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HOUSE BILL 1843

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State of Washington

66th Legislature

2019 Regular Session

**By** Representatives Chapman, Volz, Blake, Boehnke, Ryu, Chandler, Macri, Young, Santos, Eslick, Riccelli, Jenkin, Senn, Stokesbary, Sells, Griffey, Morgan, Harris, Stonier, Walsh, Gregerson, Lovick, Wylie, McCaslin, Stanford, Dent, Fitzgibbon, Van Werven, Ramos, Peterson, Graham, Pollet, Hudgins, Ortiz-Self, Ybarra, Walen, Valdez, Ormsby, Goodman, Dolan, Jinkins, Cody, Frame, Tarleton, Appleton, Bergquist, Callan, Pellicciotti, Shewmake, Kilduff, Lekanoff, Davis, Pettigrew, Doglio, and Entenman

Read first time 02/01/19. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to safeguarding the public safety by protecting  
2 railroad workers; adding new sections to chapter 81.40 RCW; adding a  
3 new title to the Revised Code of Washington to be codified as Title  
4 50B RCW; prescribing penalties; and providing an effective date.

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 work-related conditions are more prevalent among railroad  
19 workers. The federal railway safety improvement act of 2008 directed  
20 the appropriate federal agencies to address fatigue, but those  
21 agencies 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 railroad worker  
11 safety, the legislature intends to take steps to assure that railroad  
12 crew employees are healthy and rested and to assure that railroad  
13 crew employees receive fair family and medical leave.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply  
15 throughout sections 1 through 6 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 of the employee or the employee's  
30 spouse or child if:

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

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

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

1 absence from work. The railroad carrier must grant the employee no  
2 fewer than thirty days to obtain and provide any requested  
3 documentation.

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

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

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

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

24 (4) The commission shall adopt rules to implement this section.  
25 In adopting rules, the commission shall consider the following:

26 (a) Alertness, depression, suicide, and any other consequences of  
27 irregular, nonscheduled on-call working conditions;

28 (b) Reputable scientific and academic research pertaining to  
29 sleep, rest, circadian rhythms, alertness, as well as associated  
30 topics relating to human biological systems;

31 (c) Other systemic factors including:

32 (i) Impacts of lengthy anticipatory time periods rail workers are  
33 regularly subjected to while awaiting carrier calls to report for  
34 duty;

35 (ii) Operational factors relating to unpredictability of  
36 reporting times, including crew notification systems and rail carrier  
37 train line-up reporting and monitoring systems; and

38 (iii) Any other factors that may affect rail worker fatigue and  
39 alertness or have a related adverse impact on worker health; and

1 (d) The importance of ensuring fatigue layoffs are reasonable,  
2 necessary, and legitimate.

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

8 NEW SECTION. **Sec. 5.** A railroad carrier must provide data to  
9 the commission regarding the number of employee layoffs for injury,  
10 illness, and fatigue and the length of each layoff no later than  
11 January 31st of each year for the preceding year. No personally  
12 identifying information of employees may be submitted.

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

19 (2) If a railroad carrier is found to have committed an  
20 infraction under this section, the commission may impose upon the  
21 carrier a fine as follows:

22 (a) For a class I carrier, up to five hundred dollars for the  
23 first infraction, up to twenty-five thousand dollars for the second  
24 infraction within the preceding three-year time period, and up to one  
25 hundred thousand dollars for the third or subsequent infraction  
26 within the preceding three-year time period.

27 (b) For a class II or III carrier, up to one thousand dollars for  
28 the first infraction, up to five thousand dollars for the second  
29 infraction within the preceding three-year time period, and up to ten  
30 thousand dollars for the third or subsequent infraction within the  
31 preceding three-year time period.

32 (3) The commission may also order other remedies such as back pay  
33 and reinstatement, and may increase the fines by rule based on  
34 changing economic conditions.

35 NEW SECTION. **Sec. 7.** The definitions in this section apply  
36 throughout this chapter unless the context clearly requires  
37 otherwise.

1 (1) "Child" means a biological, adopted, or foster child, a  
2 stepchild, a legal ward, or a child of a person standing in loco  
3 parentis, who is: (a) Under eighteen years of age; or (b) eighteen  
4 years of age or older and incapable of self-care because of a mental  
5 or physical disability.

6 (2) "Commissioner" means the commissioner of the employment  
7 security department.

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

9 (4) "Employee" means a person who has been employed by a railroad  
10 carrier.

