

HOUSE BILL REPORT

SHB 2364

As Passed House:

February 16, 2002

Title: An act relating to use of employer-granted leave to care for family members with serious medical conditions.

Brief Description: Allowing sick leave to care for family members.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Dickerson, Kenney, Conway, Fisher, Rockefeller, Kagi, Cody, Darneille, Chase, Tokuda, Kirby, Edwards, Santos, Lysen, Wood, Simpson, Schual-Berke and Jarrett).

Brief History:

Committee Activity:

Commerce & Labor: 1/23/02, 1/31/02 [DPS].

Floor Activity:

Passed House: 2/16/02, 88-10.

Brief Summary of Substitute Bill

- Requires an employer to allow an employee to use sick leave or other paid time off to care for a child, spouse, or parent of the employee with a health condition that requires treatment or supervision.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Kenney and Lysen.

Minority Report: Do not pass. Signed by 3 members: Representatives Clements, Ranking Minority Member; Chandler and McMorris.

Staff: Jill Reinmuth (786-7134).

Background:

Certain state and federal laws provide that eligible employees are entitled to take leave for specified family and medical reasons. These laws include the state Family Care Law, the state Family Leave Law, and the federal Family and Medical Leave Act (FMLA).

State Family Care Law:

Employers must allow employees to use accrued sick leave to care for a child under age 18 with a health condition that requires treatment or supervision. Employers must display a poster that describes an employer's obligations and an employee's rights. The poster must also give notice of state laws governing maternity disability leave, and indicate that federal or local laws also may apply. Employers must also post their leave policies, if any.

The Department of Labor and Industries must administer these requirements. The department must notify employers of these requirements, develop and furnish to employers the required poster, and investigate alleged violations of these requirements. If the department reasonably believes an employer has violated these requirements, the department may issue a notice of infraction and impose a civil penalty.

State Family Leave Law:

Enforcement of the state Family Leave Law is currently suspended in large part. As originally enacted, however, eligible employees are entitled to take up to 12 weeks of unpaid leave in a 24-month period for specified reasons, including the care of a child under age 18 with a terminal health condition.

Federal Family and Medical Leave Act:

Eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified reasons, including the care of an immediate family member who has a serious health condition.

Summary of Substitute Bill:

If, under a collective bargaining agreement or employer policy, an employee is entitled to sick leave or other paid time off, the employer must allow the employee to use the employee's choice of that leave to care for the employee's child, spouse, or parent with a health condition that requires treatment or supervision. If the collective bargaining agreement or employer policy requires notice before taking vacation or personal holiday time, the employer may require the employee to comply with the notice requirements.

An employer may not discriminate against an employee who exercises these rights, or

who assists in any proceeding related to the exercise of these rights.

"Sick leave or other paid time off" includes time off for illness, vacation, and personal holiday, but not paid time for jury duty or military duty. The requirement is deleted for sick leave to be accrued sick leave.

"Child" is defined as a child who either is under age 18 or is age 18 or older and incapable of self-care because of a mental or physical disability. "Child" includes: a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The FMLA does not cover all employers or allow employees time off to care for certain family members. When employers have discretion over allowing leave, an employee is often caught between work and family. Yet when employers are flexible and allow this type of leave, there are huge benefits to both the employer and the employee in morale and retention of employees. As the population ages, this issue becomes more and more significant. Some employees do not "accrue" sick leave, but are nevertheless entitled to it. The deletion of "accrued" in the bill is not intended to allow employees to use "unearned" leave but only that time that is available to the employee. The expansion of the definition of "child" to include those over 18 with disabilities is very helpful.

Testimony Against: The current law has been acceptable, but it is not clear what the bill means by "paid time off." This bill also does not address the issue of notice to the employer, which is addressed under the FMLA. For some employers these are benefits that are bargained for, but other employers do not have a formal leave policy. It is not clear how this bill would impact those employers without formal policies. Small employers, especially, need to have a very clear idea of what the law requires. For example, would the bill allow an employee to use leave that was not yet earned? This bill is a significant expansion of the Washington family care law and conflicts with FMLA by covering categories of family members that are not included under FMLA. It is not clear whether taking leave under this bill would expand the 12 weeks of leave allowed under FMLA. The bill also does not require medical certification of the family member's condition as required under FMLA. There are also concerns about opening the door to private causes of action for wrongful discharge under the anti-retaliation provision. The remedy for these actions should be an administrative one.

Testified: (In support) Representative Dickerson, prime sponsor; Ann Montgomery; Pamela Dunn; Marilyn Watkins, Economic Opportunity Institute; Jerry Wood; and Mary Jo Wilcox, ARC of Washington State.

(Opposed) Dan Fazio, Washington State Farm Bureau; Clif Finch, Association of Washington Business; and Larry Stevens, Washington Automotive Wholesalers Association.

(Concerns) Rosemary Williamson, Verizon.