

## Vermont Supreme Court: State Leave Act Does Not Require Paid Time Off During Unpaid Parental Leave

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The Vermont Parental and Family Leave Act does not require employers to allow the accrual of paid vacation and sick time during an unpaid parental leave, the Vermont Supreme Court has held. *Vermont Human Rights Comm'n & Stanley v. Vermont Agency of Transp.*, 2012 VT 45 (June 8, 2012). Observing that if an employee could demand accrual of paid leave during unpaid parental leave, then parental leave would not be unpaid leave, the Court said such a result was “not just inconsistent with, but contrary to,” an employer’s obligation only to provide unpaid parental leave. Accordingly, the Court affirmed dismissal of the employee’s claim under VPFLA.

### Background

Ursala Stanley worked for the State of Vermont’s Department of Transportation. In 2007, she took unpaid parental leave. The State informed Stanley that she would not accrue vacation or paid sick time while on leave.

Stanley filed a complaint with the Vermont Human Rights Commission, alleging the State violated the VPFLA.

The VPFLA provides that an “employer shall continue employment benefits for the duration of [an employee’s] leave.” The Commission determined there were reasonable grounds to find the State violated the law, and the Commission and Stanley sued the State for violating the VPFLA.

The State moved to dismiss, arguing that the VPFLA did not require employers to continue paid time-off and sick time as “employment benefits” when employees take unpaid leave under the statute. The trial court granted the State’s motion to dismiss, reasoning that to permit an employee to earn paid leave conflicted with the law’s requirement that employers provide “unpaid” parental leave. The Commission and Stanley appealed.

### Applicable Law

The VPFLA permits employees to take up to 12 weeks of unpaid leave for, among other things, “parental leave, during the employee’s pregnancy and following the birth of an employee’s child.” 21 V.S.A. § 472(a)(1). An employee “may use accrued sick leave or vacation leave or any other accrued paid leave” during the course of family leave, but use of such paid leave does not increase the total statutory family leave beyond 12 weeks. 21 V.S.A. § 472(b). Section 472(c) provides that the employer “shall continue employment benefits for the duration of the leave at the level and under the conditions coverage would be provided if the employee continued in employment continuously for the duration of the leave.” In addition, the employer may require the employee contribute to the cost of the benefits during the leave at the existing rate of the employee contribution. The statute does not expressly state what benefits continue during leave taken under the VPFLA.

### Benefits Continuation Does Not Include Paid Leave

The Commission and Stanley argued that the plain language of § 472(c) requires employers to continue *all* employment benefits, including accumulation of paid leave, during unpaid leave. The Court rejected this argument as inconsistent with legislative intent. It noted that, when a statute’s meaning is clear and unambiguous, it will construe and enforce the statute according to its express meaning. However, when

interpreting an undefined statutory term, it will examine the words around the undefined term and “seek the meaning from the context, and by the light of what precedes or follows.” *Parks’ Adm’r v. Am. Home Missionary Soc’y*, 62 Vt. 19, 25 (1890).

The Court concluded that “benefit,” when read in light of the other statutory language, referred to insurance coverage only. Section 472(c) requires employers to “continue employment benefits for the duration of the leave at the level and under the conditions coverage would be provided if the employee continued in employment.” By using the term “coverage” and by permitting employers to require employees to contribute to the cost of the “coverage,” the Court concluded the legislature was referring to insurance coverage, and not paid time-off, because employees do not contribute to the costs of paid time-off.

In addition, the Court observed that, if an employer was required to allow employees to accrue paid time-off during unpaid leave, the unpaid leave, at least in part, would become paid leave. This result was inconsistent and contrary to the VPFLA’s requirement that employers provide unpaid parental leave only. Accordingly, the Court affirmed dismissal.

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“This case is welcome news for Vermont employers,” stated Joe Lynett, Partner in the Disability, Leave and Health Management Practice Group at Jackson Lewis. “Now, it is clear that the statutory requirement to continue benefits under the VPFLA only applies to health coverage continuation, tracking the federal Family and Medical Leave requirement,” Lynett noted.

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