrant aliens and are often called “lawful permanent residents.” People who are allowed to come here temporarily, usually for work, study, or pleasure, are considered non-immigrant aliens.

An alien’s immigration status and the type of visa he or she holds determine whether they can work in the United States. In most cases, a travel visa does not allow you to work in the U.S., except in a few circumstances. The primary purpose of a visa is to identify whether you are allowed to be in the U.S. You must have a special type of visa to be allowed to work in the U.S.

Working Legally in the United States

Employers must make sure that all employees are legally allowed to work in the United States. All citizens and lawful permanent residents have the right to work here. If you are a U.S. citizen, you do not need an Employment Authorization Document but you will need to show that you are a citizen. If you are a lawful permanent resident or a conditional permanent resident, you do not need an Employment Authorization Document because your Alien Registration Card proves that you may work in the United States.

If you are not a citizen or lawful permanent resident you may need to apply for an Employment Authorization Document (EAD) to prove that you are allowed to work in the United States. **Native Americans may have rights based on their tribal status even if they are not citizens.**

Only people in certain immigration categories can get an EAD. **If you are undocumented you are not eligible for an EAD.** If you apply for an EAD but you are not eligible your application may get you deported. You should talk to an immigration attorney before filing anything with Immigration.

These people must have an Employment Authorization Document to work in the U.S.: people who are seeking or have been granted asylum; refugees; students seeking particular types of employment; applicants to adjust to permanent residence status; people who receive or who have
Asylum applicants are eligible to file for EADs only after waiting 150 days from the date they filed their properly completed original asylum applications. Their application should be approved or denied within 30 days.

If you apply for asylum and are denied (most people are denied), Immigration will start removal proceedings. Talk to an immigration attorney first.

Other eligibility for temporary protected status; foreign fiancés of American citizens; and dependents of foreign government officials.

Some people, such as H-2 workers, are authorized to work for a specific employer. If you are authorized to work for a specific employer you do not need an Employment Authorization Document. Your passport and your USCIS Form I-94 (Arrival-Departure Record) proves that you may work in the United States.

Employers must verify you have the right to work in the U.S. Employers may not make you give other information about your immigration status. In other words, you may be required to show your documents but you do not have to answer questions. Only an immigration official can demand this information. If you are questioned by an immigration authority about your immigration status, you have the right to remain silent until an attorney can be obtained for you.

A new employee has three days to show the employer the required documents. If you do not provide the documents you can be fired. You may not work beyond the expiration date of your work authorization.

How To Get Work Documents

If you are not a citizen and you are sure that you are eligible to get authorization to work you must file an USCIS Form I-765 (Application for Employment Authorization) by mail with the Vermont Service Center at

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
64 Gricebrook Road
St. Albans, VT 05478

Forms are available on the web at www.uscis.gov or by calling 1-800-870-3676 or by mail.

If USCIS does not approve or deny your Employment Authorization Document application within 90 days, you may request an interim Employment Authorization Document. You must go to your local USCIS district office and bring proof of your identity and any documents that USCIS has sent you about your employment authorization application.

Discrimination

Federal and Vermont laws protect you from employment discrimination on the basis of national origin as well as race, color, religion and sex.
An employer may not discriminate against you because you are not a citizen. If you have the right to work in this country employers should not:

- Refuse to hire you because you are not a U.S. citizen;
- Fire you because you do not speak English, even though you do not need English to do your job well;
- Refuse to hire you because you don’t have a green card, even though you have a different valid work permit;
- Fire you to replace you with a U.S. citizen;
- Refuse to hire you because they think your genuine immigration card looks fake.

If you are undocumented, you may be at risk of deportation if you complain about discrimination. Talk to an attorney if you are not documented to protect yourself from deportation.

**English-Only Rules**

Requiring employees to speak only English at all times on the job violates the law, unless an employer shows it is necessary for conducting business. If an employer believes the English-only rule is critical for business purposes, employees have to be told when they must speak English and the consequences for violating the rule. Any negative employment decision based on breaking the English-only rule will be considered evidence of discrimination if the employer did not tell employees of the rule.

