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SENATE BILL 5594

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Harper, Conway, Keiser, Nelson, Kohl-Welles, Hasegawa, Kline, Frockt, Shin, and Chase

Read first time 02/05/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to establishing minimum standards for sick and safe  
2 leave from employment; adding a new chapter to Title 49 RCW; and  
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. The legislature finds  
6 that paid sick and safe leave from employment is critical to the  
7 economic well-being of the state and workers and to public health and  
8 safety. Paid sick and safe leave helps workers maintain their own  
9 health and the health of their families, coworkers, and members of the  
10 public. Paid sick and safe leave also helps give victims of domestic  
11 violence, sexual assault, and stalking the financial independence  
12 necessary to leave abusive situations, achieve safety, and minimize  
13 physical and emotional injuries. The legislature further finds that  
14 paid sick and safe leave helps employers retain trained workers and  
15 operate competitively as well as ensures that workers and their  
16 families retain economic security.

17 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this

1 section apply throughout this chapter unless the context clearly  
2 requires otherwise.

3 (1) "Child," "grandparent," "parent," "parent-in-law," and "spouse"  
4 have the same meanings as in RCW 49.12.265.

5 (2) "Department" and "director" have the same meanings as in RCW  
6 49.12.005.

7 (3) "Domestic violence" has the same meaning as in RCW 26.50.010.

8 (4) "Eating or drinking establishment" means a place where food or  
9 beverages, or both, are prepared and sold at retail for immediate  
10 consumption either on or off-premise, but excludes food and beverage  
11 service sites, such as cafeterias, that are accessory to other  
12 activities and primarily serve students, patients, and/or on-site  
13 employees.

14 (5) "Employee" means any individual employed by an employer,  
15 including individuals employed on a temporary and part-time basis. An  
16 individual performing less than two hundred forty hours of work in the  
17 state in a calendar year is an employee only for purposes of  
18 determining the employer tier. An individual performing services on a  
19 temporary basis and supplied by a temporary service, staffing agency,  
20 or similar entity, absent a contractual agreement stating otherwise, is  
21 an employee of the staffing agency or similar entity for purposes of  
22 sick and safe leave and an employee of the employer contracting with  
23 the staffing agency or similar entity for purposes of determining the  
24 employer tier.

25 (6)(a) "Employer" has the same meaning as in RCW 49.12.005.

26 (i) "Tier one employer" means an employer that employs more than  
27 four and fewer than fifty full-time equivalents on average per calendar  
28 week.

29 (ii) "Tier two employer" means an employer that employs at least  
30 fifty and fewer than two hundred fifty full-time equivalents on average  
31 per calendar week.

32 (iii) "Tier three employer" means an employer that employs two  
33 hundred fifty or more full-time equivalents on average per calendar  
34 week.

35 (b) The employer tier for the current calendar year is determined  
36 by the average number of full-time equivalents paid per calendar week  
37 during the preceding calendar year for any and all weeks during which  
38 at least one employee worked for compensation. To determine the number

1 of full-time equivalents, all compensated hours of all employees shall  
2 be counted, including part-time employment, temporary employment, or  
3 employment through the services of a staffing agency or similar entity.  
4 If an employer did not employ any employees during the previous  
5 calendar year, the employer tier is determined based upon the average  
6 number of full-time equivalents paid per calendar week during the first  
7 ninety calendar days of the current year in which the employer engaged  
8 in business.

9 (7) "Full-time equivalent" means the number of hours worked for  
10 compensation that add up to one full-time employee, based either on an  
11 eight hour day and a five day week or as full-time is defined, in  
12 writing or in practice, by the employer.

13 (8) "Health care provider" means any person licensed to provide  
14 medical or emergency services and any other person as determined by the  
15 director to be capable of providing documentation under section 5(4) of  
16 this act.

17 (9) "Sexual assault" has the same meaning as in RCW 70.125.030.

18 (10) "Sick and safe leave" means hours of paid time provided by an  
19 employer for use by an employee for absence from work for the purposes  
20 specified in section 4 of this act.

21 (11) "Staffing agency" means any person undertaking with or without  
22 compensation to procure opportunities to work or to procure, recruit,  
23 refer, or place individuals with an employer or in employment.

24 (12) "Stalking" has the same meaning as in RCW 9A.46.110.

25 NEW SECTION. **Sec. 3.** ACCRUAL OF SICK AND SAFE LEAVE. (1)  
26 Beginning January 1, 2014, an employee accrues sick and safe leave,  
27 which may be used as either sick leave or safe leave, as follows:

28 (a) An employee of a tier one or tier two employer must accrue at  
29 least one hour of leave for every forty hours worked.

