
HOUSE BILL 2602

State of Washington 60th Legislature 2008 Regular Session

By Representatives Kessler, Dickerson, Williams, O'Brien, Hurst, Lantz, Moeller, Hasegawa, Pedersen, Ormsby, VanDeWege, Conway, Goodman, Hudgins, Santos, Campbell, Upthegrove, Chase, Darneille, Barlow, Green, and Simpson

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1 AN ACT Relating to increasing the safety and economic security of
2 victims of domestic violence, sexual assault, or stalking; amending RCW
3 7.69.030; adding a new chapter to Title 49 RCW; and declaring an
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) It is in the public interest to reduce
7 domestic violence, sexual assault, and stalking by enabling victims to
8 maintain the financial independence necessary to leave abusive
9 situations, achieve safety, and minimize physical and emotional
10 injuries, and to reduce the devastating economic consequences of
11 domestic violence, sexual assault, and stalking to employers and
12 employees. Victims of domestic violence, sexual assault, and stalking
13 should be able to recover from and cope with the effects of such
14 violence and participate in criminal and civil justice processes
15 without fear of adverse economic consequences.

16 (2) One of the best predictors of whether a victim of domestic
17 violence, sexual assault, or stalking will be able to stay away from an
18 abuser is his or her degree of economic independence. However,

1 domestic violence, sexual assault, and stalking often negatively impact
2 victims' ability to maintain employment.

3 (3) An employee who is a victim of domestic violence, sexual
4 assault, or stalking, or an employee whose family member is a victim,
5 must often take leave from work due to injuries, court proceedings, or
6 safety concerns requiring legal protection.

7 (4) Thus, it is in the public interest to provide reasonable leave
8 from employment for employees who are victims of domestic violence,
9 sexual assault, or stalking, or for employees whose family members are
10 victims, to participate in legal proceedings, receive medical
11 treatment, or obtain other necessary services.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Child," "spouse," "parent," "parent-in-law," "grandparent,"
15 and "sick leave and other paid time off" have the same meanings as in
16 RCW 49.12.265.

17 (2) "Dating relationship" has the same meaning as in RCW 26.50.010.

18 (3) "Department," "director," "employer," and "employee" have the
19 same meanings as in RCW 49.12.005.

20 (4) "Domestic violence" has the same meaning as in RCW 26.50.010.

21 (5) "Family member" means any individual whose relationship to the
22 employee can be classified as a child, spouse, parent, parent-in-law,
23 grandparent, or person with whom the employee has a dating
24 relationship.

25 (6) "Intermittent leave" and "reduced leave schedule" have the same
26 meanings as in RCW 49.78.020.

27 (7) "Sexual assault" has the same meaning as in RCW 70.125.030.

28 (8) "Stalking" has the same meaning as in RCW 9A.46.110.

29 NEW SECTION. **Sec. 3.** An employee may take reasonable leave from
30 work, intermittent leave, or leave on a reduced leave schedule, with
31 or without pay, to:

32 (1) Seek legal or law enforcement assistance or remedies to ensure
33 the health and safety of the employee or employee's family members
34 including, but not limited to, preparing for, or participating in, any
35 civil or criminal legal proceeding related to or derived from domestic
36 violence, sexual assault, or stalking;

1 (2) Seek treatment by a health care provider for physical or mental
2 injuries caused by domestic violence, sexual assault, or stalking, or
3 to attend to health care treatment for a victim who is the employee's
4 family member;

5 (3) Obtain, or assist a family member in obtaining, services from
6 a domestic violence shelter, rape crisis center, or other social
7 services program for relief from domestic violence, sexual assault, or
8 stalking;

9 (4) Obtain, or assist a family member in obtaining, mental health
10 counseling related to an incident of domestic violence, sexual assault,
11 or stalking, in which the employee or the employee's family member was
12 a victim of domestic violence, sexual assault, or stalking; or

13 (5) Participate in safety planning, temporarily or permanently
14 relocate, or take other actions to increase the safety of the employee
15 or employee's family members from future domestic violence, sexual
16 assault, or stalking.

17 NEW SECTION. **Sec. 4.** (1) As a condition of taking leave for any
18 purpose described in section 3 of this act, an employee shall give an
19 employer reasonable advance notice of the employee's intention to take
20 leave, unless reasonable advance notice is not practicable.