**Harassment**

Harassing an employee because of their national origin is a violation of the law. An ethnic slur or other verbal or physical conduct because of your nationality may be harassment. It is illegal if the harassment creates an intimidating, hostile or offensive working environment or interferes with work performance or negatively affects your employment opportunities. Employers have a responsibility to maintain a workplace free of national origin harassment.

**Rights of Aliens Who Lose Their Job**

**Unemployment Compensation**

Most legal immigrants are eligible for unemployment compensation the same as other workers as long as they were authorized to work.

**Public Benefits**

Except for refugees and asylees, most legal immigrants are not eligible for public benefits for
PUBLIC CHARGE TEST
If you are applying for your green card, getting cash benefits like Reach Up or SSI could hurt your chance of getting your green card. This is because there is a "public charge test." If you are receiving cash benefits, USCIS will look at your case to see if they think you can support yourself. It is always best to have a job when you go for your interview. If you are in this situation, contact an attorney to discuss your situation. It is okay to get health insurance, child care assistance, housing assistance, food stamps and emergency help.

Undocumented Workers
Undocumented workers may be deported if they complain about workplace conditions or discrimination. Some employers take advantage of them because of this. The federal employment discrimination laws protect all employees who work for an employer with 15 or more employees, including those who are not authorized to work. Undocumented workers are entitled to the same remedies available to all other workers for violations of the anti-discrimination laws but not if the award would conflict with the requirements of immigration laws. For instance, an undocumented worker who has been wrongly fired cannot be reinstated unless s/he produces the work documents required by immigration law.

Undocumented workers are entitled to many of the benefits of our laws. You can organize, get paid minimum wage and overtime, and file for workers compensation. If you are working without documents you can complain anonymously about health and safety violations at work, to protect yourself from deportation. You should review the specific chapters about these issues if you think you have a complaint. If you can, talk to a lawyer before filing a claim to be sure that you protect yourself when filing a complaint.

Undocumented workers are not eligible for unemployment compensation unless you can show that you had work authorization both at the time you were earning wages and when you filed for unemployment. Undocumented immigrants are not eligible for some needs based public benefits such as Reach Up, Supplemental Security Income (SSI), Food Stamps and Medicaid.
Unemployment Compensation

Introduction

You apply for unemployment benefits at the Division of Unemployment Insurance and Wages of the Vermont Department of Labor. It will decide if you are eligible, send checks, and hear appeals of cases. It provides information to workers, employers, and claimants by telephone on the Claimant Information Line and at its web site (www.labor.vermont.gov/sections/uiwages). It also has a Claimant Handbook which is available directly or on the web site.

Unemployment Compensation pays temporary cash benefits to workers who are laid off and are unemployed or are only working part-time. To qualify for unemployment benefits you must have worked in enough quarters to be eligible and you must have been laid off or fired for minor reasons. You cannot get unemployment if you quit your job unless you quit because of significant mistreatment or bad conduct by the employer. You cannot get unemployment if you voluntarily reduce your hours or are unable to work for personal reasons or illness.

If you are receiving unemployment benefits you must look for work and accept a suitable job if one is offered to you. Benefits last for up to 26 weeks unless extended because of a high unemployment rate. If an extension is in effect, you may be able to get an additional 13 weeks of benefits.

Unemployment insurance is a federal-state partnership. Employers pay for unemployment insurance through a tax on their payroll. An employer may oppose your effort to collect unemployment benefits to avoid an increase in their taxes. To avoid problems keep careful records and explain your reason for leaving work carefully and in detail when you are filing your claim.

How It Works

To apply for benefits, call the Initial Claims Line at 1-877-214-3330. An intake worker will take your claim over the phone. You will be required to give some information about yourself and your work history. Call as soon as possible after you are laid off.

Unemployment Insurance will review your claim and notify your employer, who will be able to give his or her version of the events. You will be notified by mail of the decision.

