
HOUSE BILL 2944

State of Washington

65th Legislature

2018 Regular Session

By Representatives Chapman, Muri, Gregerson, Stokesbary, McBride, Rodne, Ryu, Young, Kilduff, Harris, Sells, Holy, Peterson, Volz, Valdez, Haler, Stonier, Stambaugh, Fitzgibbon, Walsh, Robinson, Irwin, Blake, Appleton, Bergquist, Ortiz-Self, Stanford, Tarleton, Wylie, Barkis, Goodman, Santos, Ormsby, Pollet, and Macri

Read first time 01/26/18. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to safeguarding the public safety by protecting
2 railroad workers; amending RCW 50A.04.010, 50A.04.020, 50A.04.025,
3 and 50A.04.035; adding new sections to chapter 81.40 RCW; creating
4 new sections; prescribing penalties; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that railroad
7 employees are susceptible to illness from working in confined spaces
8 as well as the illnesses and injuries that affect the general
9 population, yet have no paid sick leave and may be subject to
10 discipline for absence due to illness and injury. Further, the
11 legislature recognizes that chronic fatigue is endemic to railroad
12 operating craft employees due to erratic work schedules, inaccurate
13 train line up information, and on duty periods of twelve hours or
14 longer. Academic studies have found that fatigue has the equivalent
15 negative impact on alertness, awareness, and job performance as
16 alcohol intoxication. Research indicates that fatigue is related to
17 higher rates of depression, anxiety, sleep apnea, and suicide, and
18 that these conditions are more prevalent among railroad workers. The
19 federal railway safety improvement act of 2008 directed the
20 appropriate federal agencies to address fatigue, but those agencies
21 have not adequately done so.

1 The legislature further finds that railroad operating craft
2 employees may report to work while ill or fatigued to avoid
3 disciplinary action by railroad carrier companies, which creates a
4 dangerous and unnecessary public safety issue. In addition, the
5 legislature finds that the unique operational practices utilized to
6 summon railroad crew employees to duty necessitate modifications to
7 existing family and medical leave laws to provide railroad carrier
8 employees with comparable sick leave and family leave rights to those
9 previously granted to all other workers in this state.

10 Therefore, in the interest of public safety and operating craft
11 employee safety, the legislature intends to take steps to assure that
12 railroad crew employees are healthy and rested and to assure that
13 railroad crew employees receive fair family and medical leave.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply
15 throughout sections 1 through 5 of this act unless the context
16 clearly requires otherwise.

17 (1) "Operating craft employee" means any employee of a railroad
18 carrier who performs service in an operating craft on a railroad or
19 directs the work of an operating craft employee as a scheduled
20 employee, and includes any other employee of a railroad carrier who
21 performs safety sensitive tasks associated with railroad operations.

22 (2) "Railroad carrier" means any employer subject to the
23 jurisdiction of the surface transportation board under 49 U.S.C. Sec.
24 7, as it exists on the effective date of this section. "Railroad
25 carrier" includes the officers and agents of the railroad operations
26 regardless of physical location.

27 NEW SECTION. **Sec. 3.** (1) No railroad carrier may dismiss,
28 suspend, layoff, demote, or otherwise discipline an employee because
29 of absence due to illness or injury if:

30 (a) The employee has completed three consecutive months of
31 continuous employment by the railroad carrier prior to the absence;

32 (b) The period of absence does not exceed twelve weeks; and

33 (c) The employee, if requested in writing by the railroad carrier
34 within ten days after the employee's return to work, provides the
35 railroad carrier with documentation from a health care provider that
36 the employee was incapable of working due to illness or injury during
37 the employee's absence from work. The railroad carrier must grant the

1 employee no fewer than thirty days to obtain and provide any
2 requested documentation.

3 (2) Any employee absences used pursuant to this section are not
4 subject to any type of carrier availability or attendance policy and
5 are separate from any protected leave under Title 50A RCW.

6 NEW SECTION. **Sec. 4.** (1) No railroad carrier may dismiss,
7 suspend, layoff, demote, or otherwise discipline an operating craft
8 employee because of layoff due to fatigue.