21 (2) When an employee requests leave under section 3 of this act the
22 employer may require that the request be supported by verification
23 that:

24 (a) The employee or employee's family member is a victim of
25 domestic violence, sexual assault, or stalking; and

26 (b) The leave taken was for one of the purposes described in
27 section 3 of this act.

28 (3) Verification must be provided in a timely manner. In the event
29 that reasonable advance notice of the leave is not practicable,
30 verification must be provided to the employer within a reasonable time
31 period during or after the leave.

32 (4) An employee may satisfy the verification requirement of this
33 section by providing the employer with one or more of the following:

34 (a) A police report indicating that the employee or employee's
35 family member was a victim of domestic violence, sexual assault, or
36 stalking;

1 (b) A court order protecting or separating the employee or
2 employee's family member from the perpetrator of the act of domestic
3 violence, sexual assault, or stalking, or other evidence from the court
4 or the prosecuting attorney that the employee or employee's family
5 member appeared, or is scheduled to appear, in court in connection with
6 an incident of domestic violence, sexual assault, or stalking;

7 (c) Documentation that the employee or the employee's family member
8 is a victim of domestic violence, sexual assault, or stalking, from any
9 of the following persons from whom the employee or employee's family
10 member sought assistance in addressing the domestic violence, sexual
11 assault, or stalking: An advocate for victims of domestic violence,
12 sexual assault, or stalking; an attorney; a member of the clergy; or a
13 medical or other professional. The provision of documentation under
14 this section does not waive or diminish the confidential or privileged
15 nature of communications between a victim of domestic violence, sexual
16 assault, or stalking with one or more of the individuals named in this
17 subsection (4)(c) pursuant to RCW 5.60.060, 70.123.075, 70.123.076, or
18 70.125.065; or

19 (d) An employee's written statement that the employee or the
20 employee's family member is a victim of domestic violence, sexual
21 assault, or stalking and that the leave taken was for one of the
22 purposes described in section 3 of this act.

23 (5) If the victim of domestic violence, sexual assault, or stalking
24 is the employee's family member, verification of the familial
25 relationship between the employee and the victim may include, but is
26 not limited to, a statement from the employee, a birth certificate, a
27 court document, or other similar documentation.

28 (6) An employee who is absent from work pursuant to section 3 of
29 this act may elect to use the employee's sick leave and other paid time
30 off, compensatory time, or unpaid leave time.

31 (7) An employee is required to provide only the information
32 enumerated in subsection (2) of this section to establish that the
33 employee's leave is protected under this chapter. An employee is not
34 required to produce or discuss any information with the employer that
35 is beyond the scope of subsection (2) of this section, or that would
36 compromise the employee's safety or the safety of the employee's family
37 member in any way, and an employer is prohibited from requiring any
38 such disclosure.

1 (8)(a) Except as provided in (b) of this subsection, an employer
2 shall maintain the confidentiality of all information provided by the
3 employee under this section, including the fact that the employee or
4 employee's family member is a victim of domestic violence, sexual
5 assault, or stalking, that the employee has requested or obtained leave
6 under this chapter, and any written or oral statement, documentation,
7 record, or corroborating evidence provided by the employee.

8 (b) Information given by an employee may be disclosed by an
9 employer only if:

10 (i) Requested or consented to by the employee;

11 (ii) Ordered by a court or administrative agency; or

12 (iii) Otherwise required by applicable federal or state law.

13 NEW SECTION. Sec. 5. (1) The taking of leave under section 3 of
14 this act may not result in the loss of any pay or benefits to the
15 employee that accrued before the date on which the leave commenced.

16 (2) Upon an employee's return, an employer shall either:

17 (a) Restore the employee to the position of employment held by the
18 employee when the leave commenced; or

19 (b) Restore the employee to an equivalent position with equivalent
20 employment benefits, pay, and other terms and conditions of employment.

21 (3) To the extent allowed by law, an employer shall maintain
22 coverage under any health insurance plan for an employee who takes
23 leave under section 3 of this act. The coverage must be maintained for
24 the duration of the leave at the level and under the conditions
25 coverage would have been provided if the employee had not taken the
26 leave.