If you are eligible you will receive a check by mail each week. You will receive benefits for
weeks in which you actively look for work but cannot find suitable work. You must report your job searches by phone (1-800-983-2300) or online (https://uiclaims.det.state.vt.us/) each week in order to receive the next check. There is always a one week waiting period before you receive your first check. If you do not receive a check for some reason, you should call the Claimant Information number (1-877-214-3332) for help.

Most claims are processed within 10 days, but it can take up to six weeks if Unemployment Insurance thinks they need more information about your case. While this can be troubling for people who are depending on their unemployment check, there is no way around it. If it does take this long and your claim is eventually approved, you will receive a check for all the weeks in which you were eligible. If you are told that your case is being investigated, you must continue to look for work and report your work search each week. You will not get benefits for any weeks you were not available for work or did not do a work search.

**Qualifying Wages**

To be eligible for unemployment benefits, you must have earned enough money to qualify. Unemployment Insurance uses information they get from you and employers to determine whether you earned enough money to be eligible for unemployment. This information is also used to figure out how much your benefit check will be. You can find out more about how Unemployment Insurance looks at wages in the Claimant Manual (http://labor.vermont.gov/sections/uiwages/benefits/manual.html) or by calling the Claimant Information Line.

**Disqualification**

A worker who is eligible for benefits may be disqualified if they were fired because of misconduct. Disqualification could mean a loss of benefits for a week or more. If the misconduct was severe, a worker could be disqualified from benefits altogether.

**When Your Claim is Denied**

If you are denied benefits or disqualified, you can appeal the decision to an Appeals Referee. To appeal, send a letter within 30 days saying you want to appeal. The instructions for appealing are on the bottom of the second page of your determination letter.
The hearing with the Appeals Referee will be by telephone in a conference call. Unemployment Insurance will send instructions which explain how the appeal works. The conference will be recorded. Both sides will have an opportunity to testify under oath, submit documents and ask other people to testify. All of this will be considered by the Appeals Referee as evidence.

The Appeals Referee hearing is the last chance you will have to present evidence or testify so you should prepare by bringing witnesses, letters or documents, and notes to yourself reminding you of what you want to say. You can have an attorney represent you at this hearing.

After the telephone hearing, the Appeals Referee will write a decision which should be sent to you within a couple of weeks. You must continue to report on your availability and job search each week while you are waiting for the decision.

If the Appeals Referee’s decision goes against you, you can appeal the decision to the Employment Security Board. An appeal request must be made within 30 days. The Employment Security will review a written record of the case and will not hear any new evidence. Appeals from the Employment Security Board go to the Vermont Supreme Court.

Losing Your Right To Collect Benefits

You may lose your right to collect benefits even when you are still unemployed if you fail to properly report information to Unemployment Insurance or refuse to take suitable work offered to you. Read the Claimant Manual carefully or call the Claimant Information Line if you have questions on what you can or cannot do. If Unemployment Insurance decides to stop paying your benefits they will send you a determination letter. You can appeal this decision to an Appeals Referee the same way you can appeal a denial of benefits.

Overpayments

If you receive benefits and later Unemployment Insurance decides you were not eligible for the benefits, they will notify you of an Overpayment and tell you that you need to pay the benefits back. They may also try to withhold future benefits or sue you in court for the money they think they are owed. You can appeal an Overpayment notice to the Appeals Referee.
Suitable Work

In order to remain eligible for benefits while you are out of work you must actively look for work and report all of your job contacts to Unemployment Insurance. Suitable work means work that is safe and consistent with your abilities, experience and prior earning ability. It needs to be work you can get to safely and without hardship. Suitable work also means work that is consistent with your child care responsibilities. If you find part-time work you must tell Unemployment Insurance and keep looking for full-time work. If Unemployment Insurance tries to end your benefits for refusing suitable work you should appeal and talk to a lawyer immediately.
Employment of Minors and Young People

The age of majority in Vermont is 18. Everyone who is younger than 18 is a minor. Vermont child labor laws protect minors. The law restricts the number of hours minors may work and protects them from certain workplace dangers.