30 (b) An employee of a tier three employer must accrue at least one  
31 hour of leave for every thirty hours worked.

32 (2) Sick and safe leave begins to accrue at the commencement of  
33 employment, except that no leave accrues before January 1, 2014.

34 (3) If an employee is exempt from overtime payment under state and  
35 federal law: (a) The employee is not entitled to accrue leave for  
36 hours worked in excess of forty hours in a work week; and (b) if the

1 employee's normal work week is less than forty hours, leave accrues  
2 based on the employee's normal work week.

3 (4) Unused sick and safe leave carries over to the following  
4 calendar year, except that an employer is not required to allow an  
5 employee to carry over sick and safe leave in excess of:

- 6 (a) Forty hours for a tier one employer;
- 7 (b) Fifty-six hours for a tier two employer; or
- 8 (c) Subject to subsection (5) of this section, seventy-two hours  
9 for a tier three employer.

10 (5)(a) A tier one or tier two employer with a combined or universal  
11 paid leave policy, including but not limited to a paid time off policy,  
12 is not required to provide sick and safe leave in addition to the leave  
13 provided by that policy if:

14 (i) Paid leave under the policy may be used for the same purposes  
15 and under the same conditions as sick and safe leave may be used under  
16 section 4 of this act;

17 (ii) Paid leave accrues at a rate of at least one hour of leave for  
18 every forty hours worked;

19 (iii) Use of paid leave within any calendar year is limited to no  
20 less than the amounts specified for tier one and tier two employers,  
21 respectively, in section 4 of this act; and

22 (iv) Any accrued but unused paid leave may be carried over to the  
23 following calendar year. However, this section does not require a tier  
24 one or tier two employer to carry over leave in excess of the leave  
25 specified in subsection (4)(a) and (b) of this section.

26 (b) A tier three employer with a combined or universal paid leave  
27 policy, including but not limited to a paid time off policy, is not  
28 required to provide sick and safe leave in addition to the leave  
29 provided by the policy if:

30 (i) Available paid leave may be used for the same purposes and  
31 under the same conditions as sick and safe leave may be used under  
32 section 4 of this act;

33 (ii) Paid leave accrues at a rate of at least one hour of leave for  
34 every thirty hours worked;

35 (iii) Use of paid leave within any calendar year is limited to no  
36 less one hundred eight hours; and

37 (iv) Any accrued but unused paid leave may be carried over to the

1 following calendar year. However, this section does not require a tier  
2 three employer to carry over unused leave in excess of one hundred  
3 eight hours.

4 (6) If an employee separates from employment and the same employer  
5 rehires the employee within seven months of the separation: (a) The  
6 employer must reinstate previously accrued and unused sick and safe  
7 leave; (b) the employee is entitled to use accrued sick and safe leave  
8 immediately upon reemployment if the employee previously had been  
9 eligible to use the leave; and (c) the employee accrues additional  
10 leave immediately upon reemployment. If an employee separates from  
11 employment and the same employer rehires the employee more than seven  
12 months after the separation, this section does not require the employer  
13 to reinstate accrued sick and safe leave and the employee is considered  
14 to have newly commenced employment for purposes of sick and safe leave.

15 (7) An employer may loan sick and safe leave to an employee in  
16 advance of accrual of leave by the employee. Any loan of leave is  
17 subject to the terms and conditions of the employer.

18 (8) This section does not require an employer to provide financial  
19 or other reimbursement for accrued and unused sick and safe leave to  
20 any employee upon the employee's termination, resignation, retirement,  
21 or other separation from employment.

22 NEW SECTION. **Sec. 4.** USE OF SICK AND SAFE LEAVE. (1) Except as  
23 provided in subsection (6) of this section, an employee may use accrued  
24 sick and safe leave beginning one hundred eighty days after the  
25 commencement of employment with the employer. If an employee separates  
26 from employment and is rehired by the same employer within seven months  
27 of separation, the previous period of employment is counted for  
28 purposes of meeting the one hundred eighty day requirement.

29 (2) An employer must compensate an employee who uses sick and safe  
30 leave at the same hourly rate and with the same benefits, including  
31 health care benefits, as the employee would have earned during the time  
32 the leave is taken. An employer is not required to compensate an  
33 employee for lost tips or commissions and compensation is required only  
34 for hours that an employee was scheduled to work.