27 NEW SECTION. Sec. 6. (1) The rights provided in this act are in
28 addition to any other rights provided by state and federal law.

29 (2) Nothing in this chapter shall be construed to discourage
30 employers from adopting policies that provide greater leave rights to
31 employees who are victims of domestic violence, sexual assault, or
32 stalking than those required by this act.

33 (3) Nothing in this act shall be construed to diminish an
34 employer's obligation to comply with any collective bargaining
35 agreement, or any employment benefit program or plan, that provides
36 greater leave rights to employees than the rights provided by this act.

1 NEW SECTION. **Sec. 7.** Upon complaint by an employee, the director
2 shall investigate to determine if there has been compliance with this
3 chapter and the rules adopted under this chapter. If the investigation
4 indicates that a violation has occurred, the director shall issue a
5 notice of infraction. Appeal from the director's decision is governed
6 by chapter 34.05 RCW.

7 NEW SECTION. **Sec. 8.** Any finding, determination, conclusion,
8 declaration, or notice of infraction made for the purposes of enforcing
9 this chapter by the director or by an appeal tribunal, administrative
10 law judge, or reviewing officer is neither conclusive nor binding in
11 any civil action filed pursuant to section 12 of this act or in any
12 other common law or civil action, regardless of whether the prior
13 action was between the same or related parties or involved the same
14 facts.

15 NEW SECTION. **Sec. 9.** (1) If an employer is found to have
16 committed an infraction under section 7 of this act, the director may
17 impose upon the employer a fine of up to five hundred dollars for the
18 first infraction and a fine of up to one thousand dollars for each
19 subsequent infraction committed within three years of a previous
20 infraction.

21 (2) The director may also order an employer found to have committed
22 an infraction under section 7 of this act to comply with section 5(2)
23 of this act.

24 NEW SECTION. **Sec. 10.** (1) Except as provided in subsection (2) of
25 this section, information contained in the department's complaint files
26 and records of employees under this chapter is confidential and shall
27 not be open to public inspection.

28 (2) Except as limited by state or federal statute or regulations:

29 (a) The information in subsection (1) of this section may be
30 provided to public employees in the performance of their official
31 duties; and

32 (b) A complainant or a representative of a complainant, be it an
33 individual or an organization, may review a complaint file or receive
34 specific information therefrom upon the presentation of the signed
35 authorization of the complainant.

1 NEW SECTION. **Sec. 11.** No employer may discharge, threaten to
2 discharge, demote, deny a promotion to, sanction, discipline, retaliate
3 against, harass, or otherwise discriminate against an employee with
4 respect to compensation, terms, conditions, or privileges of employment
5 because the employee:

6 (1) Exercised rights under section 3 of this act;

7 (2) Filed or communicated to the employer an intent to file a
8 complaint under section 7 or 12 of this act; or

9 (3) Participated or assisted, as a witness or otherwise, in another
10 employee's attempt to exercise rights under section 3, 7, or 12 of this
11 act.

12 NEW SECTION. **Sec. 12.** (1) Any employee deeming herself or himself
13 injured by any act in violation of this chapter shall have a civil
14 action in a court of competent jurisdiction to enjoin further
15 violations, or to recover the actual damages sustained by the person,
16 or both, together with the cost of suit including reasonable attorneys'
17 fees.

18 (2) The remedy provided by this section is in addition to any
19 common law remedy or other remedy that may be available to an employee.

20 (3) An employee is not required to exhaust administrative remedies
21 before filing a civil action to enforce this chapter.

22 NEW SECTION. **Sec. 13.** The department shall include notice of the
23 provisions of this chapter in the next reprinting of employment posters
24 printed under RCW 49.78.340. Employers shall post this notice as
25 required in RCW 49.78.340.

26 NEW SECTION. **Sec. 14.** Prosecuting attorney and victim/witness
27 offices are encouraged to make information regarding this chapter
28 available for distribution at their offices.