9 (2) A railroad carrier must establish a fatigue layoff program
10 under which an operating craft employee may layoff due to fatigue
11 without being subjected to discipline or any type of availability or
12 attendance policy. A railroad carrier must submit the fatigue layoff
13 program to the commission for review and approval within ninety days
14 from the effective date of this section. Prior to approving a fatigue
15 layoff program, the commission must submit the program to the
16 leadership of the operating craft rail labor organizations state
17 legislative boards for review and input.

18 (3) A railroad carrier must report all data as requested by the
19 commission to implement and enforce this section. If the commission
20 identifies additional actions to address fatigue that require
21 legislative action, the commission shall report its findings to the
22 appropriate legislative committees.

23 (4) The commission shall adopt rules to implement this section.
24 In adopting rules, the commission shall review and consider research
25 addressing alertness, depression, and other consequences of
26 irregular, nonscheduled "on-call" working conditions. The commission
27 shall also recognize the importance of ensuring fatigue layoffs are
28 reasonable and legitimate.

29 (5) This section applies to class I railroad carriers and any
30 class II or III railroad carriers with regular operating craft
31 working hours extending beyond sixteen consecutive hours a day more
32 frequently than once per week, exclusive of unusual unforeseen events
33 such as natural disasters or similar emergencies.

34 NEW SECTION. **Sec. 5.** A railroad carrier must provide data to
35 the commission regarding the number of employees laying off for
36 injury, illness, or fatigue and the length of layoff no later than
37 January 31st of each year for the preceding year. No personally
38 identifying information of employees may be submitted.

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

7 (2) If a railroad carrier is found to have committed an
8 infraction under this section, the commission may impose upon the
9 carrier a fine of up to five hundred dollars for the first
10 infraction; a fine of up to five thousand dollars for a second
11 infraction; and a fine of up to twenty-five thousand dollars for each
12 subsequent infraction committed within three years of a previous
13 infraction. The commission may also order other remedies such as back
14 pay and reinstatement, and may increase the penalties by rule based
15 on changing economic conditions.

16 **Sec. 7.** RCW 50A.04.010 and 2017 3rd sp.s. c 5 s 2 are each
17 amended to read as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

20 (1) "Child" includes a biological, adopted, or foster child, a
21 stepchild, or a child to whom the employee stands in loco parentis,
22 is a legal guardian, or is a de facto parent, regardless of age or
23 dependency status.

24 (2) "Commissioner" means the commissioner of the department or
25 the commissioner's designee.

26 (3) "Department" means the employment security department.

27 (4)(a) "Employee" means an individual who is in the employment of
28 an employer.

29 (b) "Employee" does not include employees of the United States of
30 America.

31 (5) "Employee's average weekly wage" means the quotient derived
32 by dividing the employee's total wages during the two quarters of the
33 employee's qualifying period in which total wages were highest by
34 twenty-six. If the result is not a multiple of one dollar, the
35 department must round the result to the next lower multiple of one
36 dollar.

37 (6)(a) "Employer" means: (i) Any individual or type of
38 organization, including any partnership, association, trust, estate,
39 joint stock company, insurance company, limited liability company, or

1 corporation, whether domestic or foreign, or the receiver, trustee in
2 bankruptcy, trustee, or the legal representative of a deceased
3 person, having any person in employment or, having become an
4 employer, has not ceased to be an employer as provided in this
5 chapter; (ii) the state, state institutions, and state agencies; and
6 (iii) any unit of local government including, but not limited to, a
7 county, city, town, municipal corporation, quasi-municipal
8 corporation, or political subdivision.

9 (b) "Employer" does not include the United States of America.

10 (7)(a) "Employment" means personal service, of whatever nature,
11 unlimited by the relationship of master and servant as known to the
12 common law or any other legal relationship performed for wages or
13 under any contract calling for the performance of personal services,
14 written or oral, express or implied. The term "employment" includes
15 an individual's entire service performed within or without or both
16 within and without this state, if:

17 (i) The service is localized in this state; or

18 (ii) The service is not localized in any state, but some of the
19 service is performed in this state; and

20 (A) The base of operations of the employee is in the state, or if
21 there is no base of operations, then the place from which such
22 service is directed or controlled is in this state; or

23 (B) The base of operations or place from which such service is
24 directed or controlled is not in any state in which some part of the
25 service is performed, but the individual's residence is in this
26 state.

