

ESSB 5267 - H COMM AMD

By Committee on Labor & Workplace Standards

NOT CONSIDERED 01/02/2024

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that railroad
4 employees are susceptible to illness and infectious diseases from
5 working in confined spaces, as well as the illnesses and injuries
6 that affect the general population, yet have no protections for
7 unpaid leave, and may be subjected to discipline and termination for
8 unpaid absences from duty due to illnesses and injuries of themselves
9 and their family members.

10 The legislature further finds that railroad employees may report
11 to work while ill to avoid disciplinary action by railroad companies,
12 pursuant to their corporate attendance and availability policies.

13 Furthermore, the legislature finds that the unique operational
14 practices utilized to summon railroad crew employees to duty
15 necessitate state protections for short-term unpaid absences by
16 railroad workers. The job security protections extended by this act
17 for unpaid leave are minimal in contrast to the greater rights and
18 benefits of most employees in this state.

19 Therefore, the legislature enacts this chapter in the interest of
20 public health and infectious disease control, for protection of
21 public safety, the prevention of environmental harm, and to reduce
22 railroad operational risks across the state.

23 The provisions of this chapter are enacted in the exercise of the
24 police power of the state for the purpose of protecting the immediate
25 and future health, safety, and welfare of the people of this state.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

29 (1) The following terms have the same meaning as provided in RCW
30 50A.05.010: "Child," "family leave," "family member," "health care

1 provider," "medical leave," "period of incapacity," "serious health
2 condition," and "spouse."

3 (2) "Department" means the department of labor and industries.

4 (3) "Director" means the director of the department of labor and
5 industries, or the director's authorized representative.

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

8 (5) "Employer" means any person, firm, corporation, partnership,
9 business trust, legal representative, or other business entity,
10 including any unit of local government including, but not limited to,
11 a county, city, town, municipal corporation, quasi-municipal
12 corporation, or political subdivision, which engages in business as a
13 railroad carrier.

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

20 (7) "Intermittent leave" is leave taken in separate blocks of
21 time due to a single qualifying reason.

22 (8) "Operating craft employee" means any employee of a railroad
23 carrier who performs service in an operating craft on a railroad or
24 directs the work of an operating craft employee as a scheduled
25 employee, and includes any other employee of a railroad carrier who
26 performs safety sensitive tasks associated with railroad operations.

27 (9) "Other railroad carrier" means a railroad company that is
28 designated as a class III carrier by the surface transportation board
29 and:

30 (a) Is not owned or operated in whole or part by, or as a
31 subsidiary of, any class I or class II carrier; or

32 (b) Is not owned, operated, and managed directly by a
33 governmental entity employing 25 or more railroad employees; or

34 (c) Is not owned or operated by a railroad holding company with
35 annual combined operating revenue from all railroad sources that
36 meets or exceeds the current class II railroad designation threshold
37 as determined by the surface transportation board.

38 (10) "Railroad carrier" means any employer subject to the
39 jurisdiction of the surface transportation board under 49 U.S.C. Sec.
40 1301 through 1326, as it exists on the effective date of this

1 section. "Railroad carrier" includes the officers and agents of the
2 railroad operations regardless of physical location. "Railroad
3 carrier" does not include other railroad carriers.

4 (11) "Unpaid" means a period of leave undertaken without
5 receiving payment of lost wages from an employing railroad company.

6 NEW SECTION. **Sec. 3.** The department shall administer the
7 provisions of this chapter.

8 NEW SECTION. **Sec. 4.** (1) No railroad carrier may dismiss,
9 suspend, lay off, demote, engage in any adverse action against, or
10 otherwise discipline an employee for unpaid absences pursuant to the
11 provisions of this section if:

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

14 (b) No consecutive period of unpaid absence pursuant to the
15 provisions of this section exceeds 15 days;

16 (c) The total number of unpaid absences the employee has taken
17 pursuant to the provisions of this section, including railroad
18 employer paid sick leave, is less than 91 days in the current
19 calendar year; and

20 (d) The unpaid absence is taken pursuant to subsection (2) of
21 this section.