11 (5) "Employer" means any person, firm, corporation, partnership,  
12 business trust, legal representative, or other business entity,  
13 including any unit of local government including, but not limited to,  
14 a county, city, town, municipal corporation, quasi-municipal  
15 corporation, or political subdivision, which employs fifty or more  
16 employees for each working day during each of twenty or more calendar  
17 workweeks in the current or preceding calendar year, and engages in  
18 business as a railroad carrier.

19 (6) "Employment benefits" means all benefits provided or made  
20 available to employees by an employer, including group life  
21 insurance, health insurance, disability insurance, sick leave, annual  
22 leave, educational benefits, and pensions except benefits that are  
23 provided by a practice or written policy of an employer or through an  
24 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

25 (7) "Family member" means a child, parent, spouse, or state  
26 registered domestic partner of an employee.

27 (8) "Health care provider" means: (a) A person licensed as a  
28 physician under chapter 18.71 RCW or an osteopathic physician and  
29 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced  
30 registered nurse practitioner under chapter 18.79 RCW; or (c) any  
31 other person determined by the commissioner to be capable of  
32 providing health care services.

33 (9) "Intermittent leave" is leave taken in separate blocks of  
34 time due to a single qualifying reason.

35 (10) "Leave for a family member's serious health condition" means  
36 leave as described in section 9(1)(c) of this act.

37 (11) "Leave for the birth or placement of a child" means leave as  
38 described in section 9(1)(a) or (b) of this act.

39 (12) "Leave for the employee's serious health condition" means  
40 leave as described in section 9(1)(d) of this act.

1 (13) "Parent" means the biological or adoptive parent of an  
2 employee or an individual who stood in loco parentis to an employee  
3 when the employee was a child.

4 (14) "Period of incapacity" means an inability to work, attend  
5 school, or perform other regular daily activities because of the  
6 serious health condition, treatment of that condition or recovery  
7 from it, or subsequent treatment in connection with such inpatient  
8 care.

9 (15) "Railroad carrier" means any employer subject to the  
10 jurisdiction of the surface transportation board under 49 U.S.C. Sec.  
11 701, as it exists on the effective date of this section.

12 (16) "Reduced leave schedule" means a leave schedule that reduces  
13 the usual number of hours per workweek, or hours per workday, of an  
14 employee.

15 (17) "Serious health condition" has the same meaning as in RCW  
16 50A.04.010.

17 (18) "Spouse" means a husband or wife, as the case may be, or  
18 state registered domestic partner.

19 NEW SECTION. **Sec. 8.** The department shall administer the  
20 provisions of this chapter.

21 NEW SECTION. **Sec. 9.** (1) Subject to section 13 of this act, an  
22 employee is entitled to a total of twelve workweeks of leave during  
23 any twelve-month period for one or more of the following:

24 (a) Because of the birth of a child of the employee and in order  
25 to care for the child;

26 (b) Because of the placement of a child with the employee for  
27 adoption or foster care;

28 (c) In order to care for a family member of the employee, if the  
29 family member has a serious health condition; or

30 (d) Because of a serious health condition that makes the employee  
31 unable to perform the functions of the position of the employee.

32 (2) The entitlement to leave for the birth or placement of a  
33 child expires at the end of the twelve-month period beginning on the  
34 date of such birth or placement.

35 (3) In determining the duration of leave time remaining in fifty-  
36 two consecutive calendar weeks, a railroad carrier may deduct only  
37 the actual amount of leave taken by an employee in increments no  
38 greater than twenty-four hours, and may not deduct more than one

1 calendar day for each twenty-four hour period the employee  
2 specifically applied for leave.

3 (4) An employee is not entitled to leave under this section  
4 unless:

5 (a)(i) The employee worked for at least twelve months for the  
6 employer with respect to whom leave is requested under this section;  
7 and

8 (ii) The employee worked for at least five hundred four hours of  
9 service with the employer during the previous twelve-month period; or

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

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

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

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

27 (5) An employee is not entitled to leave under this section if  
28 the employee is employed by an employer with less than fifty  
29 employees.

30 NEW SECTION. **Sec. 10.** (1)(a) When leave is taken after the  
31 birth or placement of a child for adoption or foster care, an  
32 employee may take leave intermittently or on a reduced leave schedule  
33 with the employer's agreement. The employer's agreement is not  
34 required; however, for leave during which the employee has a serious  
35 health condition in connection with the birth of a child or if the  
36 newborn child has a serious health condition.

