

---

**SUBSTITUTE SENATE BILL 5295**

---

**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** Senate State Government, Tribal Relations & Elections (originally sponsored by Senators Braun, Ranker, Hasegawa, Keiser, and Chase; by request of Office of Financial Management)

READ FIRST TIME 01/22/18.

1 AN ACT Relating to adding the use of shared leave for employees  
2 who are sick or temporarily disabled because of pregnancy disability  
3 or for the purposes of parental leave to bond with the employee's  
4 newborn, adoptive, or foster child; amending RCW 41.04.650,  
5 41.04.655, 41.04.660, and 41.04.665; and providing an effective date.

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

7 **Sec. 1.** RCW 41.04.650 and 1989 c 93 s 1 are each amended to read  
8 as follows:

9 The legislature finds that: (1) State employees historically have  
10 joined together to help their fellow employees who suffer from, or  
11 have relatives or household members suffering from, an extraordinary  
12 or severe illness, injury, impairment, or physical or mental  
13 condition which prevents the individual from working and causes great  
14 economic and emotional distress to the employee and his or her  
15 family; ~~((and))~~ (2) state employees have also joined together to help  
16 their fellow employees who are sick or temporarily disabled because  
17 of pregnancy disability or for the purpose of parental leave to bond  
18 with the employee's newborn, adoptive, or foster child; and (3) these  
19 circumstances may be exacerbated because the affected employees use  
20 all their accrued sick leave and annual leave and are forced to take  
21 leave without pay or terminate their employment. Therefore, the

1 legislature intends to provide for the establishment of a leave  
2 sharing program.

3 **Sec. 2.** RCW 41.04.655 and 2008 c 36 s 1 are each amended to read  
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout RCW 41.04.650 through 41.04.670,  
7 28A.400.380, and section 7, chapter 93, Laws of 1989.

8 (1) "Domestic violence" means: (a) Physical harm, bodily injury,  
9 assault, or the infliction of fear of imminent physical harm, bodily  
10 injury, or assault, between family or household members as defined in  
11 RCW 26.50.010; (b) sexual assault of one family or household member  
12 by another family or household member; or (c) stalking as defined in  
13 RCW 9A.46.110 of one family or household member by another family or  
14 household member.

15 (2) "Employee" means any employee of the state, including  
16 employees of school districts and educational service districts, who  
17 are entitled to accrue sick leave or annual leave and for whom  
18 accurate leave records are maintained.

19 (3) "Parental leave" means leave to bond and care for a newborn  
20 child after birth or to bond and care for a child after placement for  
21 adoption or foster care, for a period of up to sixteen weeks after  
22 the birth or placement.

23 (4) "Pregnancy disability" means a pregnancy-related medical  
24 condition or miscarriage.

25 (5) "Program" means the leave sharing program established in RCW  
26 41.04.660.

27 (~~(4)~~) (6) "Service in the uniformed services" means the  
28 performance of duty on a voluntary or involuntary basis in a  
29 uniformed service under competent authority and includes active duty,  
30 active duty for training, initial active duty for training, inactive  
31 duty training, full-time national guard duty including state-ordered  
32 active duty, and a period for which a person is absent from a  
33 position of employment for the purpose of an examination to determine  
34 the fitness of the person to perform any such duty.

35 (~~(5)~~) (7) "Sexual assault" has the same meaning as set forth in  
36 RCW 70.125.030.

37 (~~(6)~~) (8) "Stalking" has the same meaning as set forth in RCW  
38 9A.46.110.

1       (~~(7)~~) (9) "State agency" or "agency" means departments,  
2 offices, agencies, or institutions of state government, the  
3 legislature, institutions of higher education, school districts, and  
4 educational service districts.

5       (~~(8)~~) (10) "Uniformed services" means the armed forces, the  
6 army national guard, and the air national guard of any state,  
7 territory, commonwealth, possession, or district when engaged in  
8 active duty for training, inactive duty training, full-time national  
9 guard duty, or state active duty, the commissioned corps of the  
10 public health service, the coast guard, and any other category of  
11 persons designated by the president of the United States in time of  
12 war or national emergency.

13       (~~(9)~~) (11) "Victim" means a person against whom domestic  
14 violence, sexual assault, or stalking has been committed as defined  
15 in this section.

16       **Sec. 3.** RCW 41.04.660 and 2008 c 36 s 2 are each amended to read  
17 as follows:

18       The Washington state leave sharing program is hereby created. The  
19 purpose of the program is to permit state employees, at no  
20 significantly increased cost to the state of providing annual leave,  
21 sick leave, or personal holidays, to come to the aid of a fellow  
22 state employee who is suffering from or has a relative or household  
23 member suffering from an extraordinary or severe illness, injury,  
24 impairment, or physical or mental condition; a fellow state employee  
25 who is a victim of domestic violence, sexual assault, or stalking; a  
26 fellow state employee who is sick or temporarily disabled because of  
27 pregnancy disability or for the purpose of parental leave; or a  
28 fellow state employee who has been called to service in the uniformed  
29 services, which has caused or is likely to cause the employee to take  
30 leave without pay or terminate his or her employment.