27 (b) "Employment" does not include:

28 (i) Self-employed individuals;

29 (ii) Services for remuneration when it is shown to the
30 satisfaction of the commissioner that:

31 (A)(I) Such individual has been and will continue to be free from
32 control or direction over the performance of such service, both under
33 his or her contract of service and in fact; and

34 (II) Such service is either outside the usual course of business
35 for which such service is performed, or that such service is
36 performed outside of all the places of business of the enterprises
37 for which such service is performed; and

38 (III) Such individual is customarily engaged in an independently
39 established trade, occupation, profession, or business, of the same
40 nature as that involved in the contract of service; or

1 (B) As a separate alternative:

2 (I) Such individual has been and will continue to be free from
3 control or direction over the performance of such service, both under
4 his or her contract of service and in fact; and

5 (II) Such service is either outside the usual course of business
6 for which such service is performed, or that such service is
7 performed outside of all the places of business of the enterprises
8 for which such service is performed, or the individual is
9 responsible, both under the contract and in fact, for the costs of
10 the principal place of business from which the service is performed;
11 and

12 (III) Such individual is customarily engaged in an independently
13 established trade, occupation, profession, or business, of the same
14 nature as that involved in the contract of service, or such
15 individual has a principal place of business for the work the
16 individual is conducting that is eligible for a business deduction
17 for federal income tax purposes; and

18 (IV) On the effective date of the contract of service, such
19 individual is responsible for filing at the next applicable filing
20 period, both under the contract of service and in fact, a schedule of
21 expenses with the internal revenue service for the type of business
22 the individual is conducting; and

23 (V) On the effective date of the contract of service, or within a
24 reasonable period after the effective date of the contract, such
25 individual has established an account with the department of revenue,
26 and other state agencies as required by the particular case, for the
27 business the individual is conducting for the payment of all state
28 taxes normally paid by employers and businesses and has registered
29 for and received a unified business identifier number from the state
30 of Washington; and

31 (VI) On the effective date of the contract of service, such
32 individual is maintaining a separate set of books or records that
33 reflect all items of income and expenses of the business which the
34 individual is conducting; or

35 (iii) Services that require registration under chapter 18.27 RCW
36 or licensing under chapter 19.28 RCW rendered by an individual when:

37 (A) The individual has been and will continue to be free from
38 control or direction over the performance of the service, both under
39 the contract of service and in fact;

1 (B) The service is either outside the usual course of business
2 for which the service is performed, or the service is performed
3 outside of all the places of business of the enterprise for which the
4 service is performed, or the individual is responsible, both under
5 the contract and in fact, for the costs of the principal place of
6 business from which the service is performed;

7 (C) The individual is customarily engaged in an independently
8 established trade, occupation, profession, or business, of the same
9 nature as that involved in the contract of service, or the individual
10 has a principal place of business for the business the individual is
11 conducting that is eligible for a business deduction for federal
12 income tax purposes, other than that furnished by the employer for
13 which the business has contracted to furnish services;

14 (D) On the effective date of the contract of service, the
15 individual is responsible for filing at the next applicable filing
16 period, both under the contract of service and in fact, a schedule of
17 expenses with the internal revenue service for the type of business
18 the individual is conducting;

19 (E) On the effective date of the contract of service, or within a
20 reasonable period after the effective date of the contract, the
21 individual has an active and valid certificate of registration with
22 the department of revenue, and an active and valid account with any
23 other state agencies as required by the particular case, for the
24 business the individual is conducting for the payment of all state
25 taxes normally paid by employers and businesses and has registered
26 for and received a unified business identifier number from the state
27 of Washington;

28 (F) On the effective date of the contract of service, the
29 individual is maintaining a separate set of books or records that
30 reflect all items of income and expenses of the business that the
31 individual is conducting; and

32 (G) On the effective date of the contract of service, the
33 individual has a valid contractor registration pursuant to chapter
34 18.27 RCW or an electrical contractor license pursuant to chapter
35 19.28 RCW.