37 (b) Leave may be taken intermittently or on a reduced leave  
38 schedule when medically necessary for treatment of a serious health  
39 condition by or under the supervision of a health care provider, or

1 for recovery from treatment or recovery from a serious health  
2 condition. It may also be taken to provide care or psychological  
3 comfort for an immediate family member with a serious health  
4 condition.

5 (i) Intermittent leave may be taken for a serious health  
6 condition that requires treatment by a health care provider  
7 periodically, rather than for one continuous period of time, and may  
8 include leave of periods from an hour or more to several weeks.

9 (ii) Intermittent or reduced schedule leave may be taken for  
10 absences where the employee or family member is incapacitated or  
11 unable to perform the essential functions of the position because of  
12 a chronic serious health condition even if he or she is not receiving  
13 current or ongoing treatment by a health care provider.

14 (c) There is no limit on the size of an increment of leave when  
15 an employee takes intermittent leave or leave on a reduced leave  
16 schedule. However, an employer may limit leave increments to the  
17 shortest period of time that the employer's payroll system uses to  
18 account for absences or use of leave, provided it is one hour or  
19 less.

20 (d) The taking of leave intermittently or on a reduced leave  
21 schedule under this section may not result in a reduction in the  
22 total amount of leave to which the employee is entitled under section  
23 9 of this act beyond the amount of leave actually taken.

24 (2) If an employee requests intermittent leave, or leave on a  
25 reduced leave schedule, for a family member's serious health  
26 condition or the employee's serious health condition when the  
27 condition is foreseeable based on planned medical treatment, the  
28 employer may require such employee to transfer temporarily to an  
29 available alternative position at the same geographical location for  
30 which the employee is qualified and that:

- 31 (a) Has equivalent pay and benefits; and
- 32 (b) Better accommodates recurring periods of leave than the  
33 regular employment position of the employee.

34 NEW SECTION. **Sec. 11.** (1) Leave granted under section 9 of this  
35 act may consist of unpaid leave.

36 (2) Except as provided in subsection (3) of this section, this  
37 chapter does not affect an employee's entitlement to paid leave under  
38 Title 50A RCW.

1 (3) Unless otherwise expressly permitted by the employer, leave  
2 taken under this chapter must be taken concurrently with any paid  
3 leave taken under Title 50A RCW or any leave taken under the federal  
4 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3,  
5 107 Stat. 6, as it existed on October 19, 2017).

6 NEW SECTION. **Sec. 12.** (1) If the necessity for leave for the  
7 birth or placement of a child is foreseeable based on an expected  
8 birth or placement, the employee shall provide the employer with not  
9 less than thirty days' notice, before the date the leave is to begin,  
10 of the employee's intention to take leave for the birth or placement  
11 of a child, except that if the date of the birth or placement  
12 requires leave to begin in less than thirty days, the employee shall  
13 provide such notice as is practicable.

14 (2) If the necessity for leave for a family member's serious  
15 health condition or the employee's serious health condition is  
16 foreseeable based on planned medical treatment, the employee:

17 (a) Must make a reasonable effort to schedule the treatment so as  
18 not to disrupt unduly the operations of the employer, subject to the  
19 approval of the health care provider of the employee or the health  
20 care provider of the family member, as appropriate; and

21 (b) Must provide the employer with not less than thirty days'  
22 notice, before the date the leave is to begin, of the employee's  
23 intention to take leave for a family member's serious health  
24 condition or the employee's serious health condition, except that if  
25 the date of the treatment requires leave to begin in less than thirty  
26 days, the employee must provide such notice as is practicable.

27 NEW SECTION. **Sec. 13.** If spouses entitled to leave under this  
28 chapter are employed by the same employer, the aggregate number of  
29 workweeks of leave to which both may be entitled may be limited to  
30 twelve workweeks during any twelve-month period, if such leave is  
31 taken: (1) For the birth or placement of a child; or (2) for a family  
32 member's serious health condition.

33 NEW SECTION. **Sec. 14.** (1) An employer may require that a  
34 request for leave for a family member's serious health condition or  
35 the employee's serious health condition be supported by a  
36 certification issued by the health care provider of the employee or

1 of the family member, as appropriate. The employee must provide, in a  
2 timely manner, a copy of the certification to the employer.

