

SENATE BILL REPORT

ESSB 5111

As Amended by House, 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 & Commerce: 1/16/23, 2/14/23 [DPS, w/oRec].

Floor Activity: Passed Senate: 2/27/23, 48-0.

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

Brief Summary of Engrossed First Substitute Bill

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

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5111 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Robinson, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and MacEwen.

Staff: Jarrett Sacks (786-7448)

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.

Background: Paid Sick Leave. Every employer must provide each of its employees at least one hour of paid sick leave for every 40 hours worked as an employee. An employee is entitled to use accrued paid sick leave beginning on the 90th calendar day after the commencement of employment.

Unused paid sick leave carries over to the following year, except that 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 provide financial or other reimbursement for accrued and unused paid sick leave to any employee 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.

Paid sick leave requirements do not apply to construction workers covered by a collective bargaining agreement (CBA) if:

- the union signatory to the CBA is an approved referral union program;
- the CBA establishes equivalent paid leave provisions; and
- the CBA expressly waives the sick leave requirements established by law.

Equivalent sick leave must meet the requirements in state law, except that the payment of leave may occur before usage.

Summary of Engrossed First Substitute Bill: Workers covered under the North American Industry Classification System code for construction, except for residential construction, that have not met the 90-day sick leave eligibility threshold at the time of separation must be paid the balance of their accrued and unused sick leave upon separation.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Construction workers with short-term work can never use paid sick leave even when working full-time from job to job. Many construction workers change jobs prior to the 90 day threshold. The current system has many workers coming into the work under the weather because they cannot afford to miss a day of work. Apprentices, by design, move from employer to employer and do not meet the sick leave threshold. All workers in the state should have access to paid sick leave,

which was the intent of the original initiative, but there is a gap between values and execution. State law already requires tracking of employees for tax purposes or if they return to the same employer, so there is no additional administrative burden.

CON: Sick leave provisions should be left to the bargaining table. State law allows for the negotiation of better sick leave benefits, and concerns about sick leave vesting can be addressed during collective bargaining negotiations. The bill could put union contractors at a competitive disadvantage. The bill may put an administrative burden on smaller contractors.

OTHER: Some technical changes are needed to make implementation easier, such as delaying the effective date for rulemaking. The bill references a calendar year while current rule allows them to decide what constitutes a year. Additionally, a cross-reference is needed to connect the bill to current law.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Ray Dumas, Operative Plasterers and Cement Masons—Local 528; Robert Bowstring, Construction Worker; Nikolaj Jensen, Construction Worker; Erin Frasier, WA State Building & Construction Trades Council; Joe Kendo, Washington State Labor Council, AFL-CIO; Seth Worley, Plumbers and Steamfitters UA Local 598.

CON: Jerry VanderWood, WCIC and Associated General Contractors; Carolyn Logue, Associated Builders & Contractors—W. Washington & Inland Pacific.

OTHER: Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Specifies that an employer must pay the worker for unused paid sick leave at the end of the established pay period following the worker's separation.