Employers may not hire anyone under 18 to work in any of the following jobs:

- Manufacturing and storing explosives.
- Motor vehicle driving and outside helper.
- Logging and saw milling.
- Handling power-driven woodworking machines.
- Jobs that expose you to radioactive substances.
- Operating power-driven hoists.
- Operating power-driven metal-forming, punching, and shearing machines.
- Mining.
- Slaughtering, meat packing, processing, or rendering.
- Operating power-driven bakery machines.
- Operating power-driven paper-products machines.
- Manufacturing brick or tile.
- Operating power-driven circular saws, band saws, and guillotine shears.
- Wrecking and demolition.
- Roofing.
- Excavation.

Other restrictions apply to minors under 16.

Employers may not hire minors under 16 to work more than 8 hours in any one day or more than 40 hours in any week. Minors under 16 may not start work earlier than 7 o'clock in the morning or work after 7 o'clock at night, except from June 1 though Labor Day. From June 1 though Labor Day a minor under 16 may work until 9 o'clock at night. While school is in session, a minor under 16 may only work up to 3 hours per day to a maximum of 18 hours a week. The law makes exceptions for a child employed as an actor or performer in motion pictures or theatrical productions and for baseball bat girls and bat boys.

Minors under 16 may not be employed at the following jobs, in addition to the jobs prohibited for minors under 18:

- Manufacturing, mining, meat processing or laundries.
- Public messenger service.
- Operating or tending any power-driven machinery or hoisting apparatus.
- Transportation occupations.
• Work in warehouses or storage.
• Communications and public utilities.
• Construction
• Work in engine and boiler rooms.
• Maintenance, custodial or repair.
• Outside window washing that requires working from sills.
• Any work requiring use of ladders and scaffolds.
• Cooking or baking.
• Work in freezers or meat coolers.
• Loading and unloading goods.

With a few exceptions, a minor under 14 cannot be employed unless the work has been approved by the Commissioner of Education and only during school vacation or before or after school hours.

If an employer is not following the child labor laws you can complain by contacting the Vermont Commissioner of Labor.
Welfare to Work

Introduction

The Vermont Department of Children and Families (DCF) provides cash assistance and health coverage to many low income Vermont families. Usually the parents of families who receive cash assistance must work or participate in a training program to get ready for work. These programs are sometimes called welfare to work programs. They teach job skills to people who do not have much work experience.

If you are moving from welfare to work, you may have problems with the DCF office or with your employer. It is important to know your rights with DCF and your rights with your employer.

Work Requirements

If your family is receiving or applying for Reach Up benefits you may be told that you must take a job. If you refuse, you may be sanctioned. A sanction could reduce your benefits, taking $75 out of your grant every month for the first three months and $150 every month after that until you find a job. If you refuse to take a job you will not be sanctioned if you have “good cause” for refusing it. For example, if you are sick or disabled or if you are a victim of domestic violence, you may have a good reason to refuse the job.

Child Care, Transportation and Work Related Expenses

Your Reach Up case manager should help you solve problems that stand in the way of going to work. Tell your case manager about anything that makes it hard for you to work such as transportation, health problems, dental problems, or child care. Your case manager will help you come up with solutions to problems and put them into your Family Development Plan.

Paying for Child Care

While you are getting help from Reach Up, DCF will pay for your child care. SRS (Vermont Department of Social and Rehabilitative Services) also helps low income Vermont families who do not get Reach Up benefits by giving them money for their child care.

DCF should not force you to work if there is no adequate, licensed child care you can afford. You can choose to go to an unlicensed child care provider if you want, but you cannot be forced to use unlicensed child care.
Transportation and Job Related Expenses

If you are getting help from Reach Up, DCF cannot make you work if you do not have a way to get to and from your job. They will pay for public transportation if it is available. Reach Up can also help by giving you money to repair your car, pay for car insurance, get your driver's licence, or register your car. Reach Up can help you with some other work-related expenses such as uniforms, tools or equipment you need for work.

