

HOUSE BILL REPORT

ESHB 1313

As Passed House:
January 29, 2014

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: House Committee on Labor & Workforce Development (originally sponsored by Representatives Jinkins, Farrell, Morrell, Green, Dunshee, Lytton, Sawyer, Sells, Fitzgibbon, Riccelli, Moeller, Appleton, Reykdal, Roberts, Ryu, Pollet and Moscoso).

Brief History:

Committee Activity:

Labor & Workforce Development: 2/5/13, 2/13/13 [DPS];

Appropriations: 2/26/13, 3/1/13 [DPS(LWD)].

Floor Activity:

Passed House: 1/29/14, 52-45.

Brief Summary of Engrossed Substitute Bill

- Requires employers with more than four full-time equivalent employees to provide paid leave to employees for: (1) specified medical reasons relating to the employee's or a family member's health; (2) reasons permitted under existing law requiring unpaid leave for purposes related to domestic violence, sexual assault, and stalking; or (3) closure of the employee's place of business or child's school or place of care due to specified public health emergencies.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

Minority Report: Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holy and Short.

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.

Staff: Joan Elgee (786-7106).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Labor & Workforce Development be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Green, Haigh, Hudgins, S. Hunt, Jinkins, Kagi, Morrell, Pedersen, Pettigrew, Seaquist, Springer, Sullivan and Maxwell.

Minority Report: Do not pass. Signed by 13 members: Representatives Chandler, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dahlquist, Fagan, Haler, Harris, Parker, Pike, Schmick, Taylor and Alexander.

Staff: Mary Mulholland (786-7391).

Background:

State and federal laws address leave from employment. These laws include the:

- Federal Family and Medical Leave Act (FMLA). Eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified reasons. The state Family Leave Act is very similar to the FMLA.
- State Family Care Law. If, under state law, collective bargaining agreements, or employer policies, employees are entitled to sick leave or other paid time off, employers must allow employees to use their choice of 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.
- Domestic Violence Leave Law. Victims of domestic violence, sexual assault, or stalking may take reasonable leave from work for specified legal, law enforcement, medical, and safety reasons. Family members may also take reasonable leave. The leave is with or without pay.

Leave may be taken to:

- seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family member;
- seek treatment by a health care provider for physical or mental injuries or to attend treatment for a family member;
- obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program;
- obtain, or assist a family member in obtaining, mental health counseling related to an incident in which the employee or the employee's family member was a victim; or
- participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or family member.

A "family member" is a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship. A "dating relationship" is a social relationship of a romantic nature.

In 2011 the City of Seattle adopted an ordinance, effective October 1, 2012, requiring employers to provide paid sick and safe leave.

Summary of Engrossed Substitute Bill:

Intent.

The Legislature finds that paid sick and safe leave is critical to the economic well-being of the state and workers and to public health and safety. A finding is also made that paid sick and safe leave helps workers maintain their own health and the health of others and helps victims of domestic violence, sexual assault, and stalking. Further, paid sick and safe leave helps employers retain trained workers and operate competitively as well as ensures economic security for workers and their families.

Coverage.

Minimum standards for paid sick and safe leave are established. Employees accrue and are entitled to use leave based on employer size. "Tier 1" employers have more than four and fewer than 50 full-time equivalents (FTEs). "Tier 2" employers have 50 to fewer than 250 FTEs, and "Tier 3" employers have 250 or more FTEs. Employers with four or fewer FTEs are exempt. The tier for a year is determined by the average number of FTEs paid per calendar week during the preceding year for any and all weeks during which at least one employee worked for compensation. If an employer did not have employees during the previous year, the tier is determined by the average number of FTEs paid per calendar week during the first 90 days of the year the employer was in business. All compensated hours are counted, including part-time and temporary employment, and employment through a staffing agency or similar entity.

Workers, including temporary and part-time workers, accrue and may use leave if they work 240 hours or more in the state in a calendar year. A person working less than 240 hours in the state in a calendar year is an employee only for purposes of determining the employer tier.

Paid sick and safe leave requirements do not apply to any employees covered by a bona fide collective bargaining agreement to the extent the requirements are expressly waived in clear and unambiguous terms.