36 (8) "Employment benefits" means all benefits provided or made
37 available to employees by an employer, including group life
38 insurance, health insurance, disability insurance, sick leave, annual
39 leave, educational benefits, and pensions except benefits that are

1 provided by a practice or written policy of an employer or through an
2 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

3 (9) "Family leave" means any leave taken by an employee from
4 work:

5 (a) To participate in providing care, including physical or
6 psychological care, for a family member of the employee made
7 necessary by a serious health condition of the family member;

8 (b) To bond with the employee's child during the first twelve
9 months after the child's birth, or the first twelve months after the
10 placement of a child under the age of eighteen with the employee; or

11 (c) Because of any qualifying exigency as permitted under the
12 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e)
13 and 29 C.F.R. Sec. 825.126(a)(1) through (8), as they existed on
14 October 19, 2017, for family members as defined in subsection (10) of
15 this section.

16 (10) "Family member" means a child, grandchild, grandparent,
17 parent, sibling, or spouse of an employee.

18 (11) "Grandchild" means a child of the employee's child.

19 (12) "Grandparent" means a parent of the employee's parent.

20 (13) "Health care provider" means: (a) A person licensed as a
21 physician under chapter 18.71 RCW or an osteopathic physician and
22 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
23 registered nurse practitioner under chapter 18.79 RCW; or (c) any
24 other person determined by the commissioner to be capable of
25 providing health care services.

26 (14) "Medical leave" means any leave taken by an employee from
27 work made necessary by the employee's own serious health condition.

28 (15) "Parent" means the biological, adoptive, de facto, or foster
29 parent, stepparent, or legal guardian of an employee or the
30 employee's spouse, or an individual who stood in loco parentis to an
31 employee when the employee was a child.

32 (16) "Period of incapacity" means an inability to work, attend
33 school, or perform other regular daily activities because of a
34 serious health condition, treatment of that condition or recovery
35 from it, or subsequent treatment in connection with such inpatient
36 care.

37 (17) "Premium" or "premiums" means the payments required by RCW
38 50A.04.115 and paid to the department for deposit in the family and
39 medical leave insurance account under RCW 50A.04.220.

1 (18) "Qualifying period" means the first four of the last five
2 completed calendar quarters or, if eligibility is not established,
3 the last four completed calendar quarters immediately preceding the
4 application for leave.

5 (19) "Railroad carrier" means any employer subject to the
6 jurisdiction of the surface transportation board under 49 U.S.C. Sec.
7 7, as it exists on the effective date of this section.

8 (20)(a) "Serious health condition" means an illness, injury,
9 impairment, or physical or mental condition that involves:

10 (i) Inpatient care in a hospital, hospice, or residential medical
11 care facility, including any period of incapacity; or

12 (ii) Continuing treatment by a health care provider. A serious
13 health condition involving continuing treatment by a health care
14 provider includes any one or more of the following:

15 (A) A period of incapacity of more than three consecutive, full
16 calendar days, and any subsequent treatment or period of incapacity
17 relating to the same condition, that also involves:

18 (I) Treatment two or more times, within thirty days of the first
19 day of incapacity, unless extenuating circumstances exist, by a
20 health care provider, by a nurse or physician's assistant under
21 direct supervision of a health care provider, or by a provider of
22 health care services, such as a physical therapist, under orders of,
23 or on referral by, a health care provider; or

24 (II) Treatment by a health care provider on at least one occasion
25 which results in a regimen of continuing treatment under the
26 supervision of the health care provider;

27 (B) Any period of incapacity due to pregnancy, or for prenatal
28 care;

29 (C) Any period of incapacity or treatment for such incapacity due
30 to a chronic serious health condition. A chronic serious health
31 condition is one which:

32 (I) Requires periodic visits, defined as at least twice a year,
33 for treatment by a health care provider, or by a nurse under direct
34 supervision of a health care provider;

35 (II) Continues over an extended period of time, including
36 recurring episodes of a single underlying condition; and

37 (III) May cause episodic rather than a continuing period of
38 incapacity, including asthma, diabetes, and epilepsy;

