

# HOUSE BILL REPORT

## ESSB 5111

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### As Passed House - Amended:

April 5, 2023

**Title:** An act relating to requiring payment for accrued and unused sick leave for certain construction workers.

**Brief Description:** Concerning payments for accrued and unused sick leave for certain construction workers.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Conway, Kuderer, Randall and Robinson).

### Brief History:

#### Committee Activity:

Labor & Workplace Standards: 3/15/23, 3/24/23 [DP].

#### Floor Activity:

Passed House: 4/5/23, 98-0.

### Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Requires payment of accrued and unused sick leave to certain construction workers separating from employment.

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## HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Bronoske, Connors, Doglio, Ormsby and Ortiz-Self.

**Staff:** Trudes Tango (786-7384).

### Background:

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Every employer must provide its employees paid sick leave of at least one hour for every 40 hours worked as an employee. An employee may use paid sick leave beginning on the ninetieth calendar day after commencing employment.

For each hour of paid sick leave used, the employee must be paid the greater of the state minimum hourly wage or the employee's normal hourly compensation. Unused paid sick leave carries over to the following year; however, an employer is not required to allow an employee to carry over paid sick leave in excess of 40 hours.

An employer is not required to pay the employee for any unused accrued paid sick leave upon the employee's termination, resignation, retirement, or other separation from employment. When there is a separation from employment and the employee is rehired within 12 months by the same employer, previously accrued unused paid sick leave must be reinstated and the previous period of employment counts for the purposes of determining the employee's eligibility to use paid sick leave.

The sick leave provisions do not apply to construction workers covered by a collective bargaining agreement (CBA) if: (1) the union signatory to the CBA is an approved referral union program; (2) the CBA establishes equivalent sick leave provisions; and (3) the sick leave requirements have been expressly waived in the CBA. Equivalent sick leave provisions provided by a CBA must meet the requirements of the sick leave law, except payment of leave may occur before usage.

**Summary of Amended Bill:**

Workers covered under the North American Industry Classification System code for construction, except for residential building construction, that have not met the 90-day eligibility requirement at the time of separation, must be paid the balance of the worker's accrued and unused sick leave. Payment must be made at the end of the established pay period following the worker's separation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2024.

**Staff Summary of Public Testimony:**

(In support) The voters passed the initiative providing for paid sick leave, but the requirement that the employee be with the same employer for at least 90 days is a threshold that does not fit with certain trades where workers are routinely employed with different employers for less than 90 days. Construction workers are not able to take advantage of sick leave. These workers are called "never vesters" because the 90 day "clock" starts over

again with each new employer.

(Opposed) There was not an agreement on this bill in the Senate. The construction industry should not be singled out. The bill creates an incentive to leave employment before the ninetieth day so that a worker can get their sick leave paid out. Many unions have developed their own policies and it should be addressed in collective bargaining agreements.

**Persons Testifying:** (In support) Senator Karen Keiser, prime sponsor; Mark Riker, Washington State Building and Construction Trades Council; Ray Dumas, Operative Plasterers' and Cement Masons' International Association Local 528; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organization; and Jerry VanderWood, Associated General Contractors.

(Opposed) Brent Ludeman, National Electrical Contractors Association.

**Persons Signed In To Testify But Not Testifying:** None.