29 NEW SECTION. **Sec. 15.** The director shall adopt rules as necessary
30 to implement this chapter.

31 **Sec. 16.** RCW 7.69.030 and 2004 c 120 s 8 are each amended to read
32 as follows:

33 There shall be a reasonable effort made to ensure that victims,

1 survivors of victims, and witnesses of crimes have the following
2 rights, which apply to any criminal court and/or juvenile court
3 proceeding:

4 (1) With respect to victims of violent or sex crimes, to receive,
5 at the time of reporting the crime to law enforcement officials, a
6 written statement of the rights of crime victims as provided in this
7 chapter. The written statement shall include the name, address, and
8 telephone number of a county or local crime victim/witness program, if
9 such a crime victim/witness program exists in the county;

10 (2) To be informed by local law enforcement agencies or the
11 prosecuting attorney of the final disposition of the case in which the
12 victim, survivor, or witness is involved;

13 (3) To be notified by the party who issued the subpoena that a
14 court proceeding to which they have been subpoenaed will not occur as
15 scheduled, in order to save the person an unnecessary trip to court;

16 (4) To receive protection from harm and threats of harm arising out
17 of cooperation with law enforcement and prosecution efforts, and to be
18 provided with information as to the level of protection available;

19 (5) To be informed of the procedure to be followed to apply for and
20 receive any witness fees to which they are entitled;

21 (6) To be provided, whenever practical, a secure waiting area
22 during court proceedings that does not require them to be in close
23 proximity to defendants and families or friends of defendants;

24 (7) To have any stolen or other personal property expeditiously
25 returned by law enforcement agencies or the superior court when no
26 longer needed as evidence. When feasible, all such property, except
27 weapons, currency, contraband, property subject to evidentiary
28 analysis, and property of which ownership is disputed, shall be
29 photographed and returned to the owner within ten days of being taken;

30 (8) To be provided with appropriate employer intercession services
31 to ensure that employers of victims, survivors of victims, and
32 witnesses of crime will cooperate with the criminal justice process in
33 order to minimize an employee's loss of pay and other benefits
34 resulting from court appearance;

35 (9) To access to immediate medical assistance and not to be
36 detained for an unreasonable length of time by a law enforcement agency
37 before having such assistance administered. However, an employee of
38 the law enforcement agency may, if necessary, accompany the person to

1 a medical facility to question the person about the criminal incident
2 if the questioning does not hinder the administration of medical
3 assistance. Victims of domestic violence, sexual assault, or stalking,
4 as defined in section 2 of this act, shall be notified of their right
5 to reasonable leave from employment under chapter 49. . . . RCW
6 (sections 1 through 15 of this act);

7 (10) With respect to victims of violent and sex crimes, to have a
8 crime victim advocate from a crime victim/witness program, or any other
9 support person of the victim's choosing, present at any prosecutorial
10 or defense interviews with the victim, and at any judicial proceedings
11 related to criminal acts committed against the victim. This subsection
12 applies if practical and if the presence of the crime victim advocate
13 or support person does not cause any unnecessary delay in the
14 investigation or prosecution of the case. The role of the crime victim
15 advocate is to provide emotional support to the crime victim;

16 (11) With respect to victims and survivors of victims, to be
17 physically present in court during trial, or if subpoenaed to testify,
18 to be scheduled as early as practical in the proceedings in order to be
19 physically present during trial after testifying and not to be excluded
20 solely because they have testified;

21 (12) With respect to victims and survivors of victims, to be
22 informed by the prosecuting attorney of the date, time, and place of
23 the trial and of the sentencing hearing for felony convictions upon
24 request by a victim or survivor;

25 (13) To submit a victim impact statement or report to the court,
26 with the assistance of the prosecuting attorney if requested, which
27 shall be included in all presentence reports and permanently included
28 in the files and records accompanying the offender committed to the
29 custody of a state agency or institution;

30 (14) With respect to victims and survivors of victims, to present
31 a statement personally or by representation, at the sentencing hearing
32 for felony convictions;

33 (15) With respect to victims and survivors of victims, to entry of
34 an order of restitution by the court in all felony cases, even when the
35 offender is sentenced to confinement, unless extraordinary
36 circumstances exist which make restitution inappropriate in the court's
37 judgment; and

1 (16) With respect to victims and survivors of victims, to present
2 a statement in person, via audio or videotape, in writing or by
3 representation at any hearing conducted regarding an application for
4 pardon or commutation of sentence.

5 NEW SECTION. **Sec. 17.** Sections 1 through 15 of this act
6 constitute a new chapter in Title 49 RCW.

7 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 immediately.

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