
HOUSE BILL 1356

State of Washington

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By 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

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1 AN ACT Relating to assuring that all workers may take at least
2 forty hours of accrued paid sick or safe leave per year and that
3 workers for employers with more than fifty full-time equivalent
4 employees may take greater amounts of paid leave, excepting only
5 certain occasional Washington workers, workers of employers with four
6 or fewer full-time equivalent employees, and workers in certain new
7 firms; adding a new chapter to Title 49 RCW; and prescribing
8 penalties.

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

10 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. The legislature finds
11 that paid sick and safe leave from employment is critical to the
12 economic well-being of the state and workers and to public health and
13 safety. Paid sick and safe leave helps workers maintain their own
14 health and the health of their families, coworkers, and members of
15 the public. Paid sick and safe leave is important to helping women
16 gain greater economic security for themselves and their families and
17 to achieving racial and gender equity. Paid sick and safe leave also
18 helps give victims of domestic violence, sexual assault, and stalking
19 the financial independence necessary to leave abusive situations,
20 achieve safety, and minimize physical and emotional injuries. The
21 legislature further finds that paid sick and safe leave helps

1 employers retain trained workers and operate competitively as well as
2 ensures that workers and their families retain economic security.

3 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

6 (1) "Child," "grandparent," "parent," "parent-in-law," and
7 "spouse" have the same meanings as in RCW 49.12.265.

8 (2) "Department" and "director" have the same meanings as in RCW
9 49.12.005.

10 (3) "Domestic violence" has the same meaning as in RCW 26.50.010.

11 (4)(a) "Employee" means any individual employed by an employer,
12 including individuals employed on a temporary and part-time basis.

13 (b) An employee is a "covered employee" when the employee
14 performs services in the state. An employee performing services in
15 the state on an occasional basis is a covered employee only if he or
16 she performs more than two hundred forty hours of work in the state
17 in a calendar year. An employee performing services in the state on a
18 temporary basis and supplied by a temporary service, staffing agency,
19 or similar entity, absent a contractual agreement stating otherwise,
20 is a covered employee of the staffing agency or similar entity.

21 (5)(a) "Employer" has the same meaning as in RCW 49.12.005.

22 (i) "Tier one employer" means an employer that employs more than
23 four and fewer than fifty full-time equivalents on average per
24 calendar week.

25 (ii) "Tier two employer" means an employer that employs at least
26 fifty and fewer than two hundred fifty full-time equivalents on
27 average per calendar week.

28 (iii) "Tier three employer" means an employer that employs two
29 hundred fifty or more full-time equivalents on average per calendar
30 week.

31 (b) The employer tier for the current year is determined by the
32 average number of full-time equivalents paid per calendar week during
33 the preceding year for any and all weeks during which at least one
34 employee worked for compensation. To determine the number of full-
35 time equivalents, all compensated hours of all employees shall be
36 counted, including part-time employment, temporary employment,
37 employment outside the state, and employment through the services of
38 a staffing agency or similar entity. Separate entities that form an
39 integrated enterprise are a single employer for purposes of

1 determining the employer tier. If an employer did not employ any
2 employees during the previous year, the employer tier is determined
3 based upon the average number of full-time equivalents paid per
4 calendar week during the first ninety calendar days of the current
5 year in which the employer engaged in business.

6 (6) "Full-time equivalent" means the number of hours worked for
7 compensation that add up to one full-time employee, based either on
8 an eight hour day and a five day week or as full-time is defined, in
9 writing or in practice, by the employer.

10 (7) "Health care provider" means any person licensed to provide
11 medical or emergency services and any other person as determined by
12 the director to be capable of providing documentation under section
13 5(4) of this act.

14 (8) "Sexual assault" has the same meaning as in RCW 70.125.030.

15 (9) "Sick and safe leave" means hours of paid time provided by an
16 employer for use by a covered employee for absence from work for the
17 purposes specified in section 4 of this act.

18 (10) "Staffing agency" means any person undertaking with or
19 without compensation to procure opportunities to work or to procure,
20 recruit, refer, or place individuals with an employer or in
21 employment.

22 (11) "Stalking" has the same meaning as in RCW 9A.46.110.

23 NEW SECTION. **Sec. 3.** ACCRUAL OF SICK AND SAFE LEAVE. (1)(a)

24 Subject to (b) of this subsection and beginning January 1st of the
25 year following the effective date of this section, a covered employee
26 accrues sick and safe leave, which may be used as either sick leave
27 or safe leave, as follows:

28 (i) An employee of a tier one or tier two employer must accrue at
29 least one hour of leave for every forty hours worked.