31       **Sec. 4.** RCW 41.04.665 and 2017 c 173 s 1 are each amended to  
32 read as follows:

33       (1) An agency head may permit an employee to receive leave under  
34 this section if:

35       (a)(i) The employee suffers from, or has a relative or household  
36 member suffering from, an illness, injury, impairment, or physical or  
37 mental condition which is of an extraordinary or severe nature;

1 (ii) The employee has been called to service in the uniformed  
2 services;

3 (iii) The employee is a current member of the uniformed services  
4 or is a veteran as defined under RCW 41.04.005, and is attending  
5 medical appointments or treatments for a service connected injury or  
6 disability;

7 (iv) The employee is a spouse of a current member of the  
8 uniformed services or a veteran as defined under RCW 41.04.005, who  
9 is attending medical appointments or treatments for a service  
10 connected injury or disability and requires assistance while  
11 attending appointment or treatment;

12 (v) A state of emergency has been declared anywhere within the  
13 United States by the federal or any state government and the employee  
14 has needed skills to assist in responding to the emergency or its  
15 aftermath and volunteers his or her services to either a governmental  
16 agency or to a nonprofit organization engaged in humanitarian relief  
17 in the devastated area, and the governmental agency or nonprofit  
18 organization accepts the employee's offer of volunteer services;  
19 (~~⊖~~))

20 (vi) The employee is a victim of domestic violence, sexual  
21 assault, or stalking;

22 (vii) The employee needs the time for parental leave; or  
23 (viii) The employee is sick or temporarily disabled because of  
24 pregnancy disability;

25 (b) The illness, injury, impairment, condition, call to service,  
26 emergency volunteer service, or consequence of domestic violence,  
27 sexual assault, temporary layoff under section 3(5), chapter 32, Laws  
28 of 2010 1st sp. sess., or stalking has caused, or is likely to cause,  
29 the employee to:

30 (i) Go on leave without pay status; or  
31 (ii) Terminate state employment;

32 (c) The employee's absence and the use of shared leave are  
33 justified;

34 (d) The employee has depleted or will shortly deplete his or her:  
35 (i) Annual leave and sick leave reserves if he or she qualifies  
36 under (a)(i) of this subsection;

37 (ii) Annual leave and paid military leave allowed under RCW  
38 38.40.060 if he or she qualifies under (a)(ii) of this subsection;  
39 (~~⊖~~))

1 (iii) Annual leave if he or she qualifies under (a)(v) or (vi) of  
2 this subsection; or

3 (iv) Annual leave and sick leave reserves if the employee  
4 qualifies under (a)(vii) or (viii) of this subsection. However, the  
5 employee is not required to deplete all of his or her annual leave  
6 and sick leave and can maintain up to forty hours of annual leave and  
7 forty hours of sick leave in reserve;

8 (e) The employee has abided by agency rules regarding:

9 (i) Sick leave use if he or she qualifies under (a)(i) ~~((e))~~,  
10 (vi), (vii), or (viii) of this subsection; or

11 (ii) Military leave if he or she qualifies under (a)(ii) of this  
12 subsection; and

13 (f) The employee has diligently pursued and been found to be  
14 ineligible for benefits under chapter 51.32 RCW if he or she  
15 qualifies under (a)(i) of this subsection.

16 (2) The agency head shall determine the amount of leave, if any,  
17 which an employee may receive under this section. However, an  
18 employee shall not receive a total of more than five hundred twenty-  
19 two days of leave, except that, a supervisor may authorize leave in  
20 excess of five hundred twenty-two days in extraordinary circumstances  
21 for an employee qualifying for the shared leave program because he or  
22 she is suffering from an illness, injury, impairment, or physical or  
23 mental condition which is of an extraordinary or severe nature.  
24 Shared leave received under the uniformed service shared leave pool  
25 in RCW 41.04.685 is not included in this total.

26 (3) The agency head must allow employees who are veterans, as  
27 defined under RCW 41.04.005, and their spouses, to access shared  
28 leave from the veterans' in-state service shared leave pool upon  
29 employment.

30 (4) An employee may transfer annual leave, sick leave, and his or  
31 her personal holiday, as follows:

32 (a) An employee who has an accrued annual leave balance of more  
33 than ten days may request that the head of the agency for which the  
34 employee works transfer a specified amount of annual leave to another  
35 employee authorized to receive leave under subsection (1) of this  
36 section. In no event may the employee request a transfer of an amount  
37 of leave that would result in his or her annual leave account going  
38 below ten days. For purposes of this subsection (4)(a), annual leave  
39 does not accrue if the employee receives compensation in lieu of  
40 accumulating a balance of annual leave.