Working and Benefits

DCF looks at money you earn from a job to figure your benefits. Money from a job is called earned income. DCF will not count all of the money you earn when determining the amount of your grant. The first $150 you earn each month does not count as income and will not change the amount of money you receive in your grant. DCF will not count 25% of the money you earn above $150 a month. For example if you earn $550 a month DCF will not count the first $150 or 25% ($100) of the amount above the first $150. If you make more money than you get in your Reach Up grant, your Reach Up grant will close. If your Reach Up grant closes because of the money you are earning you should still be eligible for health insurance, Food Stamps and child care assistance.

Employment Rights and Welfare to Work Programs

People in welfare to work programs do not have all of the same rights as other workers. If you are doing the same work as other workers at the job site you should be protected by most of the laws that protect them. However the minimum wage law and the unemployment compensation law will probably not apply. If your job is subsidized, which is when the state helps the employer pay your wages, you should be covered by all of the employment laws.

Unemployment Compensation

If you are treated like a regular employee, you should qualify for unemployment insurance benefits if you are fired or laid off. Some kinds of public community service would not be covered by unemployment insurance.

Health Insurance

If you receive a Reach Up grant, you should receive Medicaid. If you are working and your Reach Up grant closes because of your work income, you can continue to receive Medicaid for three years unless you earn too much money to keep Medicaid. If your Reach Up grant closes you may be eligible for some health insurance coverage through the Vermont Health Access Plan (VHAP). If you have children, they will still be eligible for the Vermont children's health insurance program called Dr. Dynasaur.
Welfare Sanctions

If you are a Reach Up participant and you quit your job or are fired, you could be sanctioned. A sanction could reduce your benefits by $75 every month for the first three months and $150 every month after that until you find a job.

If you have good cause for leaving or losing your job, you should not be sanctioned. Good cause means that you have a good reason for leaving or that it was not your fault.
Discrimination and Harassment at Work

Introduction

Federal and Vermont laws make it illegal for employers to treat workers unfairly because of their sex, race, color, religion, place of national origin, place of birth, ancestry, age, sexual orientation, or because they are pregnant, have a physical or mental disability, or have had a positive HIV blood test. The Vermont law against employment discrimination is called the Fair Employment Practices Act. All Vermont employers are covered by the Fair Employment Practices Act.

Some Federal laws against discrimination apply to all employers with fifteen or more employees. Others apply only to employers with twenty or more employees. Even when federal law does not apply Vermont’s anti-discrimination laws will apply.

Unlawful discrimination happens in many different places including job advertising, job recruitment, hiring, training, job assignments, promotions, pay, benefits, lay offs, leaves, treatment on the job, and firing.

Protected Categories

Laws against discrimination only protect certain groups of people. It is not illegal for your employer or supervisor to discipline you or to make job assignments, unless you are being targeted because you are part of a group that the law protects. For example, if your boss curses and yells at all of the employees regularly and for no good reason it is probably not illegal. If she only curses and yells at you it is not unlawful harassment unless it is because you are a member of one of the groups the law protects.

Sex Discrimination

Several laws protect women from unfair treatment because of their sex. Vermont's Fair Employment Practices Act and Title VII of the federal Civil Rights Act of 1964 make it illegal for employers to pay women less because of their sex. The Equal Pay Act of 1963 requires employers to pay women the same amount as men if they are performing jobs under similar working conditions which require equal skill, effort and responsibility.

Sexual harassment is prohibited by both Vermont and federal law. One kind of sexual harassment involves situations where an
employer or supervisor expects sexual favors for some job benefit (such as being hired, promoted or getting a fringe benefit) or to prevent a negative action (such as being fired, getting a bad evaluation or not being allowed to go to a special training).

Another kind of sexual harassment is what the law calls a hostile work environment. A hostile work environment is where someone harasses a worker in the workplace in a sexual way. To be illegal this harassment must be frequent or pervasive or very severe. The harassment must also be unwanted. Finally, the harassment must substantially interfere with the worker’s ability to do their job or create an intimidating or hostile environment.