30 (ii) An employee of a tier three employer must accrue at least
31 one hour of leave for every thirty hours worked.

32 (b) An employer may provide paid sick and safe leave in advance
33 of accrual as permitted front loading as long as the front loading
34 meets or exceeds the requirements of this chapter for accrual, use,
35 and carry over of leave.

36 (2) Sick and safe leave begins to accrue at the commencement of
37 employment, except that an employee is not entitled to begin accruing
38 leave before January 1st of the year following the effective date of
39 this section.

1 (3) If an employee is exempt from overtime payment under state
2 and federal law: (a) The employee is not entitled to accrue leave for
3 hours worked in excess of forty hours in a work week; and (b) if the
4 employee's normal work week is less than forty hours, leave accrues
5 based on the employee's normal work week.

6 (4) Unused sick and safe leave carries over to the following
7 year, except that an employer is not required to allow an employee to
8 carry over sick and safe leave in excess of:

9 (a) Forty hours for a tier one employer;

10 (b) Fifty-six hours for a tier two employer; or

11 (c) Subject to subsection (5) of this section, seventy-two hours
12 for a tier three employer.

13 (5)(a) A tier one or tier two employer with a combined or
14 universal paid leave policy, including but not limited to a paid time
15 off policy, is not required to provide sick and safe leave in
16 addition to the leave provided by that policy if:

17 (i) Paid leave under the policy may be used for the same purposes
18 and under the same conditions as sick and safe leave may be used
19 under section 4 of this act;

20 (ii) Paid leave accrues at a rate of at least one hour of leave
21 for every forty hours worked;

22 (iii) Use of paid leave within any year is limited to no less
23 than the amounts specified for tier one and tier two employers,
24 respectively, in section 4 of this act; and

25 (iv) Any accrued but unused paid leave may be carried over to the
26 following year. However, this section does not require a tier one or
27 tier two employer to carry over leave in excess of the leave
28 specified in subsection (4)(a) and (b) of this section.

29 (b) A tier three employer with a combined or universal paid leave
30 policy, including but not limited to a paid time off policy, is not
31 required to provide sick and safe leave in addition to the leave
32 provided by the policy if:

33 (i) Available paid leave may be used for the same purposes and
34 under the same conditions as sick and safe leave may be used under
35 section 4 of this act;

36 (ii) Paid leave accrues at a rate of at least one hour of leave
37 for every thirty hours worked;

38 (iii) Use of paid leave within any year is limited to no less one
39 hundred eight hours; and

1 (iv) Any accrued but unused paid leave may be carried over to the
2 following year. However, this section does not require a tier three
3 employer to carry over unused leave in excess of one hundred eight
4 hours.

5 (6) If a covered employee separates from employment and the same
6 employer rehires the employee within seven months of the separation:

7 (a) The employer must reinstate previously accrued and unused sick
8 and safe leave; (b) the employee is entitled to use accrued sick and
9 safe leave immediately upon reemployment if the employee previously
10 had been eligible to use the leave; and (c) the employee accrues
11 additional leave immediately upon reemployment. If a covered employee
12 separates from employment and the same employer rehires the employee
13 more than seven months after the separation, this section does not
14 require the employer to reinstate accrued sick and safe leave and the
15 employee is considered to have newly commenced employment for
16 purposes of sick and safe leave.

17 (7) This section does not require an employer to provide
18 financial or other reimbursement for accrued and unused sick and safe
19 leave to any employee upon the employee's termination, resignation,
20 retirement, or other separation from employment.

21 NEW SECTION. **Sec. 4.** USE OF SICK AND SAFE LEAVE. (1) A covered
22 employee may use accrued sick and safe leave beginning one hundred
23 eighty days after the commencement of employment with the employer.
24 If a covered employee separates from employment and is rehired by the
25 same employer within seven months of separation, the previous period
26 of employment is counted for purposes of meeting the one hundred
27 eighty day requirement.

28 (2) An employer must compensate a covered employee who uses sick
29 and safe leave at the same hourly rate and with the same benefits,
30 including health care benefits, as the employee would have earned
31 during the time the leave is taken. An employer is not required to
32 compensate an employee for lost tips or commissions and compensation
33 is required only for hours that an employee was scheduled to work.