39 (D) A period of incapacity which is permanent or long term due to
40 a condition for which treatment may not be effective. The employee or

1 family member must be under the continuing supervision of, but need
2 not be receiving active treatment by, a health care provider,
3 including Alzheimer's, a severe stroke, or the terminal stages of a
4 disease; or

5 (E) Any period of absence to receive multiple treatments,
6 including any period of recovery from the treatments, by a health
7 care provider or by a provider of health care services under orders
8 of, or on referral by, a health care provider, either for: (I)
9 Restorative surgery after an accident or other injury; or (II) a
10 condition that would likely result in a period of incapacity of more
11 than three consecutive, full calendar days in the absence of medical
12 intervention or treatment, such as cancer, severe arthritis, or
13 kidney disease.

14 (b) The requirement in (a)(i) and (ii) of this subsection for
15 treatment by a health care provider means an in-person visit to a
16 health care provider. The first, or only, in-person treatment visit
17 must take place within seven days of the first day of incapacity.

18 (c) Whether additional treatment visits or a regimen of
19 continuing treatment is necessary within the thirty-day period shall
20 be determined by the health care provider.

21 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
22 subsection means circumstances beyond the employee's control that
23 prevent the follow-up visit from occurring as planned by the health
24 care provider. Whether a given set of circumstances are extenuating
25 depends on the facts. For example, extenuating circumstances exist if
26 a health care provider determines that a second in-person visit is
27 needed within the thirty-day period, but the health care provider
28 does not have any available appointments during that time period.

29 (e) Treatment for purposes of (a) of this subsection includes,
30 but is not limited to, examinations to determine if a serious health
31 condition exists and evaluations of the condition. Treatment does not
32 include routine physical examinations, eye examinations, or dental
33 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
34 continuing treatment includes, but is not limited to, a course of
35 prescription medication, such as an antibiotic, or therapy requiring
36 special equipment to resolve or alleviate the health condition, such
37 as oxygen. A regimen of continuing treatment that includes taking
38 over-the-counter medications, such as aspirin, antihistamines, or
39 salves, or bed rest, drinking fluids, exercise, and other similar
40 activities that can be initiated without a visit to a health care

1 provider, is not, by itself, sufficient to constitute a regimen of
2 continuing treatment for purposes of this chapter.

3 (f) Conditions for which cosmetic treatments are administered,
4 such as most treatments for acne or plastic surgery, are not serious
5 health conditions unless inpatient hospital care is required or
6 unless complications develop. Ordinarily, unless complications arise,
7 the common cold, the flu, ear aches, upset stomach, minor ulcers,
8 headaches other than migraines, routine dental or orthodontia
9 problems, and periodontal disease are examples of conditions that are
10 not serious health conditions and do not qualify for leave under this
11 chapter. Restorative dental or plastic surgery after an injury or
12 removal of cancerous growths are serious health conditions provided
13 all the other conditions of this section are met. Mental illness
14 resulting from stress or allergies may be serious health conditions,
15 but only if all the conditions of this section are met.

16 (g)(i) Substance abuse may be a serious health condition if the
17 conditions of this section are met. However, leave may only be taken
18 for treatment for substance abuse by a health care provider or by a
19 licensed substance abuse treatment provider. Absence because of the
20 employee's use of the substance, rather than for treatment, does not
21 qualify for leave under this chapter.

22 (ii) Treatment for substance abuse does not prevent an employer
23 from taking employment action against an employee. The employer may
24 not take action against the employee because the employee has
25 exercised his or her right to take medical leave for treatment.
26 However, if the employer has an established policy, applied in a
27 nondiscriminatory manner that has been communicated to all employees,
28 that provides under certain circumstances an employee may be
29 terminated for substance abuse, pursuant to that policy the employee
30 may be terminated whether or not the employee is presently taking
31 medical leave. An employee may also take family leave to care for a
32 covered family member who is receiving treatment for substance abuse.
33 The employer may not take action against an employee who is providing
34 care for a covered family member receiving treatment for substance
35 abuse.

