

SENATE BILL REPORT

HB 1356

As of March 30, 2015

Title: An act relating to assuring that all workers may take at least forty hours of accrued paid sick or safe leave per year and that workers for employers with more than fifty full-time equivalent employees may take greater amounts of paid leave, excepting only certain occasional Washington workers, workers of employers with four or fewer full-time equivalent employees, and workers in certain new firms.

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

Sponsors: Representatives Jinkins, Riccelli, S. Hunt, Farrell, Stanford, McBride, Cody, Tharinger, Goodman, Ortiz-Self, Sullivan, Bergquist, Pettigrew, Dunshee, Fitzgibbon, Peterson, Moscoso, Ryu, Appleton, Sells, Pollet, Robinson, Reykdal, Walkinshaw, Senn, Wylie, Ormsby, Lytton, Moeller, Kagi, Hansen, Hudgins, Tarleton, Sawyer, Fey, Gregerson, Gregory, Van De Wege, Kilduff, Blake, Kirby, Orwall and Clibborn.

Brief History: Passed House: 3/03/15, 51-46.

Committee Activity: Commerce & Labor: 3/30/15.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Mac Nicholson (786-7445)

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

- 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. A family member is a child, spouse, parent, parent-in-

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law, grandparent, or person with whom the employee has a dating relationship. A dating relationship is a social relationship of a romantic nature.

The city of Seattle adopted an ordinance, effective October 1, 2012, requiring employers to provide paid sick and safe leave.

A Health Impact Review of this legislation was requested and is available at the Washington State Board of Health's website: sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2015-08-HB1356.pdf.

Summary of Bill: Intent. A safe and sick leave law is created that applies to employees performing services in the state, including temporary and part-time employees. Employees accrue and are entitled to use and carry over unused leave based on employer size. Employers with four or fewer full-time equivalent (FTE) employees are exempt.

- Tier 1 employers have more than four and fewer than 50 FTEs.
- Tier 2 employers have 50 to fewer than 250 FTEs.
- Tier 3 employers have 250 or more FTEs.

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.

Employer Tier	Hours worked to accrue hour of leave	Hour use per year	Carry-over
Tier 1	40	40	40
Tier 2	40	56	56
Tier 3	30	72	72

Use of Leave. A 180-day waiting period after hire applies before an employee may use 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.

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.

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.

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. 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, and make the request in writing, and at least ten days before the leave, or as early as possible. For unforeseeable leave, the employee must give notice as soon as practicable.

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. The employer and employee split the cost of any out-of-pocket expense of obtaining the documentation. An employer also may require reasonable verification for use of more than three consecutive days of safe time, and methods of satisfying the verification requirement are specified.

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 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. 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. An 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 of the Department (Director) must investigate complaints and may investigate if the Director obtains information that a violation may have occurred. If the Director finds a violation, the Director must try to negotiate a settlement. If an agreement cannot be reached, the Director must issue a notice of infraction and may order appropriate relief, including damages – including back pay, payment of any sick or safe leave unlawfully withheld, and liquidated damages of \$250 or three times the dollar amount of the leave withheld, 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, 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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