34 (3) A covered employee may use sick leave for the following
35 reasons:

36 (a) An absence resulting from an employee's mental or physical
37 illness, injury, or health condition; to accommodate the employee's
38 need for medical diagnosis, care, or treatment of a mental or

1 physical illness, injury, or health condition; or the employee's need
2 for preventive medical care; or

3 (b) To allow the employee to provide care for a child,
4 grandparent, parent, parent-in-law, or spouse with a mental or
5 physical illness, injury, or health condition; care for a child,
6 grandparent, parent, parent-in-law, or spouse who needs medical
7 diagnosis, care, or treatment of a mental or physical illness,
8 injury, or health condition; or care for a child, grandparent,
9 parent, parent-in-law, or spouse who needs preventive medical care.

10 (4) A covered employee may use safe leave for the following
11 reasons:

12 (a) When the employee's place of business has been closed by
13 order of a public official to limit exposure to an infectious agent,
14 biological toxin, or hazardous material; or to accommodate the
15 employee's need to care for a child whose school or place of care has
16 been closed by order of a public official to limit exposure to an
17 infectious agent, biological toxin, or hazardous material; or

18 (b) For any of the reasons identified in RCW 49.76.030.

19 (5) An employer is not required to allow an employee to use in
20 excess of the following hours of sick and safe leave in a year:

21 (a) Forty hours for a tier one employer;

22 (b) Fifty-six hours for a tier two employer; or

23 (c) Subject to section 3(5)(b) of this act, seventy-two hours for
24 a tier three employer.

25 NEW SECTION. **Sec. 5.** REQUESTS AND DOCUMENTATION. (1) An
26 employer must provide sick and safe leave upon the request of a
27 covered employee.

28 (2) When possible, the request must include the expected duration
29 of the absence. An employer may require an employee to comply with
30 the employer's usual and customary notice and procedural requirements
31 for absences and requesting leave, as long as the requirements do not
32 interfere with the purposes for which the leave is needed. If the
33 leave is foreseeable, the employee must: (a) Make a reasonable effort
34 to schedule the leave in a manner that does not unduly disrupt the
35 operations of the employer; (b) make the request in writing; and (c)
36 make the request at least ten days, or as early as possible, in
37 advance of the leave unless the employer's usual and customary notice
38 requirements provide for less advance notice. If the leave is
39 unforeseeable, the employee must provide notice as soon as

1 practicable and must comply with the employer's usual and customary
2 notice and procedural requirements for absences as long as the
3 requirements do not interfere with the purposes for which the leave
4 is needed.

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

11 (4) An employer may require reasonable documentation for use of
12 more than three consecutive days of sick leave. Documentation signed
13 by a health care provider stating that sick leave is necessary is
14 reasonable documentation. An employer may not require the
15 documentation to explain the nature of the illness, injury, or health
16 condition. The employer and employee must each pay one-half the cost
17 of any out-of-pocket expense incurred by the employee in obtaining
18 the documentation requested by the employer. Out-of-pocket expenses
19 are limited to the costs of services provided by health care
20 providers, services of health care facilities, testing prescribed by
21 health care providers, and transportation to the location where the
22 services are provided.

23 (5) An employer may require verification for use of more than
24 three consecutive days of safe leave. For leave under section 4(4)(a)
25 of this act, the employer may require verification of a closure
26 order. Notice of the closure order in whatever format the employee
27 received the notice satisfies the verification request. For leave
28 under section 4(4)(b) of this act, the employer may require
29 verification that the employee or employee's family member is a
30 victim of domestic violence, sexual assault, or stalking, and that
31 the leave taken was for one of the purposes under section 4(4)(b) of
32 this act. An employee may satisfy the verification requirement in the
33 same manner as provided in RCW 49.76.040(4) and verification does not
34 waive or diminish the confidential or privileged nature of
35 communications in the same manner as under RCW 49.76.040(4).

36 (6) Upon mutual consent of the employee and employer, an employee
37 may work additional hours or shifts during the same or next pay
38 period instead of using accrued sick and safe leave for leave taken
39 under this section. An employer may not require the employee to work

1 additional shifts or hours. The employer must comply with any
2 applicable laws regarding overtime pay.

3 (7) This chapter does not prohibit an employer from establishing
4 a policy under which employees may: (a) Voluntarily exchange assigned
5 hours or trade shifts; or (b) donate unused accrued sick and safe
6 leave to another employee.