22 (2) An employee's unpaid absence under this section is due to any
23 of the following reasons:

24 (a) An absence resulting from an employee's mental or physical
25 illness, injury, or health condition including fatigue; to
26 accommodate the employee's need for medical diagnosis, care, or
27 treatment of a mental or physical illness, injury, or health
28 condition; or an employee's need for preventive medical care;

29 (b) To allow the employee to provide care for a family member
30 with a mental or physical illness, injury, or health condition; care
31 of a family member who needs medical diagnosis, care, or treatment of
32 a mental or physical illness, injury, or health condition; or care
33 for a family member who needs preventive medical care; and

34 (c) When the employee or their spouse or registered domestic
35 partner's place of business has been closed by order of a public
36 official for any health-related reason, or when an employee's child's
37 school or place of care has been closed for such a reason.

1 (3) An employer may permit employees to use any accrued leave,
2 including vacation time or personal leave, while absent pursuant to
3 the provisions of this section. An employer may not require an
4 employee to use paid leave while absent pursuant to the provisions of
5 this section.

6 (4) For employee absences under this section exceeding five
7 consecutive days, the employer may, within 10 days of the employee's
8 return to work, request verification that the employee's unpaid
9 absence was for a specific purpose pursuant to this section.

10 (a) If verification is requested by an employer, the employer
11 must provide the employee no fewer than 30 days to obtain and provide
12 any requested verification. An employer's requirements for
13 verification may not result in an unreasonable burden or expense on
14 the employee and may not exceed privacy or verification requirements
15 otherwise established by law.

16 (b) If an employer requires an employee to provide verification
17 from a health care provider identifying the need for use of their
18 unpaid leave for a specific purpose pursuant to this section, the
19 employer must not require that the information provided explain the
20 nature of the condition. If the employer obtains any health
21 information about an employee or an employee's family member, the
22 employer must treat such information in a confidential manner
23 consistent with applicable privacy laws.

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

27 NEW SECTION. **Sec. 5.** (1) It is unlawful for any employer to:

28 (a) Interfere with, restrain, or deny the exercise of, or the
29 attempt to exercise, any right provided under this chapter; or

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

32 (2) It is unlawful for any person to discharge or in any other
33 manner discriminate against any individual because the individual
34 has:

35 (a) Filed any complaint or charge, or has instituted or caused to
36 be instituted any proceeding, under or related to this chapter;

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

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

3 NEW SECTION. **Sec. 6.** (1)(a) Upon receipt of a complaint by an
4 employee of a railroad carrier, the department shall investigate to
5 determine if there has been noncompliance with this chapter and
6 related rules and issue either a citation and notice of assessment or
7 a closure letter within 90 days after the date on which the
8 department received the complaint, unless the complaint is otherwise
9 resolved. The department may extend the period by providing advance
10 written notice to the employee and the employer setting forth good
11 cause for an extension of the period, and specifying the duration of
12 the extension.

13 (b) The department shall send the citation and notice of
14 assessment or the closure letter to both the employer and the
15 employee by service of process or using a method by which the mailing
16 can be tracked or the delivery can be confirmed to their last known
17 addresses.

18 (c) If the department's investigation finds that the employee's
19 allegation cannot be substantiated, the department shall issue a
20 closure letter to the employee and the employer detailing such
21 finding.

22 (2)(a) If the department's investigation finds that a railroad
23 carrier violated this chapter or related rules, the department may
24 order the employer to pay the department a civil penalty. Civil
25 penalties may be assessed as follows:

26 (i) For a class I carrier, any class II carrier owned by a class
27 I carrier, and any class III carrier subject to this chapter, up to
28 \$5,000 for the first violation, up to \$25,000 for the second
29 violation within a three-year period following any previous
30 violation, and up to \$100,000 for the third or subsequent violation
31 within a three-year period following any previous violation;

32 (ii) For a class II carrier, up to \$1,000 for the first
33 violation, up to \$5,000 for the second violation within a three-year
34 period following any previous violation, and up to \$10,000 for the
35 third or subsequent violation within a three-year period following
36 any previous violation.