The employer can be held responsible for hostile environment harassment if the harassing person was the employee’s boss or supervisor. If the harassing person was a co-worker, the employer will only be held responsible if the employer knew or should have known about it but failed to stop it. Report any harassment to a supervisor, someone in the human resources department or to a state or federal agency that enforces the laws. Sexual harassment is often an embarrassing subject to talk about but for it to stop workers must report harassment promptly and describe it with as much detail as possible.

In Vermont, all employers must have a written sexual harassment policy and must give a copy of the policy to every employee. Employers also must display a poster that describes the policy against sexual harassment and explains how to file a complaint.

Pregnancy Discrimination

The federal Pregnancy Discrimination Act makes it illegal for an employer to discriminate against a woman because she is pregnant. This means that an employer cannot assume that a pregnant woman can only do certain jobs. An employer cannot refuse to hire a pregnant woman and cannot fire or lay off a woman simply because she is pregnant. Vermont’s Fair Employment Practices Act also covers discrimination on the basis of pregnancy.

English-Only Rules

An employer cannot discriminate by requiring employees to speak only the English language in the workplace except where language is a work requirement such as a hotel receptionist who must be able to speak and understand English in order to do his or her job properly.

Discrimination Based on Mental or Physical Disability

Vermont and federal laws recognize that people with physical or mental disabilities face special challenges in the workplace that require not only equal treatment but also additional accommodations.

These laws prohibit discrimination against people with disabilities in all employment practices, including recruitment, hiring, promotions, training, pay, job assignments, leave, social activities, and benefits. In order to be protected by these laws, a person with a disability must be able to perform the essential functions of the job with or without a reasonable accommodation made for the disability.
The law protects people with disabilities. You have a disability if you have a physical or mental impairment that substantially limits one or more major life activities. Major life activities include caring for yourself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and receiving education or vocational training.

The laws also protect you if you have a history of a substantially limiting physical or mental impairment or if you are seen by others as having such an impairment.

**Workers With Disabilities Must Ask For a Reasonable Accommodation**

If you need an accommodation in the workplace, you must let the employer know that you have a disability which requires accommodation. Some physical impairments and most mental impairments are not obvious to others. An employer cannot be expected to accommodate you unless he or she knows of your impairment and need for an accommodation. If your impairment is obvious the employer should recognize the need for an accommodation. When an employer knows that you have a disability and need an accommodation, he or she must discuss potential accommodations and try to identify an accommodation that would make it possible for you to do your job. If such an accommodation is available and reasonable, the employer must provide it.

An employee or applicant with a disability often has the best knowledge about the type of accommodation that is needed. For example, if you are disabled and need an accommodation to use a particular type of equipment on the job, you can find suggestions and guidance from the Equal Employment Opportunity Commission, the Vermont Vocational Rehabilitation Department or state or local organizations representing or providing services to individuals with disabilities. The employer does not have to provide you with the exact accommodation you request. If a less costly or burdensome accommodation exists that will allow you to perform the essential functions of the job, the employer can provide that accommodation.

**Typical Work Accommodations**

- Alternatives to print formats such as Braille or tape
- Sign language interpretation
- TTY telephones
- Accessible buildings both inside and out
- Modifications to equipment or furnishings (counter height, tools)
- Specially-designed computer software
- Assistive devices such as calculators, electronic day timers
- Flexible working hours, part-time hours, job sharing

If you think your employment rights have been violated you may file a charge of discrimination with Equal Employment Opportunity Commission John F. Kennedy Federal Building 475 Government Center Boston, MA 02203 Phone: 617-565-3200 Fax: 617-565-3196 TTY: 617-565-3204
**Employers Do Not Have to Make an Accommodation if it Would Cause an Undue Hardship**

Employers do not have to provide accommodations that put an undue hardship on them. An undue hardship is something that an employer would not be able to afford because of the small size of the employer's operation, their financial resources, and the cost.

If an accommodation causes an undue hardship on an employer because of its cost, the employer must allow you to provide the accommodation or pay for the portion of the accommodation that constitutes an undue hardship. Employers should make reasonable efforts to determine if the cost of an accommodation may be covered by a state or federal program, or be offset by a tax credit.