7 NEW SECTION. **Sec. 6.** RECORDKEEPING. (1)(a) An employer must
8 provide at the time wages are paid information in writing stating an
9 updated amount of sick and safe leave available to each covered
10 employee. Employers may choose a reasonable system for providing this
11 information including, but not limited to, listing remaining
12 available sick and safe leave on each pay stub or providing an online
13 system where employees can access their own sick and safe leave
14 information.

15 (b) This section does not require employers to modify their
16 recordkeeping policies as long as records reasonably indicate accrued
17 and used sick and safe leave. When an issue arises as to the amount
18 of accrued sick and safe leave and the employer does not maintain or
19 retain adequate records or does not allow the department reasonable
20 access to the records, it is presumed that the employer violated this
21 chapter.

22 (2) Employers shall retain records documenting hours worked by
23 employees and sick and safe leave taken by employees for a period of
24 three years, and shall allow the department access to such records,
25 with appropriate notice and at a mutually agreeable time, to
26 investigate potential violations and to monitor compliance with this
27 chapter.

28 (3)(a) Except as provided in (b) of this subsection, an employer
29 must maintain the confidentiality of information provided by the
30 employee or others in support of an employee's request for sick or
31 safe leave, including health information and the fact the employee or
32 employee's family member is a victim of domestic violence, sexual
33 assault, or stalking, that the employee has requested or taken leave
34 under this chapter, and any written or oral statement, documentation,
35 record, or corroborating evidence provided by the employee.

36 (b) Information provided by an employee may be disclosed by an
37 employer only if the disclosure is: (i) Requested or consented to by
38 the employee; (ii) ordered by a court or administrative agency; or
39 (iii) otherwise required by applicable federal or state law.

1 NEW SECTION. **Sec. 7.** NOTICE OF RIGHTS. (1) Beginning January
2 1st of the year following the effective date of this section, a tier
3 one, tier two, and tier three employer shall give notice to
4 employees:

5 (a) That covered employees are entitled to sick and safe leave;

6 (b) Of the amount of sick and safe leave and the terms of its use
7 guaranteed under this chapter;

8 (c) That retaliation against employees who request or use sick or
9 safe leave is prohibited; and

10 (d) That an employee has the right to file a complaint or bring a
11 civil action if sick or safe leave as required by this chapter is
12 denied by the employer or the employee is retaliated against for
13 requesting or taking sick or safe leave.

14 (2) An employer may comply with this section by providing the
15 information in subsection (1) of this section in English and in any
16 language that is the first language spoken by at least five percent
17 of the employer's workforce: (a) On a notice to each of the
18 employer's covered employees; or (b) on a poster displayed in a
19 conspicuous and accessible place in each establishment where the
20 employer's covered employees are employed.

21 (3) The department must create and make available to employers
22 posters for use under subsection (2) of this section.

23 (4) The department must provide notice to employers regarding the
24 requirements of this chapter when the department updates information
25 for employers about employment standards requirements.

26 NEW SECTION. **Sec. 8.** RETALIATION. (1) An employer may not
27 discharge, threaten to discharge, demote, deny a promotion to,
28 sanction, discipline, retaliate against, harass, or otherwise
29 discriminate against an employee with respect to compensation, terms,
30 conditions, or privileges of employment because the employee:

31 (a) Exercised rights under section 4 of this act;

32 (b) Filed or communicated to the employer an intent to file a
33 complaint under section 9 or 11 of this act; or

34 (c) Participated or assisted, as a witness or otherwise, in
35 another employee's attempt to exercise rights under section 4, 9, or
36 11 of this act.

37 (2) Counting use of paid sick and safe leave as an absence that
38 may lead to or result in adverse action against the employee is
39 unlawful retaliation under this section.

1 NEW SECTION. **Sec. 9.** ADMINISTRATIVE ENFORCEMENT. (1) Upon
2 complaint by an employee, the director must investigate to determine
3 if there has been compliance with this chapter and the rules adopted
4 under this chapter. The director may also investigate if the director
5 obtains information that a violation may have occurred. If upon
6 investigation the director determines that a violation has occurred,
7 the director must endeavor with reasonable promptness to eliminate
8 the violation by agreement. The terms of the agreement may include
9 any of the relief specified in section 10 of this act. If an
10 agreement cannot be reached, the director must issue a notice of
11 infraction. Appeal from the director's decision is governed by
12 chapter 34.05 RCW.