36 (h) Absences attributable to incapacity under (a)(ii)(B) or (C)
37 of this subsection qualify for leave under this chapter even though
38 the employee or the family member does not receive treatment from a
39 health care provider during the absence, and even if the absence does
40 not last more than three consecutive, full calendar days. For

1 example, an employee with asthma may be unable to report for work due
2 to the onset of an asthma attack or because the employee's health
3 care provider has advised the employee to stay home when the pollen
4 count exceeds a certain level. An employee who is pregnant may be
5 unable to report to work because of severe morning sickness.

6 ~~((+20))~~ (21) "Service is localized in this state" has the same
7 meaning as described in RCW 50.04.120.

8 ~~((+21))~~ (22) "Spouse" means a husband or wife, as the case may
9 be, or state registered domestic partner.

10 ~~((+22))~~ (23) "State average weekly wage" means the most recent
11 average weekly wage calculated under RCW 50.04.355 and available on
12 January 1st of each year.

13 ~~((+23))~~ (24) "Typical workweek hours" means:

14 (a) For an hourly employee, the average number of hours worked
15 per week by an employee since the beginning of the qualifying period;
16 and

17 (b) Forty hours for a salaried employee, regardless of the number
18 of hours the salaried employee typically works.

19 ~~((+24))~~ (25) "Wage" means the same as "wages" under RCW
20 50.04.320(2), except that: (a) The term employment as used in RCW
21 50.04.320(2) is defined in this chapter; and (b) the maximum wages
22 subject to a premium assessment are those wages as set by the
23 commissioner under RCW 50A.04.115(4). "Wages" for purposes of
24 elective coverage under ~~((RCW 50A.04.120))~~ RCW 50A.04.105 has the
25 meaning as defined by rule.

26 **Sec. 8.** RCW 50A.04.020 and 2017 3rd sp.s. c 5 s 6 are each
27 amended to read as follows:

28 (1) Beginning January 1, 2020, family and medical leave are
29 available and benefits are payable to a qualified employee under this
30 section. Following a waiting period consisting of the first seven
31 calendar days of leave, benefits are payable when family or medical
32 leave is required. However, no waiting period is required for leave
33 for the birth or placement of a child. Benefits may continue during
34 the continuance of the need for family and medical leave, subject to
35 the maximum and minimum weekly benefits, duration, and other
36 conditions and limitations established in this chapter. Successive
37 periods of family and medical leave caused by the same or related
38 injury or sickness are deemed a single period of family and medical
39 leave only if separated by less than four months.

1 (2) The weekly benefit shall be prorated by the percentage of
2 hours on leave compared to the number of hours provided as the
3 typical workweek hours as defined in RCW 50A.04.010.

4 (a) The benefits in this section, if not a multiple of one
5 dollar, shall be reduced to the next lower multiple of one dollar.

6 (b) Hours on leave claimed for benefits under this chapter, if
7 not a multiple of one hour, shall be reduced to the next lower
8 multiple of one hour.

9 (c) The minimum claim duration payment is for eight consecutive
10 hours of leave.

11 (3)(a) The maximum duration of paid family leave may not exceed
12 twelve times the typical workweek hours during a period of fifty-two
13 consecutive calendar weeks.

14 (b) The maximum duration of paid medical leave may not exceed
15 twelve times the typical workweek hours during a period of fifty-two
16 consecutive calendar weeks. This leave may be extended an additional
17 two times the typical workweek hours if the employee experiences a
18 serious health condition with a pregnancy that results in incapacity.

19 (c) An employee is not entitled to paid family and medical leave
20 benefits under this chapter that exceeds a combined total of sixteen
21 times the typical workweek hours. The combined total of family and
22 medical leave may be extended to eighteen times the typical workweek
23 hours if the employee experiences a serious health condition with a
24 pregnancy that results in incapacity.

25 (d) In determining the duration of leave time remaining in fifty-
26 two consecutive calendar weeks, a railroad carrier may deduct only
27 the actual amount of leave taken by an employee in increments no
28 greater than twenty-four hours, and may not deduct more than one day
29 for each date the employee specifically applied for leave.