35 (3) An employee may use sick leave for the following reasons:

36 (a) An absence resulting from an employee's mental or physical  
37 illness, injury, or health condition; to accommodate the employee's

1 need for medical diagnosis, care, or treatment of a mental or physical  
2 illness, injury, or health condition; or the employee's need for  
3 preventive medical care; or

4 (b) To allow the employee to provide care for a child, grandparent,  
5 parent, parent-in-law, or spouse with a mental or physical illness,  
6 injury, or health condition; care for a child, grandparent, parent,  
7 parent-in-law, or spouse who needs medical diagnosis, care, or  
8 treatment of a mental or physical illness, injury, or health condition;  
9 or care for a child, grandparent, parent, parent-in-law, or spouse who  
10 needs preventive medical care.

11 (4) An employee may use safe leave for the following reasons:

12 (a) When the employee's place of business has been closed by order  
13 of a public official to limit exposure to an infectious agent,  
14 biological toxin, or hazardous material; or to accommodate the  
15 employee's need to care for a child whose school or place of care has  
16 been closed by order of a public official to limit exposure to an  
17 infectious agent, biological toxin, or hazardous material; or

18 (b) For any of the reasons identified in RCW 49.76.030.

19 (5) An employer is not required to allow an employee to use in  
20 excess of the following hours of sick and safe leave in a calendar  
21 year:

22 (a) Forty hours for a tier one employer;

23 (b) Fifty-six hours for a tier two employer; or

24 (c) Subject to section 3(5)(b) of this act, seventy-two hours for  
25 a tier three employer.

26 (6) An employee may not use leave under this section until twenty-  
27 four months after the hire date of the employer's first employee.

28 NEW SECTION. **Sec. 5.** REQUESTS AND DOCUMENTATION. (1) An employer  
29 must provide sick and safe leave upon the request of an employee.

30 (2) When possible, the request must include the expected duration  
31 of the absence. An employer may require an employee to comply with the  
32 employer's usual and customary notice and procedural requirements for  
33 absences and requesting leave, as long as the requirements do not  
34 interfere with the purposes for which the leave is needed. If the  
35 leave is foreseeable, the employee must: (a) Make a reasonable effort  
36 to schedule the leave in a manner that does not unduly disrupt the  
37 operations of the employer; (b) make the request in writing; and (c)

1 make the request at least ten days, or as early as possible, in advance  
2 of the leave unless the employer's usual and customary notice  
3 requirements provide for less advance notice. If the leave is  
4 unforeseeable, the employee must provide notice as soon as practicable  
5 and must comply with the employer's usual and customary notice and  
6 procedural requirements for absences as long as the requirements do not  
7 interfere with the purposes for which the leave is needed.

8 (3) For employees covered by federal or state overtime  
9 requirements, sick and safe leave may be used in hourly increments, or  
10 smaller increments if an employer so designates. For employees exempt  
11 from state and federal overtime requirements, the employer may make  
12 deductions of sick and safe leave in accordance with state and federal  
13 law.

14 (4) An employer may require reasonable documentation for use of  
15 more than three consecutive days of sick leave. Documentation signed  
16 by a health care provider stating that sick leave is necessary is  
17 reasonable documentation. An employer may not require the  
18 documentation to explain the nature of the illness, injury, or health  
19 condition. If the employer does not offer health insurance to the  
20 employee, the employer and employee must each pay one-half the cost of  
21 any out-of-pocket expense incurred by the employee in obtaining the  
22 documentation requested by the employer. Out-of-pocket expenses are  
23 limited to the costs of services provided by health care providers,  
24 services of health care facilities, testing prescribed by health care  
25 providers, and transportation to the location where the services are  
26 provided. An employee who has declined to participate in the health  
27 insurance offered by the employer is not entitled to reimbursement for  
28 out-of-pocket expenses.

29 (5) An employer may require verification for use of more than three  
30 consecutive days of safe leave. For leave under section 4(4)(a) of  
31 this act, the employer may require verification of a closure order.  
32 Notice of the closure order in whatever format the employee received  
33 the notice satisfies the verification request. For leave under section  
34 4(4)(b) of this act, the employer may require verification that the  
35 employee or employee's family member is a victim of domestic violence,  
36 sexual assault, or stalking, and that the leave taken was for one of  
37 the purposes under section 4(4)(b) of this act. An employee may  
38 satisfy the verification requirement in the same manner as provided in

1 RCW 49.76.040(4) and verification does not waive or diminish the  
2 confidential or privileged nature of communications in the same manner  
3 as under RCW 49.76.040(4).