3 (2) Certification provided under subsection (1) of this section  
4 is sufficient if it states:

5 (a) The date on which the serious health condition commenced;

6 (b) The probable duration of the condition;

7 (c) The appropriate medical facts within the knowledge of the  
8 health care provider regarding the condition;

9 (d) (i) For purposes of leave for a family member's serious health  
10 condition, a statement that the employee is needed to care for the  
11 family member and an estimate of the amount of time that such  
12 employee is needed to care for the family member; and

13 (ii) For purposes of leave for the employee's serious health  
14 condition, a statement that the employee is unable to perform the  
15 functions of the position of the employee;

16 (e) In the case of certification for intermittent leave, or leave  
17 on a reduced leave schedule, for planned medical treatment, the dates  
18 on which the treatment is expected to be given and the duration of  
19 the treatment;

20 (f) In the case of certification for intermittent leave, or leave  
21 on a reduced leave schedule, for the employee's serious health  
22 condition, a statement of the medical necessity for the intermittent  
23 leave or leave on a reduced leave schedule, and the expected duration  
24 of the intermittent leave or reduced leave schedule; and

25 (g) In the case of certification for intermittent leave, or leave  
26 on a reduced leave schedule, for a family member's serious health  
27 condition, a statement that the employee's intermittent leave or  
28 leave on a reduced leave schedule is necessary for the care of the  
29 family member who has a serious health condition, or will assist in  
30 their recovery, and the expected duration and schedule of the  
31 intermittent leave or reduced leave schedule.

32 (3) If the employer has reason to doubt the validity of the  
33 certification provided under subsection (1) of this section for leave  
34 for a family member's serious health condition or the employee's  
35 serious health condition, the employer may require, at the expense of  
36 the employer, that the employee obtain the opinion of a second health  
37 care provider designated or approved by the employer concerning any  
38 information certified under subsection (2) of this section for the  
39 leave. The second health care provider may not be contracted by a

1 vendor or service provider of, or employed on any prior basis by, the  
2 employer.

3 (4) If the second opinion described in subsection (3) of this  
4 section differs from the opinion in the original certification  
5 provided under subsection (1) of this section, the employer may  
6 require, at the expense of the employer, that the employee obtain the  
7 opinion of a third health care provider designated or approved  
8 jointly by the employer and the employee concerning the information  
9 certified under subsection (2) of this section. The opinion of the  
10 third health care provider concerning the information certified under  
11 subsection (2) of this section is considered to be final and is  
12 binding on the employer and the employee.

13 (5) The employer may require that the employee obtain subsequent  
14 recertifications on a reasonable basis.

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

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

20 (b) Limitations on employer requests for recertification,  
21 including defining what constitutes a reasonable basis after approval  
22 has previously been granted for that year.

23 NEW SECTION. **Sec. 15.** (1)(a) Except as provided in (b) of this  
24 subsection, any employee who takes leave under section 9 of this act  
25 the intended purpose of the leave is entitled, on return from the  
26 leave:

27 (i) To be restored by the employer to the position of employment  
28 held by the employee when the leave commenced; or

29 (ii) To be restored to an equivalent position with equivalent  
30 employment benefits, pay, and other terms and conditions of  
31 employment at a workplace within twenty miles of the employee's  
32 workplace when leave commenced.

33 (b) The taking of leave under section 9 of this act may not  
34 result in the loss of any employment benefits accrued before the date  
35 on which the leave commenced.

36 (c) Nothing in this subsection (1) entitles any restored employee  
37 to:

38 (i) The accrual of any seniority or employment benefits during  
39 any period of leave; or

1 (ii) Any right, benefit, or position of employment other than any  
2 right, benefit, or position to which the employee would have been  
3 entitled had the employee not taken the leave.

4 (d) As a condition of restoration under (a) of this subsection  
5 for an employee who has taken leave for the employee's serious health  
6 condition, the employer may have a uniformly applied practice or  
7 policy that requires each such employee to receive certification from  
8 the health care provider of the employee that the employee is able to  
9 resume work, except that nothing in this subsection (1)(d) supersedes  
10 a valid local law or a collective bargaining agreement that governs  
11 the return to work of such employees.

12 (e) Nothing in this subsection (1) prohibits an employer from  
13 requiring an employee on leave to report periodically to the employer  
14 on the status and intention of the employee to return to work.

