

HB 2739 - S AMD 1359

By Senator Hunt

ADOPTED 03/10/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 41.04.655 and 2018 c 39 s 2 are each amended to
4 read 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 (6) "Service in the uniformed services" means the performance of
28 duty on a voluntary or involuntary basis in a uniformed service under
29 competent authority and includes active duty, active duty for
30 training, initial active duty for training, inactive duty training,
31 full-time national guard duty including state-ordered active duty,
32 and a period for which a person is absent from a position of

1 employment for the purpose of an examination to determine the fitness
2 of the person to perform any such duty.

3 (7) "Sexual assault" has the same meaning as set forth in RCW
4 70.125.030.

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

7 (9) "State agency" or "agency" means departments, offices,
8 agencies, or institutions of state government, the legislature,
9 institutions of higher education, school districts, and educational
10 service districts.

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

19 (11) "Victim" means a person against whom domestic violence,
20 sexual assault, or stalking has been committed as defined in this
21 section.

22 **Sec. 2.** RCW 41.04.665 and 2019 c 64 s 17 are each amended to
23 read as follows:

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

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

29 (ii) The employee has been called to service in the uniformed
30 services;

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

35 (iv) The employee is a spouse of a current member of the
36 uniformed services or a veteran as defined under RCW 41.04.005, who
37 is attending medical appointments or treatments for a service
38 connected injury or disability and requires assistance while
39 attending appointment or treatment;

1 (v) A state of emergency has been declared anywhere within the
2 United States by the federal or any state government and the employee
3 has needed skills to assist in responding to the emergency or its
4 aftermath and volunteers his or her services to either a governmental
5 agency or to a nonprofit organization engaged in humanitarian relief
6 in the devastated area, and the governmental agency or nonprofit
7 organization accepts the employee's offer of volunteer services;

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

10 (vii) The employee needs the time for parental leave; or

11 (viii) The employee is sick or temporarily disabled because of
12 pregnancy disability;

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

18 (i) Go on leave without pay status; or

19 (ii) Terminate state employment;

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

22 (d) The employee has depleted or will shortly deplete his or her:

23 (i) Annual leave and sick leave reserves if he or she qualifies
24 under (a)(i) of this subsection;

25 (ii) Annual leave and paid military leave allowed under RCW
26 38.40.060 if he or she qualifies under (a)(ii) of this subsection;

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

29 (iv) Annual leave and sick leave reserves if the employee
30 qualifies under (a)(vii) or (viii) of this subsection(~~(. However, the~~
31 ~~employee is not required to deplete all of his or her annual leave~~
32 ~~and sick leave and can maintain up to forty hours of annual leave and~~
33 ~~forty hours of sick leave in reserve));~~

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

35 (i) Sick leave use if he or she qualifies under (a)(i), (vi),
36 (vii), or (viii) of this subsection; or

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

39 (~~The employee has diligently pursued and been found to be~~
40 ~~ineligible for benefits under chapter 51.32 RCW if he or she~~

1 ~~qualifies under (a)(i) of this subsection))~~ (i) Until the expiration
2 of proclamation 20-05, issued February 29, 2020, by the governor and
3 declaring a state of emergency in the state of Washington, or any
4 amendment thereto, whichever is later, an agency head may permit an
5 employee to receive shared leave under this section if the employee,
6 or a relative or household member, is isolated or quarantined as
7 recommended, requested, or ordered by a public health official or
8 health care provider as a result of suspected or confirmed infection
9 with or exposure to the 2019 novel coronavirus (COVID-19). An agency
10 head may permit use of shared leave under this subsection (1)(f)
11 without considering the requirements of (a) through (e) of this
12 subsection.

13 (ii) The office of the governor must provide notice of the
14 expiration of proclamation 20-05, or any amendment thereto, whichever
15 is later, to the chief clerk of the house of representatives, the
16 secretary of the senate, the office of the code reviser, and others
17 as deemed appropriate by the office of the governor.

18 (2) (a) The agency head shall determine the amount of leave, if
19 any, which an employee may receive under this section. However, the
20 agency head may not prevent an employee from using shared leave
21 intermittently or on nonconsecutive days so long as the leave has not
22 been returned under subsection (10) of this section. In addition, an
23 employee shall not receive a total of more than five hundred twenty-
24 two days of leave, except that, a supervisor may authorize leave in
25 excess of five hundred twenty-two days in extraordinary circumstances
26 for an employee qualifying for the shared leave program because he or
27 she is suffering from an illness, injury, impairment, or physical or
28 mental condition which is of an extraordinary or severe nature.
29 Shared leave received under the uniformed service shared leave pool
30 in RCW 41.04.685 is not included in this total.

31 (b) An employee receiving industrial insurance wage replacement
32 benefits may not receive greater than twenty-five percent of his or
33 her base salary from the receipt of shared leave under this section.