4 (6) Upon mutual consent of the employee and employer, an employee  
5 may work additional hours or shifts during the same or next pay period  
6 instead of using accrued sick and safe leave for leave taken under this  
7 section. An employer may not require the employee to work additional  
8 shifts or hours. The employer must comply with any applicable laws  
9 regarding overtime pay.

10 (7) This chapter does not prohibit an employer from establishing a  
11 policy under which employees may: (a) Voluntarily exchange assigned  
12 hours or trade shifts; or (b) donate unused accrued sick and safe leave  
13 to another employee.

14 (8) If an employee who works in an eating and/or drinking  
15 establishment requests sick or safe leave, the employer may offer the  
16 employee substitute hours or shifts. If the employee accepts the offer  
17 and works the substitute hours or shifts, the employer may deduct from  
18 the employee's accrued sick and safe leave the amount of leave worked  
19 during the substitute period or the amount of the sick and safe leave  
20 request, whichever is smaller. The employer must comply with any  
21 applicable laws regarding overtime pay. An employer is not required to  
22 offer, and an employee is not required to accept, substitute hours or  
23 shifts.

24 NEW SECTION. **Sec. 6.** RECORDKEEPING. (1)(a) An employer must  
25 provide at the time wages are paid information in writing stating an  
26 updated amount of sick and safe leave available to each employee.  
27 Employers may choose a reasonable system for providing this  
28 information, including but not limited to, listing remaining available  
29 sick and safe leave on each pay stub or providing an online system  
30 where employees can access their own sick and safe leave information.

31 (b) This section does not require employers to modify their  
32 recordkeeping policies as long as records reasonably indicate accrued  
33 and used sick and safe leave. When an issue arises as to the amount of  
34 accrued sick and safe leave and the employer does not maintain or  
35 retain adequate records or does not allow the department reasonable  
36 access to the records, it is presumed that the employer violated this  
37 chapter.

1 (2) Employers shall retain records documenting hours worked by  
2 employees and sick and safe leave taken by employees for a period of  
3 three years, and shall allow the department access to such records,  
4 with appropriate notice and at a mutually agreeable time, to  
5 investigate potential violations and to monitor compliance with this  
6 chapter.

7 (3)(a) Except as provided in (b) of this subsection, an employer  
8 must maintain the confidentiality of information provided by the  
9 employee or others in support of an employee's request for sick or safe  
10 leave, including health information and the fact the employee or  
11 employee's family member is a victim of domestic violence, sexual  
12 assault, or stalking, that the employee has requested or taken leave  
13 under this chapter, and any written or oral statement, documentation,  
14 record, or corroborating evidence provided by the employee.

15 (b) Information provided by an employee may be disclosed by an  
16 employer only if the disclosure is: (i) Requested or consented to by  
17 the employee; (ii) ordered by a court or administrative agency; or  
18 (iii) otherwise required by applicable federal or state law.

19 NEW SECTION. **Sec. 7.** NOTICE OF RIGHTS. (1) Beginning January 1,  
20 2014, a tier one, tier two, and tier three employer shall give notice  
21 to employees:

22 (a) That employees are entitled to sick and safe leave;

23 (b) Of the amount of sick and safe leave and the terms of its use  
24 guaranteed under this chapter;

25 (c) That retaliation against employees who request or use sick or  
26 safe leave is prohibited; and

27 (d) That an employee has the right to file a complaint or bring a  
28 civil action if sick or safe leave as required by this chapter is  
29 denied by the employer or the employee is retaliated against for  
30 requesting or taking sick or safe leave.

31 (2) An employer may comply with this section by providing the  
32 information in subsection (1) of this section in English and in any  
33 language that is the first language spoken by at least five percent of  
34 the employer's workforce: (a) On a notice to each of the employer's  
35 employees; or (b) on a poster displayed in a conspicuous and accessible  
36 place in each establishment where the employer's employees are  
37 employed.

1 (3) The department must create and make available to employers  
2 posters for use under subsection (2) of this section.

3 NEW SECTION. **Sec. 8.** RETALIATION. A tier one, tier two, or tier  
4 three employer may not discharge, threaten to discharge, demote, deny  
5 a promotion to, sanction, discipline, retaliate against, harass, or  
6 otherwise discriminate against an employee with respect to  
7 compensation, terms, conditions, or privileges of employment because  
8 the employee:

- 9 (1) Exercised rights under section 4 of this act;
- 10 (2) Filed or communicated to the employer an intent to file a  
11 complaint under section 9 or 10 of this act; or
- 12 (3) Participated or assisted, as a witness or otherwise, in another  
13 employee's attempt to exercise rights under section 4, 9, or 10 of this  
14 act.

