

SENATE BILL REPORT

SB 6229

As of February 1, 2012

Title: An act relating to establishing minimum standards for sick and safe leave from employment.

Brief Description: Establishing minimum standards for sick and safe leave from employment.

Sponsors: Senators Kohl-Welles, Conway, Keiser, Nelson, Kline, Chase and Frockt.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/24/12, 1/26/12.

Brief Summary of Bill

Provides minimum requirements for safe and sick leave from employment.
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SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Ingrid Mungia (786-7423)

Background: The federal Family and Medical Leave Act permits workers who work for an employer with 50 or more employees and have worked at least 12 months for the business for a total of at least 1,250 hours to take up to 12 weeks of unpaid leave to care for:

- a newborn or newly adopted or foster child,
- to recover from the employee's own serious illness, or
- to care for a child, spouse, or parent with a serious health condition.

The state Family Care Law provides that, if employees are entitled to sick leave or other paid time off, employers must allow employees to use their choice of that leave to care for children with health conditions that require treatment or supervision; or spouses, parents, parents-in-law, or grandparents who have serious health conditions or emergency conditions. It also requires employers to display a poster describing the employer's obligations and the employee's rights, and post the employer's leave policies in a conspicuous place. The Family Care Law prohibits employers from discharging or otherwise discriminating against employees who exercise (or attempt to exercise) their rights, or who file complaints, testify, or assist in related proceedings.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department of Labor and Industries (Department) is required to administer and investigate violations of the leave requirement.

Summary of Bill: Beginning January 1, 2013, employers must provide safe and sick leave to employees. An employee may use accrued sick and safe leave beginning 180 days after the commencement of employment with the employer. An employee may not use leave until 24 months after the hire date of the employer's first employee.

For purposes of determining the amount of paid leave each employee is entitled to accrue, employers are categorized by the number of full-time equivalent employees in a 40 hour work week. A business is considered tier 1 if they employ 5-49 full-time employees, tier 2 if they employ 50-249 full-time employees, and tier 3 if they employ 250 or more full-time employees. Employers may provide sick and safe leave, another method of accrual or more generous benefits as long as the minimum amount of hours is available as sick and safe leave. Employees covered by a collective bargaining agreement may waive the sick and safe leave requirements in a collective bargaining agreement in clear and unambiguous terms.

An employee may use sick leave for the following reasons:

- an absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or the employee's need for preventative medical care; or
- to allow the employee to provide care for a child, grandparent, parent, parent-in-law, or spouse with a mental or physical illness, injury, or health condition; care for a child, grandparent, parent, parent-in-law, or spouse who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a child, grandparent, parent, parent-in-law, or spouse who needs preventive medical care.

An employee may use safe leave for the following reasons:

- when the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material; or to accommodate the employee's need to care for a child whose school or place of care has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material; or
- for any reason outlines in the domestic violence leave statute.

Accrual of sick and safe leave. An employee begins to accrue sick and safe leave at the beginning of employment. An employer may loan sick and safe leave to an employee in advance of accrual of leave. An employee accrues sick and safe leave, which may be used as follows:

- an employee of a tier 1 or tier 2 employer must accrue at least one hour of leave for every 40 hours worked.
- an employee of a tier 3 employer must accrue at least one hour of leave for every 30 hours worked.

If an employee is exempt from overtime payment under state and federal law, the employee is not entitled to accrue leave for hours worked in excess of 40 hours in a work week and if

the the employees normal work week is less than 40 hours, the leave accrues based on the employee's normal work week.

Unused sick and safe leave carries over the following calendar year, except that an employer is not required to allow an employee to carry over sick and safe leave in excess of:

- 40 hours for a tier 1 employee;
- 56 hours for a tier 2 employer; or
- 72 hours for a tier 3 employer, unless the employer has a combined or universal paid leave policy.

An employer with a combined or universal paid leave policy, including but not limited to a paid time-off policy, is not required to provide sick and safe leave in addition to the leave provided by the policy if:

- paid leave may be used for the same purposes and under the same conditions as sick and safe leave may be used;
- paid leave accrues at a rate of at least one hour of leave for every 40 hours for tier 1 and 2, and 30 hours for tier 3;
- use of paid leave within any calendar year is limited to 40 hours for tier 1, 56 hours for tier 2 and no less than 108 hours for tier 3; and
- any accrued but unused paid leave may be carried over to the following year.

If an employee separates from employment and the same employer rehires the employee within seven months of the separation:

- the employer must reinstate previously accrued and unused sick and safe leave;
- the employee is entitled to use accrued sick and safe leave immediately upon reemployment if the employee previously had been eligible to use the leave; and
- the employee accrues additional leave immediately upon reemployment.