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

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

1 (a) An employee who has an accrued annual leave balance of more
2 than ten days may request that the head of the agency for which the
3 employee works transfer a specified amount of annual leave to another
4 employee authorized to receive leave under subsection (1) of this
5 section. In no event may the employee request a transfer of an amount
6 of leave that would result in his or her annual leave account going
7 below ten days. For purposes of this subsection (4)(a), annual leave
8 does not accrue if the employee receives compensation in lieu of
9 accumulating a balance of annual leave.

10 (b) An employee may transfer a specified amount of sick leave to
11 an employee requesting shared leave only when the donating employee
12 retains a minimum of one hundred seventy-six hours of sick leave
13 after the transfer.

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

21 (5) An employee of an institution of higher education under RCW
22 28B.10.016, school district, or educational service district who does
23 not accrue annual leave but does accrue sick leave and who has an
24 accrued sick leave balance of more than twenty-two days may request
25 that the head of the agency for which the employee works transfer a
26 specified amount of sick leave to another employee authorized to
27 receive leave under subsection (1) of this section. In no event may
28 such an employee request a transfer that would result in his or her
29 sick leave account going below twenty-two days. Transfers of sick
30 leave under this subsection are limited to transfers from employees
31 who do not accrue annual leave. Under this subsection, "sick leave"
32 also includes leave accrued pursuant to RCW 28A.400.300(1)(b) or
33 28A.310.240(1) with compensation for illness, injury, and
34 emergencies.

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

37 (7) Leave transferred under this section may be transferred from
38 employees of one agency to an employee of the same agency or, with
39 the approval of the heads of both agencies, to an employee of another
40 state agency.

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

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

10 (b) In the case of leave transferred by an employee of one agency
11 to an employee of another agency, the agencies involved shall arrange
12 for the transfer of funds and credit for the appropriate value of
13 leave.

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

18 (ii) The office of financial management may adjust the
19 appropriation authority of an agency receiving funds under this
20 section only if and to the extent that the agency's existing
21 appropriation authority would prevent it from expending the funds
22 received.

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

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

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

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

39 (ii) The employee is released to full-time employment; has not
40 received additional medical treatment for his or her current

1 condition or any other qualifying condition for at least six months;
2 and the employee's doctor has declined, in writing, the employee's
3 request for a statement indicating the employee's condition has been
4 resolved.

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

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

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

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

17 (13) For the purposes of this section, "shortly deplete" means
18 that the employee will have forty hours or less of the applicable
19 leave types under subsection (1)(d) of this section. However, the
20 employee is not required to deplete all of the employee's leave and
21 can maintain up to forty hours of the applicable leave types in
22 reserve.

23 NEW SECTION. Sec. 3. A new section is added to chapter 41.04
24 RCW to read as follows:

25 (1) Parental leave received under RCW 41.04.665 must be used
26 within the sixteen weeks immediately after birth or placement, except
27 as provided in subsection (2) of this section.

28 (2) If a person receiving parental leave also receives leave due
29 to a pregnancy disability, the parental leave may be taken in the
30 sixteen weeks immediately after the pregnancy disability leave.
31 However, parental leave may not be used more than one year after
32 birth.

33 NEW SECTION. Sec. 4. Section 2 of this act is necessary for the
34 immediate preservation of the public peace, health, or safety, or
35 support of the state government and its existing public institutions,
36 and takes effect immediately."

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1 On page 1, line 2 of the title, after "program;" strike the
2 remainder of the title and insert "amending RCW 41.04.655 and
3 41.04.665; adding a new section to chapter 41.04 RCW; and declaring
4 an emergency."

EFFECT: (1) Modifies the definition of "parental leave" for purposes of the shared leave program.

(2) Defines "shortly deplete" for the purposes of qualifying for the state shared leave program, allowing an employee to maintain up to 40 hours of each applicable leave type in reserve and still be eligible for shared leave.

(3) Removes the requirement that an employee pursue and be found ineligible for industrial insurance wage benefits for shared leave eligibility.

(4) Limits the amount of shared leave that an employee may receive when also receiving industrial insurance wage replacement benefits to twenty-five percent of base salary.

(5) Requires parental leave be used in the 16 weeks immediately following birth or placement, unless a person is also receiving shared leave for a pregnancy disability, in which case the 16 weeks of parental leave may be taken immediately following the pregnancy disability leave.

(6) Requires parental leave to be taken within one year following birth.

(7) Allows use of shared leave for employees who are isolated or quarantined, or who have relatives or household members who are isolated or quarantined, as recommended, requested, or ordered by a public health official or health care provider as a result of suspected or confirmed COVID-19 infection or exposure, regardless of whether other standards for use of shared leave are met. This additional authority expires when the proclamation declaring an emergency, or any amendment to the proclamation, expires.

(8) Corrects the title.

(9) Adds an emergency clause.

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