30 (4) The weekly benefit for family and medical leave shall be
31 determined as follows: If the employee's average weekly wage is: (a)
32 Fifty percent or less of the state average weekly wage, the
33 employee's weekly benefit is ninety percent of the employee's average
34 weekly wage; or (b) greater than fifty percent of the state average
35 weekly wage, the employee's weekly benefit is the sum of: (i) Ninety
36 percent of the employee's average weekly wage up to fifty percent of
37 the state average weekly wage; and (ii) fifty percent of the
38 employee's average weekly wage that is greater than fifty percent of
39 the state average weekly wage.

1 (5)(a) The maximum weekly benefit for family and medical leave
2 that occurs on or after January 1, 2020, shall be one thousand
3 dollars. By September 30, 2020, and by each subsequent September
4 30th, the commissioner shall adjust the maximum weekly benefit amount
5 to ninety percent of the state average weekly wage. The adjusted
6 maximum weekly benefit amount takes effect on the following January
7 1st.

8 (b) The minimum weekly benefit shall not be less than one hundred
9 dollars per week except that if the employee's average weekly wage at
10 the time of family and medical leave is less than one hundred dollars
11 per week, the weekly benefit shall be the employee's full wage.

12 **Sec. 9.** RCW 50A.04.025 and 2017 3rd sp.s. c 5 s 31 are each
13 amended to read as follows:

14 (1) Except as provided in RCW 50A.04.600(5) and subsection (6) of
15 this section, any employee who takes family or medical leave under
16 this chapter is entitled, on return from the leave:

17 (a) To be restored by the employer to the position of employment
18 held by the employee when the leave commenced; or

19 (b) To be restored by the employer to an equivalent position with
20 equivalent employment benefits, pay, and other terms and conditions
21 of employment.

22 (2) The taking of leave under this chapter may not result in the
23 loss of any employment benefits accrued before the date on which the
24 leave commenced.

25 (3) Nothing in this section shall be construed to entitle any
26 restored employee to:

27 (a) The accrual of any seniority or employment benefits during
28 any period of leave; or

29 (b) Any right, benefit, or position of employment other than any
30 right, benefit, or position to which the employee would have been
31 entitled had the employee not taken the leave.

32 (4) As a condition of restoration under subsection (1) of this
33 section for an employee who has taken medical leave, the employer may
34 have a uniformly applied practice or policy that requires each such
35 employee to receive certification from the employee's health care
36 provider that the employee is able to resume work.

37 (5) Nothing in this section shall be construed to prohibit an
38 employer from requiring an employee on leave to report periodically

1 to the employer on the status and intention of the employee to return
2 to work.

3 (6)(a) This section does not apply unless the employee: ~~((i))~~
4 (A) Works for an employer with fifty or more employees; ~~((ii))~~ (B)
5 has been employed by the current employer for twelve months or more;
6 and ~~((iii))~~ (C) has worked for the current employer for at least
7 one thousand two hundred fifty hours during the twelve months
8 immediately preceding the date on which leave will commence; or
9 (ii) Is an employee of a railroad carrier and:

10 (A) Has been assigned to and worked on a guaranteed extra call
11 board for at least the twelve months immediately preceding the date
12 on which leave will commence and has worked or been paid for:

13 (I) Not less than sixty percent of the applicable total monthly
14 guarantee, or the equivalent, during the twelve-month period; and

15 (II) Not less than five hundred four hours, not counting personal
16 commute time or time spent on vacation leave, sick leave, personal
17 leave, or medical leave, during the twelve-month period, for or by
18 that employer; or

19 (B) If the employee has not been assigned to and worked on a
20 guaranteed extra call board for at least twelve consecutive months
21 preceding, the employee has worked not less than five hundred four
22 hours, not counting personal commute time or time spent on vacation
23 leave, sick leave, personal leave, or medical leave, during the
24 preceding twelve months of time that the employee was actively
25 working for or by that employer.

26 (b) For the purposes of this subsection ~~((7))~~:

27 (i) An employer shall be considered to employ fifty or more
28 employees if the employer employs fifty or more employees for each
29 working day during each of twenty or more calendar workweeks in the
30 current or preceding calendar year.