37 (b) The department may, at any time, waive or reduce any civil
38 penalty assessed against an employer under this section if the

1 department determines that the employer has taken corrective action
2 to remedy the retaliatory action.

3 (3) The director may also order other remedies such as back pay
4 and reinstatement, and may increase the fines by rule based on
5 changing economic conditions.

6 (4) The department shall deposit civil penalties paid under this
7 section in the supplemental pension fund established under RCW
8 51.44.033.

9 (5)(a) The administrative remedies established in this chapter
10 apply to complaints alleging violations that occurred on or after the
11 effective date of this act.

12 (b) A complaint alleging a violation of this chapter may be filed
13 within two years from the date of the last event constituting a
14 violation.

15 NEW SECTION. **Sec. 7.** (1) A person, firm, or corporation
16 aggrieved by a citation and notice of assessment by the department
17 under this chapter, or any rules adopted under this chapter, may
18 appeal the citation and notice of assessment to the director by
19 filing a notice of appeal with the director within 30 days of the
20 department's issuance of the citation and notice of assessment. A
21 citation and notice of assessment not appealed within 30 days is
22 final and binding, and not subject to further appeal.

23 (2) A notice of appeal filed with the director under this section
24 shall stay the effectiveness of the citation and notice of assessment
25 pending final review of the appeal by the director as provided for in
26 chapter 34.05 RCW.

27 (3) Upon receipt of a notice of appeal, the director shall assign
28 the hearing to an administrative law judge of the office of
29 administrative hearings to conduct the hearing and issue an initial
30 order. The hearing and review procedures shall be conducted in
31 accordance with chapter 34.05 RCW, and the standard of review by the
32 administrative law judge of an appealed citation and notice of
33 assessment shall be de novo. Any party who seeks to challenge an
34 initial order shall file a petition for administrative review with
35 the director within 30 days after service of the initial order. The
36 director shall conduct an administrative review in accordance with
37 chapter 34.05 RCW.

1 (4) The director shall issue all final orders after appeal of the
2 initial order. The final order of the director is subject to judicial
3 review in accordance with chapter 34.05 RCW.

4 (5) Orders that are not appealed within the time period specified
5 in this section and chapter 34.05 RCW are final and binding, and not
6 subject to further appeal.

7 (6) An employer who fails to allow adequate inspection of records
8 in an investigation by the department under this chapter within a
9 reasonable time period may not use such records in any appeal under
10 this section to challenge the correctness of any determination by the
11 department of the penalty assessed.

12 NEW SECTION. **Sec. 8.** If any person fails to pay an assessment
13 under this chapter, or under any rule under this chapter, after it
14 has become a final and unappealable order, or after the court has
15 entered final judgment in favor of the agency, the director may
16 initiate collection procedures in accordance with section 9 of this
17 act.

18 NEW SECTION. **Sec. 9.** (1) After a final order is issued under
19 this chapter, or any rules under this chapter, if an employer
20 defaults in the payment of: (a) Any amount determined by the
21 department to be owed to an employee, including interest; or (b) any
22 civil penalty ordered by the department under this chapter, or any
23 rules under this chapter, the director may file with the clerk of any
24 county within the state a warrant in the amount of the payment plus
25 any filing fees. The clerk of the county in which the warrant is
26 filed shall immediately designate a superior court cause number for
27 the warrant, and the clerk shall cause to be entered in the judgment
28 docket under the superior court cause number assigned to the warrant,
29 the name of the employer mentioned in the warrant, the amount of
30 payment due on it plus any filing fees, and the date when the warrant
31 was filed. The aggregate amount of the warrant as docketed becomes a
32 lien upon the title to, and interest in, all real and personal
33 property of the employer against whom the warrant is issued, the same
34 as a judgment in a civil case docketed in the office of the clerk.
35 The sheriff shall proceed upon the warrant in all respects and with
36 like effect as prescribed by law with respect to execution or other
37 process issued against rights or property upon judgment in a court of
38 competent jurisdiction. The warrant so docketed is sufficient to