15 NEW SECTION. **Sec. 9.** ADMINISTRATIVE ENFORCEMENT. (1) The  
16 director may investigate to determine if there has been compliance with  
17 this chapter and the rules adopted under this chapter. If the director  
18 determines that a violation has occurred, a hearing must be held in  
19 accordance with chapter 34.05 RCW. The director must issue a written  
20 determination including his or her findings after the hearing. The  
21 director may order appropriate relief. The relief may include:

- 22 (a) Damages, including back pay, payment of any sick or safe leave  
23 unlawfully withheld, and interest on the damages at the prevailing  
24 rate;
- 25 (b) If any sick or safe leave was unlawfully withheld, liquidated  
26 damages of three times the dollar amount of leave withheld, or two  
27 hundred fifty dollars, whichever is greater;
- 28 (c) If a violation resulted in other harm to the employee or any  
29 other person, such as discharge from employment, or otherwise violated  
30 the rights of employees or other persons, such as a failure to provide  
31 notice to employees or a prohibited act of retaliation, liquidated  
32 damages of fifty dollars to each employee or person whose rights were  
33 violated for each day or portion of each day that the violation  
34 occurred or continued;
- 35 (d) To compensate the department for the costs of investigating or

1 remedying the violation, not more than fifty dollars for each day or  
2 portion of each day and for each person or employee as to whom the  
3 violation occurred or continued;

4 (e) Attorneys' fees and costs; and

5 (f) Equitable relief, including reinstatement.

6 (2) In addition to any other remedies, if the director finds that  
7 an employer has willfully violated the notice and posting requirements  
8 of section 7 of this act, the director may issue a notice of infraction  
9 and impose a civil penalty not to exceed one hundred twenty-five  
10 dollars for the first violation and two hundred fifty dollars for  
11 subsequent violations.

12 (3) A judicial appeal from the director's determination may be  
13 taken in accordance with chapter 34.05 RCW, and an aggrieved employee  
14 who prevails and a person awarded liquidated damages who prevails are  
15 entitled to attorneys' fees and costs.

16 NEW SECTION. **Sec. 10.** CIVIL ENFORCEMENT. (1) The department and  
17 any person aggrieved by a violation of this chapter, any entity a  
18 member of which is aggrieved by a violation of this chapter, or any  
19 other person or entity acting on behalf of the public health and  
20 welfare may bring a civil action in a court of competent jurisdiction  
21 against any person who violates this chapter. The court may order  
22 appropriate relief including the relief specified in section 9 of this  
23 act, except that any person or entity enforcing this chapter on behalf  
24 of the public health and welfare is not entitled to liquidated damages.  
25 In addition, the court shall award reasonable attorneys' fees and costs  
26 to the party bringing the civil action if the party prevails.

27 (2) Exhaustion of administrative remedies is not required before  
28 filing a civil action.

29 (3) The remedies in this section are in addition to any common law  
30 or other remedies that may be available.

31 NEW SECTION. **Sec. 11.** MORE GENEROUS POLICIES. This chapter  
32 provides minimum requirements pertaining to sick and safe leave and is  
33 not intended to discourage and does not prohibit an employer from  
34 adopting or retaining a sick and safe leave policy more generous than  
35 any policies that comply with the requirements under this chapter, or  
36 as diminishing the obligation of any employer to comply with any

1 contract, collective bargaining agreement, employment benefit plan, or  
2 other agreement providing more generous sick and safe leave than  
3 required under this chapter.

4 NEW SECTION. **Sec. 12.** RELATIONSHIP TO OTHER LAWS. This chapter  
5 does not preempt, limit, or otherwise affect the applicability of any  
6 other law, regulation, requirement, policy, or standard that provides  
7 for greater accrual or use by employees of sick or safe leave, whether  
8 paid or unpaid, or that extends other protections to employees.

9 NEW SECTION. **Sec. 13.** WAIVER. (1) The requirements of this  
10 chapter do not apply to any employees covered by a bona fide collective  
11 bargaining agreement to the extent that the requirements are expressly  
12 waived in the collective bargaining agreement in clear and unambiguous  
13 terms.

14 (2) Any waiver by an employee of any requirements of this chapter  
15 is contrary to public policy and is void and unenforceable.

16 NEW SECTION. **Sec. 14.** The department may adopt rules to implement  
17 this chapter.

18 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act  
19 constitute a new chapter in Title 49 RCW.

20 NEW SECTION. **Sec. 16.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

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