**Medical Examinations and Questions about Disabilities**

An employer may not ask a job applicant whether she is disabled or about the nature or severity of a disability. An employer may not require an applicant to take a medical examination before making a job offer. Employers are allowed to ask applicants questions about their ability to perform job-related functions. Employers may ask applicants with obvious disabilities that seem likely to affect their ability to work how they will perform the job.

After making you a job offer, an employer may require you to take a medical examination if everyone working in that job category must also take the exam. As long as everyone else is treated the same, the employer may make you a job offer that is not final until you have taken the medical examination. If you are not hired because the exam revealed a disability, the employer must show that the reason for not hiring you was job related and necessary for the conduct of business. The employer must also show that there was no reasonable accommodation that would have made it possible for you to perform the essential functions of the job.

Once you are hired and become an employee, the employer may not require a medical exam or ask questions about disabilities unless the exam or questions are job related and necessary for the business. A disability-related exam or inquiry is job related and necessary for the conduct of business when the employer has a reasonable belief that 1) your ability to perform essential job functions will be impaired by a medical condition, or 2) you will pose a direct threat to others due to a medical condition. After you ask for an accommodation an employer may require a medical examination, ask disability-related questions, or require documentation about your disability and its functional limitations.

**Alcohol and Drug Users**

Drug addiction and alcoholism are considered physical or mental impairments in Vermont's anti-discrimination law. People who suffer from drug addiction and/or alcoholism are protected by the law. The federal ADA also covers people who suffer from alcoholism, but does not cover people who currently use illegal drugs.
People who suffer from drug addiction and/or alcoholism are not protected by the law if:

- their current use of alcohol or drugs prevents them from performing the duties of the job in question, or
- because of alcohol or drug use, their employment would threaten the safety or property of others.

**Retaliation**

Retaliation is when an employer does something to an employee to pay them back for something the employee did. An employer may not retaliate against you because you complained about discrimination. This protection also applies if you provide support to a worker who has complained of discrimination or cooperate with an investigation into a claim of discrimination or harassment.

**How To File a Complaint**

If you believe that you have been a victim of discrimination, harassment or retaliation in employment you have a several options:

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

Civil Rights Unit of the Vermont Attorney General’s Office
109 State Street, Montpelier VT 05609-1001
Phone: (802) 828-3171 Fax: (802) 828-5341

Vermont Human Rights Commission
135 State Street, Drawer 33
Montpelier, Vermont 05633-6301
human.rights@hrc.state.vt.us
(800) 416-2010 Voice/TTY
(802) 828-2480 Voice/TTY
(802) 828-2481 Facsimile

U.S. Equal Employment Opportunity Commission (EEOC)
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Phone: 617-565-3200
Fax: 617-565-3196
TTY: 617-565-3204

Office of Federal Contract Compliance
New York District Office
US Dept. of Labor
ESA - OFCCP
26 Federal Plaza, Room 36-116
New York, NY 10278
Phone: (212) 264-7743
Fax: (212) 264-8166

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Main Number: (202) 616-5594
Fax Number: (202) 616-5509
Toll Free Information Number and Worker Hotline: 1-800-255-7688
(202) 616-5525 or 1-800-237-2515 (TDD for hearing impaired)
Resources

Vermont Statutes Online
www.leg.state.vt.us/statutes/statutes2.htm

Vermont Workers Center Hotline
Toll free: 866-229-0009
www.workerscenter.org

Vermont Legal Aid
- Burlington - 264 North Winooski Avenue, Burlington, Vermont 05402
- Montpelier - 7 Court Street, Montpelier, Vermont 05601
- St. Johnsbury - 177 Western Avenue, Suite 1, St. Johnsbury, Vermont 05819
- Rutland - 57 North Main Street, Rutland, Vermont 05701
- Springfield - 56 Main Street, Suite 301, Springfield, Vermont 05156
Toll Free: 800.889.2047

Legal Services Law Line of Vermont
30 Elmwood Avenue
Burlington, VT 05401
800.639.8857
www.vtlawhelp.org