1 support the issuance of writs of garnishment in favor of the state in
2 a manner provided by law in case of judgment, wholly or partially
3 unsatisfied. The clerk of the court is entitled to a filing fee which
4 shall be added to the amount of the warrant. A copy of the warrant
5 shall be mailed to the employer within three days of filing with the
6 clerk.

7 (2) (a) The director may issue to any person, firm, corporation,
8 other entity, municipal corporation, political subdivision of the
9 state, a public corporation, or any agency of the state, a notice and
10 order to withhold and deliver property of any kind when they have
11 reason to believe that there is in the possession of the person,
12 firm, corporation, other entity, municipal corporation, political
13 subdivision of the state, public corporation, or agency of the state,
14 property that is or will become due, owing, or belonging to an
15 employer upon whom a notice of assessment has been served by the
16 department for payments or civil penalties due to the department. The
17 effect of a notice and order is continuous from the date the notice
18 and order is first made until the liability out of which the notice
19 and order arose is satisfied or becomes unenforceable because of
20 lapse of time. The department shall release the notice and order when
21 the liability out of which the notice and order arose is satisfied or
22 becomes unenforceable by reason of lapse of time and shall notify the
23 person against whom the notice and order was made that the notice and
24 order has been released.

25 (b) The notice and order to withhold and deliver must be served
26 by the sheriff of the county or by the sheriff's deputy, by certified
27 mail, return receipt requested, or by the director. A person, firm,
28 corporation, other entity, municipal corporation, political
29 subdivision of the state, public corporation, or agency of the state
30 upon whom service has been made shall answer the notice within 20
31 days exclusive of the day of service, under oath and in writing, and
32 shall make true answers to the matters inquired of in the notice and
33 order. Upon service of the notice and order, if the party served
34 possesses any property that may be subject to the claim of the
35 department, the party shall promptly deliver the property to the
36 director. The director shall hold the property in trust for
37 application on the employer's indebtedness to the department, or for
38 return without interest, in accordance with a final determination of
39 a petition for review. In the alternative, the party shall furnish a
40 good and sufficient surety bond satisfactory to the director

1 conditioned upon final determination of liability. If a party served
2 and named in the notice fails to answer the notice within the time
3 prescribed in this section, the court may render judgment by default
4 against the party for the full amount claimed by the director in the
5 notice, together with costs. If a notice is served upon an employer
6 and the property subject to the notice is wages, the employer may
7 assert in the answer all exemptions provided for by chapter 6.27 RCW
8 to which the wage earner is entitled.

9 (c) As an alternative to the methods of service described in this
10 section, the department may electronically serve a financial
11 institution with a notice and order to withhold and deliver by
12 providing a list of its outstanding warrants, except those for which
13 a payment agreement is in good standing, to the department of
14 revenue. The department of revenue may include the warrants provided
15 by the department in a notice and order to withhold and deliver
16 served under RCW 82.32.235(3). A financial institution that is served
17 with a notice and order to withhold and deliver under this subsection
18 (2)(c) must answer the notice within the time period applicable to
19 service under RCW 82.32.235(3). The department and the department of
20 revenue may adopt rules to implement this subsection (2)(c).

21 (3) In addition to the procedure for collection of amounts owed,
22 including interest, and civil penalties as set forth in this section,
23 the department may recover amounts owed, including interest, and
24 civil penalties assessed under this chapter, and any rules under this
25 chapter, in a civil action brought in a court of competent
26 jurisdiction of the county where the violation is alleged to have
27 occurred.