13 (2) Within the first twenty-four months after a tier one or tier
14 two employer's hiring of the employer's first employee, the
15 department may educate and advise the employer and employees but may
16 not investigate or order any other relief.

17 NEW SECTION. **Sec. 10.** ADMINISTRATIVE RELIEF. (1) If an employer
18 is found to have committed an infraction, the director may order
19 appropriate relief which may include:

20 (a) Damages, including back pay, payment of any sick or safe
21 leave unlawfully withheld, and interest on the damages at the
22 prevailing rate;

23 (b) If any sick or safe leave was unlawfully withheld, statutory
24 damages of three times the dollar amount of leave withheld, or two
25 hundred fifty dollars, whichever is greater;

26 (c) If a violation resulted in other harm to the employee or any
27 other person, such as discharge from employment, or otherwise
28 violated the rights of employees or other persons, such as a failure
29 to provide notice to employees or a prohibited act of retaliation,
30 statutory damages of fifty dollars to each employee or person whose
31 rights were violated for each day or portion of each day that the
32 violation occurred or continued;

33 (d) To compensate the department for the costs of investigating
34 or remedying the violation, not more than fifty dollars for each day
35 or portion of each day and for each person or employee as to whom the
36 violation occurred or continued;

37 (e) Attorneys' fees and costs; and

38 (f) Equitable relief, including reinstatement.

1 (2) In addition to any other remedies, if the director finds that
2 an employer has willfully violated the notice and posting
3 requirements of section 7 of this act, the director may impose a
4 civil penalty not to exceed one hundred twenty-five dollars for the
5 first violation and two hundred fifty dollars for subsequent
6 violations.

7 (3) A judicial appeal from the director's determination may be
8 taken in accordance with chapter 34.05 RCW, and an aggrieved employee
9 who prevails and a person awarded statutory damages who prevails are
10 entitled to attorneys' fees and costs.

11 NEW SECTION. **Sec. 11.** CIVIL ENFORCEMENT. (1) The department and
12 any person aggrieved by a violation of this chapter, any entity a
13 member of which is aggrieved by a violation of this chapter, or any
14 other person or entity acting on behalf of the public health and
15 welfare may bring a civil action in a court of competent jurisdiction
16 against any person who violates this chapter. The court may order
17 appropriate relief including the relief specified in section 10 of
18 this act, except that any person or entity enforcing this chapter on
19 behalf of the public health and welfare is not entitled to statutory
20 damages. In addition, the court shall award reasonable attorneys'
21 fees and costs to the party bringing the civil action if the party
22 prevails.

23 (2) Exhaustion of administrative remedies is not required before
24 filing a civil action.

25 (3) The remedies in this section are in addition to any common
26 law or other remedies that may be available.

27 (4) This section does not apply to any violations during the
28 first twenty-four months after a tier one or tier two employer's
29 hiring of the employer's first employee.

30 NEW SECTION. **Sec. 12.** MORE GENEROUS POLICIES. This chapter
31 provides minimum requirements pertaining to sick and safe leave and
32 is not intended to discourage and does not prohibit an employer from
33 adopting or retaining a sick and safe leave policy more generous than
34 any policies that comply with the requirements under this chapter, or
35 as diminishing the obligation of any employer to comply with any
36 contract, collective bargaining agreement, employment benefit plan,
37 or other agreement providing more generous sick and safe leave than
38 required under this chapter.

1 NEW SECTION. **Sec. 13.** RELATIONSHIP TO OTHER LAWS. This chapter
2 does not preempt, limit, or otherwise affect the applicability of any
3 other law, regulation, requirement, policy, or standard that provides
4 for greater accrual or use by employees of sick or safe leave,
5 whether paid or unpaid, or that extends other protections to
6 employees.

7 NEW SECTION. **Sec. 14.** WAIVER. (1) The requirements of this
8 chapter do not apply to any employees covered by a bona fide
9 collective bargaining agreement to the extent that the requirements
10 are expressly waived in the collective bargaining agreement in clear
11 and unambiguous terms.

12 (2) Any waiver by an employee of any requirements of this chapter
13 is contrary to public policy and is void and unenforceable.

14 NEW SECTION. **Sec. 15.** RULES. The department may adopt rules to
15 implement this chapter.

16 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
17 constitute a new chapter in Title 49 RCW.

18 NEW SECTION. **Sec. 17.** SEVERABILITY. If any provision of this
19 act or its application to any person or circumstance is held invalid,
20 the remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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