Vermont Lawyer Referral Service
800-639-7036
jsponer@vtbar.org
www.vtbar.org/static/vtbar/lawyer_referral/information.php

Vermont Trial Lawyers Association
802.223.0501
www.vtla.org

Vermont State Labor Council AFL-CIO
7 Court Street
P.O. Box 858
Montpelier, VT 05601-0858
(802)-223-5229
www.vtafl-cio.org

Civil Rights Unit of the Vermont Attorney General's Office
109 State Street, Montpelier VT 05609-1001
Phone: (802) 828-3171 Fax: (802) 828-5341
**Vermont Human Rights Commission**
135 State Street, Drawer 33  
Montpelier, Vermont 05633-6301  
human.rights@hrc.state.vt.us  
(800) 416-2010 Voice/TTY  
(802) 828-2480 Voice/TTY  
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**U.S. Equal Employment Opportunity Commission (EEOC)**
John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203  
Phone: 617-565-3200  
Fax: 617-565-3196  
TTY: 617-565-3204

**Office of Federal Contract Compliance**
New York District Office  
US Dept. of Labor  
ESA - OFCCP  
26 Federal Plaza, Room 36-116  
New York, NY 10278  
Phone: (212) 264-7743  
Fax: (212) 264-8166

**Office of Special Counsel for Immigration-Related Unfair Employment Practices**
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Main Number: (202) 616-5594  
Fax Number: (202) 616-5509  
Toll Free Information Number and Worker Hotline: 1-800-255-7688  
(202) 616-5525 or 1-800-237-2515 (TDD for hearing impaired)

**U.S. Citizenship and Immigration Services**
U.S. Department of Homeland Security  
Vermont Service Center  
64 Gricebrook Road  
St. Albans, VT 05478
Workers Compensation & Safety Division
Vermont Department of Labor
National Life Building
Montpelier, Vermont 05620-3401

Telephone: (802) 828-2286
Fax: (802) 828-2195
Web: www.labor.state.vt.us/sections/wcsafety

Occupational Safety and Health Administration
John F. Kennedy Federal Building
Room E-340
Boston, MA. 02203
Phone 617-565-9860
Fax 617-565-9827

24 hour Hotline Emergency Number 1-800-321-OSHA
Website Home Page www.osha.gov
Website Complaint filing www.osha.gov/as/opa/worker/index.html

Vermont Occupational Safety and Health Administration
Vermont Department of Labor
PO Box 488, 5 Green Mountain Drive
Montpelier, VT 05601-0488
Phone: (802) 828-4000
FAX: (802) 828-4022
Website www.labor.vermont.gov

U.S. Department of Labor
Public Disclosure Room
Tel 202.693.8673

Toll-Free Employee & Employer Hotline
Tel 1.866.444.EBSA (3272)

Toll-Free EFAST Help Line
Tel 1.866.463.3278 Questions (202) 254-7013

Vermont Department of Labor
PO Box 488, 5 Green Mountain Drive
Montpelier, VT 05601-0488
Phone: (802) 828-4000
FAX: (802) 828-4022
www.labor.vermont.gov
U.S. Department of Labor Wage and Hour Division
1750 Elm Street, Suite 111
Manchester, NH 03104-2907
603-666-7716
Website:  www.dol.gov/dol/esa/public/whd_org.htm

U.S. Equal Employment Opportunity Commission
33 Whitehall Street
New York, New York 10004
Phone: 212-336-3620
TTY: 212-336-3622
www.eeoc.gov

National Labor Relations Board
10 Causeway Street - 6th Floor
Boston, MA 02222-1072
Regional Director: Rosemary Pye
Hours of Operation: 8:30 am - 5:00 pm (EST)
TEL: 617-565-6700
FAX: 617-565-6725
http://www.nlrb.gov/nlrb/employee/default.asp

Vermont Labor Relations Board
Office Location:
13 Baldwin Street
Montpelier, Vermont
Tel: (802) 828-2700
Fax: (802) 828-2392

Mailing Address:
133 State Street
Montpelier, VT 05633-6101
http://www.state.vt.us/vlrb/