Accrual of Leave.

Employees accrue leave beginning January 1, 2015. Employers are not required to allow employees to use hours in a year in excess of a cap or to carry over leave in excess of the cap. Employees accrue leave as follows:

- Tier 1: One hour for every 40 hours worked, with a 40 hour cap.
- Tier 2: One hour for every 40 hours worked, with a 56 hour cap.
- Tier 3: One hour for every 30 hours worked, with a 72 hour cap.

If an employer has a combined or universal paid leave policy, the employer is not required to provide additional leave if the leave under the policy may be used for the same purposes and under the same conditions, and accrues and may be used and carried over at the same rate, as under the paid sick and safe leave requirements. However, for a Tier 3 employer the cap must be no less than 108 hours under the policy. An employer may front load leave, as long as the front loading meets or exceeds the requirements for accrual, use, and carry over of leave.

Employees exempt from overtime payment are not entitled to accrue leave for hours worked in excess of 40 in a work week.

For seasonal employees who are rehired by the same employer within seven months of separation, the employer must reinstate accrued and unused sick and safe leave.

Use of Leave.

Sick leave may be used:

- for an absence resulting from, or for medical diagnosis, care or treatment of, the employee's mental or physical illness, injury, or health condition, and for preventative medical care; or
- to care for specified family members with a mental or physical illness, injury, or health condition, or to care for a family member who needs medical diagnosis, care or treatment, or preventive medical care. Family members are a child, grandparent, parent, parent-in-law, or spouse.

Safe leave may be used:

- for any of the purposes specified in the domestic violence leave law;
- 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 care for a child whose school or place of care has been closed by a public official for the same reasons as specified for the employee's place of business.

A 180-day waiting period after hire applies before an employee may use leave. For seasonal employees who separate and are rehired by the same employer within seven months, the previous period of employment counts for purposes of the 180-day requirement. With respect to new employers, an employee may not use leave until 24 months after the hire date of the employer's first employee.

An employer must compensate an employee who uses sick and safe leave at the same hourly rate and with the same benefits as the employee would have earned during the time leave is taken. No compensation is required for lost tips or commissions and compensation is only required for hours that the employee was scheduled to work.

With the employer's consent, an employee may work additional hours or swap shifts instead of using leave. Eating and drinking establishments may arrange shift trades. If the employee agrees to the trade, the employer may deduct sick and safe time.

Leave Requests and Documentation.

Requests.

An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, so long as they do not interfere with the purposes for which leave is requested. If the leave is foreseeable, the employee must make a reasonable effort to schedule the leave so as not to unduly disrupt the employer's operations, must make the request in writing, and must make the request at least 10 days before the leave, or as early as possible, unless the employer's usual and customary policy provides for shorter notice. For unforeseeable leave, the employee must give notice as soon as practicable and must comply with the usual and customary notice and procedural requirements so long as they do not interfere with the purposes for which leave is needed.

Documentation and Verification.

An employer may require reasonable documentation for use of more than three consecutive days of sick time. Documentation signed by a health care provider is reasonable. If the employer does not offer health insurance, the employer and employee split the cost of any out-of-pocket expense of obtaining the documentation. Out-of-pocket expenses are limited to health care provider services and testing, health care facility services, and transportation. An employer may require reasonable verification for use of more than three consecutive days of safe time. For safe leave due to public health closures, notice of the closure order in whatever format the employee received the notice is sufficient. For safe leave due to domestic violence, sexual assault, or stalking, an employee may satisfy the verification requirement in the same manner as provided in the domestic violence leave law.

Records.

When an employer pays an employee, the employer must provide information in writing stating an updated amount of sick and safe leave available. Employers may choose a reasonable system, including listing time on each pay stub or providing an on-line system. Employers must maintain records regarding leave for three years. If an employer does not have adequate records, or does not allow reasonable access, it is presumed that the employer violated the requirements. With some exceptions, an employer must maintain the confidentiality of information provided by the employee or others in support of a request for leave.

Notice.