Requests and Documentation. An employer must provide sick and safe leave upon the request of an employee. When possible the request must include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences and requesting leave. An employer may require reasonable documentation or verification for use of more than three consecutive days of sick and safe leave. If employers do not offer health insurance, employers and employees each pay 50 percent of the costs of obtaining documentation. An employer may establish a policy under which employees may voluntarily exchange assigned hours or trade shifts or donate unused accrued sick and safe leave to another employee.

For employees covered by federal or state overtime requirements, sick and safe leave may be used in hourly increments or smaller increments if an employer so designates. For employees exempt from state and federal overtime requirements, the employer may make deductions of sick and safe leave in accordance with state and federal law.

Upon mutual consent of the employee and employer, an employee may work additional hours or shifts during the same or next pay period instead of using accrued sick and safe leave. If an employee who works in an eating and/or drinking establishment requests sick or safe leave, the employer may offer the employee substitute hours or shifts.

Recordkeeping. At the time wages are paid an employer must provide information in writing stating an updated amount of sick and safe leave available to each employee. When an issue arises as to the amount of accrued sick and safe leave and the employer does not maintain or retain adequate records or does not allow the Department reasonable access to the records, it is presumed that the employer violated the recordkeeping requirement. Employers must retain records documenting hours worked by employees and sick and safe leave taken by employees for a period of three years.

An employer must maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick or safe leave. Information provided by an employee may be disclosed by an employer only if the disclosure is requested or consented to by the employee; ordered by a court or administrative agency; or otherwise required by federal or state law.

Notice of Rights. Beginning January 1, 2013, employers must give notice to employees in English and in any language that is the first language spoken by at least 5 percent of the employer's workforce on a notice to each of the employees or on a poster displayed in a conspicuous and accessible place in each establishment. The Department must create and make available posters to employees. The notice must contain information including:

- employees are entitled to sick and safe leave;
- the amount of sick and safe leave and the terms of its use guaranteed;
- retaliation against employees who request or use sick or safe leave is prohibited; and
- an employee has the right to file a complaint or bring a civil action if sick or safe leave is denied by the employer or the employee is retaliated against for requesting or taking sick or safe leave.

Retaliation. An employer may not discharge, threaten to discharge, demote, deny a promotion to or retaliate against an employee because the employee: used safe and sick leave; filed or communicated to the employer an intent to file a complaint; or participated or assisted in another employee's attempt to exercise the employee's right to take leave.

Enforcement. The Director of Labor and Industries may investigate to determine if an employer had complied with the safe and sick leave rules. If it is determined a violation has occurred, the director must hold a hearing and issue a written determination including findings and appropriate relief. The relief may include:

- damages and interest, including back pay and payment of any sick or safe leave unlawfully withheld;
- if sick or safe leave was unlawfully withheld, liquidated damages of three times the dollar amount of leave withheld or \$150, whichever is greater;
- if a violation resulted on other harm to the employee or any other person, liquidated damages of \$50 to each employee or person whose rights were violated for each day or portion of each day that the violation occurred or continued;
- to compensate the department for the costs of investigating or remedying the violation, not more than \$50 for each day or portion of each day and for each person or employee as to whom the violation occurred or continued;
- attorney's fees and costs; and
- equitable relief, including reinstatement.

If the director finds an employer has willfully violated the notice and posting requirements, the director may issue a notice of infraction and impose a civil penalty not to exceed \$125 for the first violation and \$250 for the subsequent violations. The director's determination may be appealed under the Administrative Procedure Act, and an aggrieved employee who prevails and a person awarded liquidated damages who prevails are entitled to attorneys' fees and costs.

The Department and any person aggrieved by a violation of sick and safe leave may bring a civil action. The court may order appropriate relief, except that any person or entity enforcing safe and sick leave on behalf of the public health and welfare is not entitled to liquidated damages. The court must also award reasonable attorneys' fees and costs to the party bringing the civil action if the party prevails. Exhaustion of administrative remedies is not required before filing a civil action. The remedies are in addition to any common law or other remedies that may be available.

Appropriation: None.

