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H.318

Introduced by Representatives Bartley of Fairfax, Arsenault of Williston, Beck
of St. Johnsbury, Branagan of Georgia, Burrows of West
Windsor, Carroll of Bennington, Chase of Chester, Demar of
Enosburgh, Dodge of Essex, Dolan of Essex Junction, Elder of
Starksboro, Galfetti of Barre Town, Goldman of Rockingham,
Graning of Jericho, Gregoire of Fairfield, Krasnow of South
Burlington, LaMont of Morristown, McCann of Montpelier,
Mulvaney-Stanak of Burlington, Noyes of Wolcott, Ode of
Burlington, Oliver of Sheldon, Parsons of Newbury, Sims of
Craftsbury, Stone of Burlington, Taylor of Milton, and Toof of
St. Albans Town

Referred to Committee on

Date:

Subject: Labor; employment practices; fair employment practices; constructive
discharge; legislative leave

Statement of purpose of bill as introduced: This bill proposes to define
discharge for purposes of the Fair Employment Practices Act to include a
constructive discharge. This bill also proposes to amend the notice
requirements of Vermont’s legislative leave law, to expand coverage under the
law to all employed legislators, and to require an employer to continue a

1 legislator’s insurance and benefits during a legislative leave at the same level
2 and rate of contribution as when the legislator is not on leave.

3 An act relating to fair employment practices and legislative leave

4 It is hereby enacted by the General Assembly of the State of Vermont:

5 Sec. 1. 21 V.S.A. § 495d is amended to read:

6 § 495d. DEFINITIONS

7 As used in this subchapter:

8 * * *

9 (16) “Constructive discharge” means:

10 (A) objectively difficult or unpleasant working conditions to the
11 extent that a reasonable employee would feel compelled to resign; or

12 (B) outrageous conduct by an employer or an employer’s agent,
13 including sexual assault, threats of violence directed at the employee, a
14 continuous pattern of discriminatory harassment, or other similar kinds of
15 conduct, if the conduct would cause a reasonable employee to feel compelled
16 to resign.

17 (17) “Discharge” includes constructive discharge.

18 Sec. 2. 21 V.S.A. § 496 is amended to read:

19 § 496. LEGISLATIVE LEAVE

1 (a)(1) Any person who, in order to serve as a member of the General
2 Assembly, must take a leave a full-time position in the employ of from
3 employment with any employer; shall be entitled to a temporary or partial
4 leave of absence for the purpose of allowing ~~such~~ the employee to perform any
5 official duty in connection with ~~his or her~~ the employee's elected office.

6 (2)(A) ~~Such~~ The leave of absence shall not cause loss of job status; or
7 seniority; ~~or the right to participate in insurance and other employee benefits~~
8 during the leave of absence.

9 (B) The employer shall continue employment benefits for the
10 duration of the leave at the level and under the conditions coverage would be
11 provided if the employee continued in employment continuously for the
12 duration of the leave. The employer may require that the employee contribute
13 to the cost of the benefits during the leave at the existing rate of employee
14 contribution.

15 (b)(1) An employee who is not a current member of the General Assembly
16 and who intends to seek election to the General Assembly and to invoke, if
17 elected, ~~his or her~~ the right to a leave of absence pursuant to subsection (a) of
18 this section, shall notify ~~his or her~~ the employee's employer of those intentions
19 in writing within ~~10~~ 14 days after ~~filing the primary election nominating~~
20 ~~petition required by 17 V.S.A. § 2353 or of taking any other action required by~~

1 ~~17 V.S.A. chapter 49, to place his or her name on a primary or general election~~
2 ~~ballot being elected.~~

3 (2) A current member of the General Assembly who accepts a position
4 with a new employer during the member's term and intends to invoke the right
5 to a leave of absence pursuant to subsection (a) of this section shall notify the
6 employer of those intentions within 14 days after accepting the position.

7 (3) A current member of the General Assembly who previously invoked
8 the member's right to a leave of absence pursuant to this section with the
9 member's current employer shall be entitled to the rights provided pursuant to
10 this section throughout any continuous period of service as a member of the
11 General Assembly without providing additional notice at the time the member
12 seeks reelection. The provisions of this subdivision shall not apply to a former
13 member of the General Assembly who seeks election to the General Assembly
14 following a break in service as a member of the General Assembly.

15 (4) An employee who fails to give notice to ~~his or her~~ the employee's
16 employer as required by this ~~section~~ subsection shall be deemed to have
17 waived ~~his or her~~ the right to a leave of absence under subsection (a) of this
18 section.

19 (c) An employer who contends that granting the leave of absence required
20 by subsection (a) of this section will cause unreasonable hardship for ~~his or her~~
21 the employer's business may appeal for relief by letter to the Chair of the State

1 Labor Relations Board created ~~by~~ pursuant to 3 V.S.A. § 921. The employer's
2 right to ~~sue~~ appeal shall be waived unless it is filed within 14 days ~~of~~
3 following receipt of the notice required by subsection (b) of this section. The
4 appeal shall state the name of the employee and the reasons for the alleged
5 unreasonable hardship. The remedy created by this subsection shall be the
6 exclusive remedy for an employer who claims unreasonable hardship as a
7 result of the application ~~to him or her~~ of subsection (a) of this section to the
8 employer.

9 * * *

10 (e) This section is not applicable if the employer employs five or fewer
11 persons immediately prior to the first day of the leave of absence.

12 * * *

13 Sec. 3. EFFECTIVE DATE

14 This act shall take effect on July 1, 2023.