Tier 1, 2, and 3 employers must notify employees about the requirements of the law, including that employees are entitled to sick and safe leave, that retaliation is prohibited, and other specified information. Employers may comply by providing the information in English and in any language that is the first language spoken by at least 5 percent of the employer's workforce either on a notice to each of the employees or on a poster displayed in a conspicuous and accessible place. The Department of Labor and Industries (Department) must create and make available posters.

Retaliation.

A Tier 1, 2, or 3 employer may not discharge, demote, take other listed actions, or otherwise discriminate against an employee because the employee exercised rights, used sick and safe leave, filed a complaint or communicated an intent to file a complaint, or participated or assisted in another employee's attempt to exercise the employee's rights under the sick and safe leave law.

Enforcement.

Administrative and judicial remedies are provided. The Director (Director) of the Department may investigate violations and issue a written determination after a hearing. The Director may order appropriate relief, including damages (including back pay), payment of any sick or safe leave unlawfully withheld and liquidated damages of three times the dollar amount of the leave withheld or \$250, whichever is greater. If the violation resulted in other harm to the employee or other person, or otherwise violated the rights of employees or other persons, such as a failure to provide notice or retaliation, the Director may order liquidated damages of \$50 per day to each employee or person whose rights were violated. The Director may also order no more than \$50 for each day and for each person or employee whose rights were violated to compensate the Department for the costs of investigating or remedying the violation, attorney's fees and costs, and equitable relief, including reinstatement. For a willful violation of the notice requirements, the Director may impose a civil penalty not to exceed \$125 for the first violation and \$250 for subsequent violations.

The Department and any person aggrieved, any entity a member of which is aggrieved, or any other person or entity acting on behalf of the public health and welfare may bring a civil action against any person violating the sick and safe leave requirements. The court may order appropriate relief, including the relief the Director may order, except that any person or entity acting on behalf of the public health and welfare is not entitled to liquidated damages. The court must award reasonable attorneys' fees and costs to the party bringing the civil action if the party prevails.

Other.

The Department has rule-making authority.

The sick and safe leave requirements do not preempt any other laws or standards that provide for greater accrual or use by employees of sick or safe leave. The requirements are not intended to discourage employers from adopting or retaining more generous policies or to diminish the obligation of any employer to comply with any agreement providing more generous sick and safe leave.

Definitions are provided, including for "eating or drinking establishment," "full-time equivalent," and "health care provider."

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workforce Development):

(In support) Over one million people in the state do not have the ability to take sick leave. The lack of paid sick leave disproportionately affects people who are low-income or ethnic minorities. People should not have to make the Hobbesian choice between putting food on

the table or staying home sick and losing pay or even their job. Paid leave is humane and moral and fills a basic need.

Some workers cannot use sick leave until the third scheduled day. Many grocery and other workers do not get full-time hours. If you work only 20 hours, taking a day off costs a worker 50 percent of their pay. An employer's sick leave policy requires 48 hours' notice so it often cannot be used. Taking leave without notice may result in getting "occurrences."

Public health policy is to stay home if you are sick. The way most people get sick is from sick people who do not stay home. People have the right not to be exposed to communicable diseases. Food workers who come to work sick cause 85 percent of noro virus cases. Do you want to be served by a sick deli worker? This bill protects the public and patients.

Kids are unable to go home from school because there is no one to pick them up. A parent did not have leave to grieve the death of their son. The domestic violence leave law is not accessible to victims who cannot afford to take time off. Economic instability keeps domestic violence victims trapped.

Labor is under attack. Management threatened labor in Seattle if ordinance provisions were not waived.

Paid leave will not be abused. Studies show that workers with paid sick days take an average of two days per year. This bill is a nuanced and tiered approach that is not onerous. There are exemptions. It is human nature that some people will try to abuse sick leave.

This bill is sound economic policy. The bill will create loyalty and productivity and make more money for employers. It is hard to do a good job when you work while sick or are worried about sick children. Businesses are not negatively impacted by Seattle's ordinance. The requirements are not one-size-fits-all. Businesses can get tax breaks.

(Opposed) Business agrees that employees should be safe and healthy. Administrative concerns are greatly underestimated for both employers and employees. Seattle's ordinance has cost some larger businesses up to eight figures to implement. Businesses have had to restructure their payment and tracking system. One business had to spend \$40,000. Employees not based in Seattle have to be tracked for hours worked in Seattle. Businesses have to apply the requirements corporate-wide to be fair. A person took nine hours of sick leave and it took the profit out of a project in an industry where margins are tight.