Fiscal Note: Requested on January 23, 2012.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is a real live situation for many people. People that work have to sometimes face impossible choices. If they become really ill and don't have paid sick leave, their health can suffer, health care costs can rise, and contagious illnesses can spread in the work place. It makes people have to make a difficult decision to be responsible employees and stay on the job even though they are sick or contentious community members and stay home to stay out of contact with the community. There can be significant challenges for employers and they offer shift sharing. For small businesses there can be real challenges to offer some sort of leave. Want to come up with something that will work for employees, employers, and the community. This bill is good for business for jobs and job retention. It allows people to seek assistance for medical providers. Sick people also place a burden on our emergency rooms because they can't make time to see their primary care physician. This bill will increase job retention. No one should go to work sick or fear they will lose their job because they have to stay home because they are sick. This is good for public health and helps employees feel safe and valued. People need to be able to pay rent even if they do take leave for being sick. I fear being wrote up for missing work because I am sick. You don't want people who are sick touching your food. One million workers do not have access to paid sick leave. People have to choose between economic security and being sick. Sending kids to school sick is bad for their education and spreads illness throughout our communities. This bill establishes a minimum standards and allows for trading of shifts. Well paid professions already get paid sick leave. Part time workers usually do not get sick leave. This is a common sense measure. We are in support of this bill because we want to make sure family care givers are able to care for their family members. This bill will help workers balance their time and take care of themselves.

CON: Boeing currently has eight collective bargaining agreements and all provide more generous sick leave provisions than this bill. This bill would be difficult to administer since we have many offices across the world. In our business we use shift swapping to allow people to fill in for other people when they are ill. This bill would not attract employers to this state. This bill might encourage employers to limit their payroll. This bill would be a burden on employers. The trading of shifts is already happening. The increase of costs will cause me to look at what I already offer for medical and dental to employees. We would like small employers exempt from the bill. This bill is a one size fits all and it does not work for every employer. It encourages people to abuse potential benefits and encourages employers not to grow. This is not the right time to implement this bill. Collective bargaining agreements would have to be reopened in favor of employees. Employers would need to reduce their health benefits for employees if they also have to provide sick and safe leave. This bill will be a huge burden on employers. To comply with the requirements of the bill would require us to build a more structured system. The burden of this bill is tremendous. This bill has unintended consequences for staffing companies. Businesses are already struggling and this bill will not help. Please do not straddle small businesses with more regulations, we are already struggling in this economy. We are fighting to survive and existing on slim profit margins. This bill will have a 1 percent increase in costs, leaving only a 1 percent profit margin. Small businesses do not want the Legislature dictating what they have to do for employees. No other health and safety standards in law are allowed to be waived with collective bargaining. Local governments are not pre-empted from enacting stricter standards under the bill. Businesses in the Seattle area are already confused by the sick and safe leave ordinance and how the costs will impact their businesses. We should wait to see how Seattle works before enacting this structure statewide. Private and public businesses owners will be paying double under this bill. This will be difficult for the construction industry.

OTHER: It is unclear if this bill covers school districts. We are concerned regarding the coverage of substitutes. We would like school districts to be exempt under the bill. The implementation would be very difficult for school districts. I am concerned about employees that are already covered by a collective bargaining unit. Tracking the information outlined in the bill would be difficult. A study of small business owners shows that Washington should not follow Seattle in adopting sick and safe leave. The burden of this bill would land on small business owners. This bill will raise the cost of doing business in the state and new businesses will not start up.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Sharon Ness, UFCW 141; Tracey Champion, grocery worker; Makini Howell, Plum Bistro; Mary Clogston, NOW, AARP; Rebecca Johnson, WSLC; Marilyn Watkins, Economic Opportunity Institute; Sean L. O'Sullivan, AWPPW.

CON: Karissa Bresheare, business owner; Joe Gross, HR Policy Solutions; Jim King, BIAW; Carolyn Ladd, Boeing; Dan Johnson, Schnitzer Steel, Inc.; Klaus DeBoer, SW WA National Electrical Contractors Assn.; Carolyn Logue, WA Food Industry Assn.; Cathy Cottingham, People Systems Inc.; Paul MacLurg, Thrive Community Fitness; Van Collins, Associated General Contractors; Steve Salins, Shuttle Express; George Allen, Metropolitan Seattle Chamber of Commerce; Mark Peterson, H&H Furniture; Jerry Murphy, Green Shields

Industrial Supply; Robert Lycke, Kuker-Ranken Inc.; Betty Neighbore, Terra Staffing; Ned Witting, Print NW; Dave Morell, Rock Creek Gardens.

OTHER: Marcia Fromhold, Evergreen, Vancouver School Districts, Educational Service Districts; Randy Hathaway, WA School Personnel Assn.; Nancy Moffatt, WA Assn. of School Business Officials; Erin Shannon, WA Policy Center.