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

19 (a) Denial is necessary to prevent substantial and grievous  
20 economic injury to the operations of the employer;

21 (b) The employer notifies the employee of its intent to deny  
22 restoration on such basis at the time the employer determines that  
23 the injury would occur; and

24 (c) The leave has commenced and the employee elects not to return  
25 to employment after receiving the notice.

26 NEW SECTION. **Sec. 16.** During any period of leave taken under  
27 section 9 of this act, if the employee is not eligible for any  
28 employer contribution to medical or dental benefits under an  
29 applicable collective bargaining agreement or employer policy during  
30 any period of leave, an employer shall allow the employee to  
31 continue, at the employee's expense, medical or dental insurance  
32 coverage, including any spouse and dependent coverage, in accordance  
33 with state or federal law. The premium to be paid by the employee  
34 shall not exceed one hundred two percent of the applicable premium  
35 for the leave period.

36 NEW SECTION. **Sec. 17.** (1) It is unlawful for any employer to:  
37 (a) Interfere with, restrain, or deny the exercise of, or the  
38 attempt to exercise, any right provided under this chapter; or

1 (b) Discharge or in any other manner discriminate against any  
2 individual for opposing any practice made unlawful by this chapter.

3 (2) It is unlawful for any person to discharge or in any other  
4 manner discriminate against any individual because the individual  
5 has:

6 (a) Filed any charge, or has instituted or caused to be  
7 instituted any proceeding, under or related to this chapter;

8 (b) Given, or is about to give, any information in connection  
9 with any inquiry or proceeding relating to any right provided under  
10 this chapter; or

11 (c) Testified, or is about to testify, in any inquiry or  
12 proceeding relating to any right provided under this chapter.

13 NEW SECTION. **Sec. 18.** Upon complaint by an employee, the  
14 commissioner shall investigate to determine if there has been  
15 noncompliance with this chapter and the rules adopted under this  
16 chapter. If the investigation indicates that a violation may have  
17 occurred, a hearing must be held in accordance with chapter 34.05  
18 RCW. The commissioner must issue a written determination including  
19 his or her findings within thirty business days after the hearing. A  
20 judicial appeal from the commissioner's determination may be taken in  
21 accordance with chapter 34.05 RCW, with the prevailing party entitled  
22 to recover reasonable costs and attorneys' fees.

23 NEW SECTION. **Sec. 19.** (1) An employer who is found, in  
24 accordance with section 18 of this act, to have violated a  
25 requirement of this chapter and the rules adopted under this chapter,  
26 is subject to a civil penalty as follows:

27 (a) For a class I carrier, up to five thousand dollars for the  
28 first violation, up to twenty-five thousand dollars for the second  
29 violation within a three-year period following any previous  
30 violation, and up to one hundred thousand dollars for the third or  
31 subsequent violation within a three-year period following any  
32 previous violation.

33 (b) For a class II or III carrier, up to one thousand dollars for  
34 the first violation, up to five thousand dollars for the second  
35 violation within a three-year period following any previous  
36 violation, and up to ten thousand dollars for the third or subsequent  
37 violation within a three-year period following any previous  
38 violation.

1 (c) For a violation of section 17(1)(a) of this act by any  
2 carrier because the employee complained, opposed, gave information or  
3 was about to give information, or testified or was about to testify,  
4 regarding a railroad safety matter, up to five million dollars.

5 (2) Civil penalties must be collected by the commission and  
6 deposited into the safe leave for railroad workers enforcement  
7 account.

8 NEW SECTION. **Sec. 20.** (1) Except as provided in subsection (2)  
9 of this section, any employer who violates section 17 of this act is  
10 liable:

11 (a) For damages equal to:

12 (i) The amount of:

13 (A) Any wages, salary, employment benefits, or other compensation  
14 denied or lost to such employee by reason of the violation;

15 (B) In a case in which wages, salary, employment benefits, or  
16 other compensation have not been denied or lost to the employee, any  
17 actual monetary losses sustained by the employee as a direct result  
18 of the violation, such as the cost of providing care, up to a sum  
19 equal to twelve weeks of wages or salary for the employee;

20 (ii) The interest on the amount described in (a)(i) of this  
21 subsection calculated at the prevailing rate of inflation plus ten  
22 percent; and

23 (iii) An additional amount as liquidated damages equal to the sum  
24 of the amount described in (a)(i) of this subsection and the interest  
25 described in (a)(ii) of this subsection, except that if an employer  
26 who has violated section 17 of this act proves to the satisfaction of  
27 the court that the act or omission that violated section 17 of this  
28 act was in good faith and that the employer had reasonable grounds  
29 for believing that the act or omission was not a violation of section  
30 17 of this act, the court may, in the discretion of the court, reduce  
31 the amount of the liability to the amount and interest determined  
32 under (a)(i) and (ii) of this subsection, respectively; and

33 (b) For such equitable relief as may be appropriate, including  
34 employment, reinstatement, and promotion.