When you layer requirements, it limits wages, benefits, and hiring. Employers have to shift resources away from other benefits that employees may want. In Seattle, restaurants have had to cut benefits and explain the cuts to workers. Restaurants have had to figure out administrative costs and how to provide coverage, and also decide whether to cut reward programs for employees. The restaurant industry is a low-margin industry. Data shows restaurants in San Francisco have specifically been hurt by paid sick leave.

There is no data that the lack of paid leave is a problem or that paid sick leave is working. Seattle is having a bad epidemic and it has paid sick leave. Restaurants are the largest private

employer in the state and have the lowest food-borne illness record since records have been kept.

This bill is a cost and a hidden head tax on employers when the Governor and Legislature are focused on job growth. It is bad public policy and not a welcome mat to new business.

Most larger businesses already offer paid sick leave. For smaller businesses, the bill is a burden. For construction, paid days off are not offered because the work is intermittent, but construction pays more. Connecticut exempts small businesses and manufacturing.

Workers not covered by a collective bargaining agreement cannot waive the requirements.

Staff Summary of Public Testimony (Appropriations):

(In support) Over 1 million workers in the state do not have paid sick leave and most are low-income. This bill will ensure all workers have access to sick days they have earned and not be penalized. Workers should not have to make the choice between staying home when sick or being unable to put food on the table. Sick workers put members of the public and patients at risk. Sick food workers transmit a minimum of 52 percent of the norovirus.

Domestic violence victims should not have to choose between one's safety and job. A risk factor for domestic violence is lack of resources. The state will save money by supporting victims of domestic violence.

Paid sick and safe leave is working in Seattle. No violations have occurred. The bill is a nuanced and tiered approach, with small business in mind. The cost is overstated and is being worked on. Studies show paid sick leave pays for itself. Sick workers coming to work actually cost employers and are more likely to get hurt at work. Most workers take an average of only two to three sick days a year. People with leave make fewer emergency room visits and family members get better faster when a family member is present.

(Opposed) This bill creates a new employment cost for small business and is a bad bill for creating jobs. People should be encouraged to save, while this bill encourages relying on the employer, which increases costs and discourages hires. State and local government costs may result in higher taxes. Businesses would face huge administrative challenges. Paid leave is a head tax. Assuming an average pay of \$15 per hour, an employer must set aside \$4,800 a year to pay for the leave. Paid leave would result in a 2.5 to 3.3 percent increase in wages which will come out of other benefits.

The fiscal note does not address some costs, such as the cost of hiring a replacement. Industrial insurance funds should not be used.

Persons Testifying (Labor & Workforce Development): (In support) Representative Jinkins, prime sponsor; Sarah Cherin, Kyong Barry, Linda Fuller, Gayla McKinney, and Jeanette Randal, United Food and Commercial Workers Local 21; Robin Flemming, Washington State Nurses Association; John Minor and Mike Silver, Association of Western Pulp and Paper Workers Union; Traci Underwood, Washington State Coalition Against Domestic Violence;

Jessica Roach and Ron Schnell, United Food and Commercial Workers Local 367; Makini Howell, Plum Bistro; and Rod Ackley, United Food and Commercial Workers Local 1439.

(Opposed) George Allen, Seattle Chamber of Commerce; Steve Neighbors, TERRA Staffing Group; Kris Tefft, Association of Washington Business; Jerry Vanderwood, Associated General Contractors of Washington; and Josh McDonald, Washington Restaurant Association.

Persons Testifying (Appropriations): (In support) Representative Jinkins, prime sponsor; Sarah Cherin, United Food and Commercial Workers International Union Local 21; Marilyn Watkins, Economic Opportunity Institute; and Grace Huang, Washington State Coalition Against Domestic Violence.

(Opposed) Gary Smith, Independent Business Association; Brad Tower, Community Banks of Washington; and Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Labor & Workforce Development): Erin Shannon, Washington Policy Center.

Persons Signed In To Testify But Not Testifying (Appropriations): None.