31 ~~((b))~~ (ii) "Applicable monthly guarantee" means: (A) The
32 minimum number of hours for which an employer has agreed to
33 compensate such employee for any given month for an employee
34 described in (a)(ii)(A) of this subsection other than an employee on
35 reserve status; and (B) the number of hours for which an employer has
36 agreed to pay such employee on reserve status for any given month, as
37 established in the applicable collective bargaining agreement or, if
38 none exists, in the employer's policies for an employee described in
39 (a)(ii)(A) of this subsection who is on reserve status.

1 (c) An employer may deny restoration under this section to any
2 salaried employee who is among the highest paid ten percent of the
3 employees employed by the employer within seventy-five miles of the
4 facility at which the employee is employed if:

5 (i) Denial is necessary to prevent substantial and grievous
6 economic injury to the operations of the employer;

7 (ii) The employer notifies the employee of the intent of the
8 employer to deny restoration on such basis at the time the employer
9 determines that the injury would occur; and

10 (iii) The leave has commenced and the employee elects not to
11 return to employment after receiving the notice.

12 **Sec. 10.** RCW 50A.04.035 and 2017 3rd sp.s. c 5 s 13 are each
13 amended to read as follows:

14 (1) Family and medical leave insurance benefits are payable to an
15 employee during a period in which the employee is unable to perform
16 his or her regular or customary work because he or she is on family
17 and medical leave if the employee:

18 (a) Files an application for benefits as required by rules
19 adopted by the commissioner;

20 (b) Has met the eligibility requirements of RCW 50A.04.015 or the
21 elective coverage requirements under RCW 50A.04.105;

22 (c) Consents to the disclosure of information or records deemed
23 private and confidential under state law. Initial disclosure of this
24 information and these records by another state agency to the
25 department is solely for purposes related to the administration of
26 this chapter. Further disclosure of this information or these records
27 is subject to chapter 50.13 RCW and RCW 50A.04.195(3) and 50A.04.080;

28 (d) Discloses whether or not he or she owes child support
29 obligations as defined in RCW 50.40.050;

30 (e) Provides his or her social security number;

31 (f) Provides a document authorizing the family member's or
32 employee's health care provider, as applicable, to disclose the
33 family member's or employee's health care information in the form of
34 the certification of a serious health condition;

35 (g) Provides the employer from whom family and medical leave is
36 to be taken with written notice of the employee's intention to take
37 family leave in the same manner as an employee is required to provide
38 notice in RCW 50A.04.030 and, in the employee's initial application
39 for benefits, attests that written notice has been provided; and

1 (h) If requested by the employer, provides documentation of a
2 military exigency.

3 (2) An employee who is not in employment for an employer at the
4 time of filing an application for benefits is exempt from subsection
5 (1)(g) and (h) of this section.

6 (3) In adopting rules to implement this section, the department
7 shall adopt rules applicable to railroad carriers that at least
8 address the following matters:

9 (a) What constitutes complete and sufficient certification from a
10 medical provider, such that no additional details may be requested;
11 and

12 (b) Limits on employer requests for recertification after
13 approval has previously been granted for that year.

14 NEW SECTION. Sec. 11. Sections 1 through 6 of this act are each
15 added to chapter 81.40 RCW.

16 NEW SECTION. Sec. 12. This act shall be known and cited as the
17 safe leave act for Washington railroad workers.

18 NEW SECTION. Sec. 13. Sections 1 through 6 of this act are
19 necessary for the immediate preservation of the public peace, health,
20 or safety, or support of the state government and its existing public
21 institutions, and take effect immediately.

22 NEW SECTION. Sec. 14. If any part of this act is found to be in
23 conflict with federal requirements that are a prescribed condition to
24 the allocation of federal funds to the state, the conflicting part of
25 this act is inoperative solely to the extent of the conflict and with
26 respect to the agencies directly affected, and this finding does not
27 affect the operation of the remainder of this act in its application
28 to the agencies concerned. Rules adopted under this act must meet
29 federal requirements that are a necessary condition to the receipt of
30 federal funds by the state.

31 NEW SECTION. Sec. 15. If any provision of this act or its
32 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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