1 (b) An employee may transfer a specified amount of sick leave to  
2 an employee requesting shared leave only when the donating employee  
3 retains a minimum of one hundred seventy-six hours of sick leave  
4 after the transfer.

5 (c) An employee may transfer, under the provisions of this  
6 section relating to the transfer of leave, all or part of his or her  
7 personal holiday, as that term is defined under RCW 1.16.050, or as  
8 such holidays are provided to employees by agreement with a school  
9 district's board of directors if the leave transferred under this  
10 subsection does not exceed the amount of time provided for personal  
11 holidays under RCW 1.16.050.

12 (5) An employee of an institution of higher education under RCW  
13 28B.10.016, school district, or educational service district who does  
14 not accrue annual leave but does accrue sick leave and who has an  
15 accrued sick leave balance of more than twenty-two days may request  
16 that the head of the agency for which the employee works transfer a  
17 specified amount of sick leave to another employee authorized to  
18 receive leave under subsection (1) of this section. In no event may  
19 such an employee request a transfer that would result in his or her  
20 sick leave account going below twenty-two days. Transfers of sick  
21 leave under this subsection are limited to transfers from employees  
22 who do not accrue annual leave. Under this subsection, "sick leave"  
23 also includes leave accrued pursuant to RCW 28A.400.300(1)(b) or  
24 28A.310.240(1) with compensation for illness, injury, and  
25 emergencies.

26 (6) Transfers of leave made by an agency head under subsections  
27 (4) and (5) of this section shall not exceed the requested amount.

28 (7) Leave transferred under this section may be transferred from  
29 employees of one agency to an employee of the same agency or, with  
30 the approval of the heads of both agencies, to an employee of another  
31 state agency.

32 (8) While an employee is on leave transferred under this section,  
33 he or she shall continue to be classified as a state employee and  
34 shall receive the same treatment in respect to salary, wages, and  
35 employee benefits as the employee would normally receive if using  
36 accrued annual leave or sick leave.

37 (a) All salary and wage payments made to employees while on leave  
38 transferred under this section shall be made by the agency employing  
39 the person receiving the leave. The value of leave transferred shall  
40 be based upon the leave value of the person receiving the leave.

1 (b) In the case of leave transferred by an employee of one agency  
2 to an employee of another agency, the agencies involved shall arrange  
3 for the transfer of funds and credit for the appropriate value of  
4 leave.

5 (i) Pursuant to rules adopted by the office of financial  
6 management, funds shall not be transferred under this section if the  
7 transfer would violate any constitutional or statutory restrictions  
8 on the funds being transferred.

9 (ii) The office of financial management may adjust the  
10 appropriation authority of an agency receiving funds under this  
11 section only if and to the extent that the agency's existing  
12 appropriation authority would prevent it from expending the funds  
13 received.

14 (iii) Where any questions arise in the transfer of funds or the  
15 adjustment of appropriation authority, the director of financial  
16 management shall determine the appropriate transfer or adjustment.

17 (9) Leave transferred under this section shall not be used in any  
18 calculation to determine an agency's allocation of full time  
19 equivalent staff positions.

20 (10)(a) The value of any leave transferred under this section  
21 which remains unused shall be returned at its original value to the  
22 employee or employees who transferred the leave when the agency head  
23 finds that the leave is no longer needed or will not be needed at a  
24 future time in connection with the illness or injury for which the  
25 leave was transferred or for any other qualifying condition. Unused  
26 shared leave may not be returned until one of the following occurs:

27 (i) The agency head receives from the affected employee a  
28 statement from the employee's doctor verifying that the illness or  
29 injury is resolved; or

30 (ii) The employee is released to full-time employment; has not  
31 received additional medical treatment for his or her current  
32 condition or any other qualifying condition for at least six months;  
33 and the employee's doctor has declined, in writing, the employee's  
34 request for a statement indicating the employee's condition has been  
35 resolved.

36 (b) If a shared leave account is closed and an employee later has  
37 a need to use shared leave due to the same condition listed in the  
38 closed account, the agency head must approve a new shared leave  
39 request for the employee.

1 (c) To the extent administratively feasible, the value of unused  
2 leave which was transferred by more than one employee shall be  
3 returned on a pro rata basis.

4 (11) An employee who uses leave that is transferred to him or her  
5 under this section may not be required to repay the value of the  
6 leave that he or she used.

7 (12) The director of financial management may adopt rules as  
8 necessary to implement subsection (2) of this section.

9 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2018.

--- END ---