35 (2) For a violation of section 17(1)(a) of this act by any  
36 carrier because the employee complained, opposed, gave information or  
37 was about to give information, or testified or was about to testify,  
38 regarding a railroad safety matter, the additional amount as  
39 liquidated damages shall be up to five million dollars.

1 (3) An action to recover the damages or equitable relief  
2 prescribed in subsection (1) of this section may be maintained  
3 against any employer in any court of competent jurisdiction by any  
4 one or more employees for and on behalf of:

5 (a) The employees; or

6 (b) The employees and other employees similarly situated.

7 (4) The court in such an action shall, in addition to any  
8 judgment awarded to the plaintiff, allow reasonable attorneys' fees,  
9 reasonable expert witness fees, and an additional amount to  
10 compensate for any taxes owed on a lump sum damage award payment, and  
11 any other costs of the action to be paid by the defendant.

12 NEW SECTION. **Sec. 21.** Each employer shall post and keep posted,  
13 in conspicuous places on the premises of the employer where notices  
14 to employees and applicants for employment are customarily posted, a  
15 notice, to be prepared or approved by the commissioner, setting forth  
16 excerpts from, or summaries of, the pertinent provisions of this  
17 chapter and information pertaining to the filing of a charge. Any  
18 employer that willfully violates this section may be subject to a  
19 civil penalty of not more than one thousand dollars for each separate  
20 offense. Any penalties collected by the commission under this section  
21 shall be deposited into the safe leave for railroad workers  
22 enforcement account.

23 NEW SECTION. **Sec. 22.** The safe leave for railroad workers  
24 enforcement account is created in the custody of the state treasurer.  
25 Any penalties collected under section 19 or 21 of this act shall be  
26 deposited into the account and shall be used only for the purposes of  
27 administering and enforcing this chapter. Only the commissioner or  
28 the commissioner's designee may authorize expenditures from the  
29 account. The account is subject to allotment procedures under this  
30 chapter, but an appropriation is not required for expenditures.

31 NEW SECTION. **Sec. 23.** Nothing in this chapter shall be  
32 construed:

33 (1) To modify or affect any state or local law prohibiting  
34 discrimination on the basis of race, religion, color, national  
35 origin, sex, age, or disability; or

1 (2) To supersede any provision of any local law that provides  
2 greater family or medical leave rights than the rights established  
3 under this chapter.

4 NEW SECTION. **Sec. 24.** Nothing in this chapter diminishes the  
5 obligation of an employer to comply with any collective bargaining  
6 agreement or any employment benefit program or plan that provides  
7 greater family or medical leave rights to employees than the rights  
8 established under this chapter. The rights established for employees  
9 under this chapter may not be diminished by any collective bargaining  
10 agreement or any employment benefit program or plan.

11 NEW SECTION. **Sec. 25.** Nothing in this chapter shall be  
12 construed to discourage employers from adopting or retaining leave  
13 policies more generous than any policies that comply with the  
14 requirements under this chapter.

15 NEW SECTION. **Sec. 26.** The commissioner shall adopt rules as  
16 necessary to implement this chapter.

17 NEW SECTION. **Sec. 27.** This chapter must be construed to the  
18 extent possible in a manner that is consistent with similar  
19 provisions, if any, of Title 50A RCW and the federal family and  
20 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat.  
21 6), and that gives consideration to the rules, precedents, and  
22 practices of the federal department of labor relevant to the federal  
23 act.

24 NEW SECTION. **Sec. 28.** This act may be known and cited as the  
25 safe leave act for Washington railroad workers.

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

1        NEW SECTION.    **Sec. 30.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 31.**    Sections 1 through 6 of this act are each  
6 added to chapter 81.40 RCW.

7        NEW SECTION.    **Sec. 32.**    Sections 7 through 29 and 33 of this act  
8 constitute a new chapter in a new title to be codified as Title 50B  
9 RCW.

10       NEW SECTION.    **Sec. 33.**    This act takes effect January 1, 2020.

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