28 (4) Whenever any employer quits business, sells out, exchanges,
29 or otherwise disposes of the employer's business or stock of goods,
30 any person who becomes a successor to the business becomes liable for
31 the full amount of any outstanding citation and notice of assessment
32 or penalty against the employer's business under this chapter if, at
33 the time of the conveyance of the business, the successor has: (a)
34 Actual knowledge of the fact and amount of the outstanding citation
35 and notice of assessment; or (b) a prompt, reasonable, and effective
36 means of accessing and verifying the fact and amount of the
37 outstanding citation and notice of assessment from the department. If
38 the citation and notice of assessment or penalty is not paid in full
39 by the employer within 10 days of the date of the sale, exchange, or
40 disposal, the successor is liable for the payment of the full amount

1 of the citation and notice of assessment or penalty, and payment
2 thereof by the successor must, to the extent thereof, be deemed a
3 payment upon the purchase price. If the payment is greater in amount
4 than the purchase price, the amount of the difference becomes a debt
5 due to the successor from the employer.

6 (5) This section does not affect other collection remedies that
7 are otherwise provided by law.

8 NEW SECTION. **Sec. 10.** Each employer shall post and keep posted,
9 in conspicuous places on the premises of the employer where notices
10 to employees and applicants for employment are customarily posted, a
11 notice, to be prepared or approved by the director, setting forth
12 excerpts from, or summaries of, the pertinent provisions of this
13 chapter and information pertaining to the filing of a charge. Any
14 employer that willfully violates this section may be subject to a
15 civil penalty of not more than \$1,000 for each separate offense. Any
16 penalties collected by the department under this section shall be
17 deposited into the supplemental pension fund established under RCW
18 51.44.033.

19 NEW SECTION. **Sec. 11.** Nothing in this chapter shall be
20 construed:

21 (1) To modify or affect any state or local law prohibiting
22 discrimination on the basis of race, religion, color, national
23 origin, sex, sexual orientation, gender identity, age, or disability;
24 or

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

28 NEW SECTION. **Sec. 12.** Nothing in this chapter diminishes the
29 obligation of an employer to comply with any collective bargaining
30 agreement or any employment benefit program or plan that provides
31 greater family or medical leave rights to employees than the rights
32 established under this chapter. The rights established for employees
33 under this chapter may not be diminished by any collective bargaining
34 agreement or any employment benefit program or plan.

35 NEW SECTION. **Sec. 13.** Nothing in this chapter shall be
36 construed to discourage employers from adopting or retaining leave

1 policies more generous than any policies that comply with the
2 requirements under this chapter.

3 NEW SECTION. **Sec. 14.** The director may adopt rules as necessary
4 to implement this chapter.

5 NEW SECTION. **Sec. 15.** This act may be known and cited as the
6 Shahraim C. Allen safe leave act for Washington railroad workers.

7 NEW SECTION. **Sec. 16.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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

13 NEW SECTION. **Sec. 18.** Except for sections 6 through 10 of this
14 act, which take effect January 1, 2024, this act is necessary for the
15 immediate preservation of the public peace, health, or safety, or
16 support of the state government and its existing public institutions
17 and takes effect immediately."

18 Correct the title.

EFFECT: Makes the following changes:

Adds language to the intent section regarding the unique operational practices of railroad workers and the Legislature's interest in protecting public safety.

Applies the bill to class III carriers, unless the class III carrier: (1) is not owned or operated by, or is a subsidiary of, any class I or class II carrier; or (2) is not owned, operated, and managed directly by a governmental entity employing 25 or more railroad employees; or (3) is not owned or operated by a railroad holding company with annual combined operating revenue from all railroad sources that meets or exceeds the current class II railroad designation threshold.

Applies the civil penalties to class III carriers subject to the provisions of the bill.

Specifies that: (1) the administrative remedies apply to complaints alleging violations occurring on or after the effective date of the bill; and (2) a complaint alleging a violation may be filed within two years from the date of the last event constituting the violation.

Corrects a technical drafting error and removes unnecessary language.

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