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**HOUSE BILL 2944**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Chapman, Muri, Gregerson, Stokesbary, McBride, Rodne, Ryu, Young, Kilduff, Harris, Sells, Holy, Peterson, Volz, Valdez, Haler, Stonier, Stambaugh, Fitzgibbon, Walsh, Robinson, Irwin, Blake, Appleton, Bergquist, Ortiz-Self, Stanford, Tarleton, Wylie, Barkis, Goodman, Santos, Ormsby, Pollet, and Macri

AN ACT Relating to safeguarding the public safety by protecting railroad workers; amending RCW 50A.04.010, 50A.04.020, 50A.04.025, and 50A.04.035; adding new sections to chapter 81.40 RCW; creating new sections; prescribing penalties; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds that railroad employees are susceptible to illness from working in confined spaces as well as the illnesses and injuries that affect the general population, yet have no paid sick leave and may be subject to discipline for absence due to illness and injury. Further, the legislature recognizes that chronic fatigue is endemic to railroad operating craft employees due to erratic work schedules, inaccurate train line up information, and on duty periods of twelve hours or longer. Academic studies have found that fatigue has the equivalent negative impact on alertness, awareness, and job performance as alcohol intoxication. Research indicates that fatigue is related to higher rates of depression, anxiety, sleep apnea, and suicide, and that these conditions are more prevalent among railroad workers. The federal railway safety improvement act of 2008 directed the appropriate federal agencies to address fatigue, but those agencies have not adequately done so.

The legislature further finds that railroad operating craft employees may report to work while ill or fatigued to avoid disciplinary action by railroad carrier companies, which creates a dangerous and unnecessary public safety issue. In addition, the legislature finds that the unique operational practices utilized to summon railroad crew employees to duty necessitate modifications to existing family and medical leave laws to provide railroad carrier employees with comparable sick leave and family leave rights to those previously granted to all other workers in this state.

Therefore, in the interest of public safety and operating craft employee safety, the legislature intends to take steps to assure that railroad crew employees are healthy and rested and to assure that railroad crew employees receive fair family and medical leave.

NEW SECTION. **Sec.**  The definitions in this section apply throughout sections 1 through 5 of this act unless the context clearly requires otherwise.

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

(2) "Railroad carrier" means any employer subject to the jurisdiction of the surface transportation board under 49 U.S.C. Sec. 7, as it exists on the effective date of this section. "Railroad carrier" includes the officers and agents of the railroad operations regardless of physical location.

NEW SECTION. **Sec.**  (1) No railroad carrier may dismiss, suspend, layoff, demote, or otherwise discipline an employee because of absence due to illness or injury if:

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

(b) The period of absence does not exceed twelve weeks; and

(c) The employee, if requested in writing by the railroad carrier within ten days after the employee's return to work, provides the railroad carrier with documentation from a health care provider that the employee was incapable of working due to illness or injury during the employee's absence from work. The railroad carrier must grant the employee no fewer than thirty days to obtain and provide any requested documentation.

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

NEW SECTION. **Sec.**  (1) No railroad carrier may dismiss, suspend, layoff, demote, or otherwise discipline an operating craft employee because of layoff due to fatigue.

(2) A railroad carrier must establish a fatigue layoff program under which an operating craft employee may layoff due to fatigue without being subjected to discipline or any type of availability or attendance policy. A railroad carrier must submit the fatigue layoff program to the commission for review and approval within ninety days from the effective date of this section. Prior to approving a fatigue layoff program, the commission must submit the program to the leadership of the operating craft rail labor organizations state legislative boards for review and input.

(3) A railroad carrier must report all data as requested by the commission to implement and enforce this section. If the commission identifies additional actions to address fatigue that require legislative action, the commission shall report its findings to the appropriate legislative committees.

(4) The commission shall adopt rules to implement this section. In adopting rules, the commission shall review and consider research addressing alertness, depression, and other consequences of irregular, nonscheduled "on-call" working conditions. The commission shall also recognize the importance of ensuring fatigue layoffs are reasonable and legitimate.

(5) This section applies to class I railroad carriers and any class II or III railroad carriers with regular operating craft working hours extending beyond sixteen consecutive hours a day more frequently than once per week, exclusive of unusual unforeseen events such as natural disasters or similar emergencies.

NEW SECTION. **Sec.**  A railroad carrier must provide data to the commission regarding the number of employees laying off for injury, illness, or fatigue and the length of layoff no later than January 31st of each year for the preceding year. No personally identifying information of employees may be submitted.

NEW SECTION. **Sec.**  (1) Upon complaint by an employee of a railroad carrier, the commission shall investigate to determine if there has been compliance with sections 3 and 4 of this act. If the investigation indicates that a violation has occurred, the commission shall issue a notice of infraction. Appeal from the commission's decision is governed by chapter 34.05 RCW.

(2) If a railroad carrier is found to have committed an infraction under this section, the commission may impose upon the carrier a fine of up to five hundred dollars for the first infraction; a fine of up to five thousand dollars for a second infraction; and a fine of up to twenty-five thousand dollars for each subsequent infraction committed within three years of a previous infraction. The commission may also order other remedies such as back pay and reinstatement, and may increase the penalties by rule based on changing economic conditions.

**Sec.**  RCW 50A.04.010 and 2017 3rd sp.s. c 5 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child" includes a biological, adopted, or foster child, a stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(2) "Commissioner" means the commissioner of the department or the commissioner's designee.

(3) "Department" means the employment security department.

(4)(a) "Employee" means an individual who is in the employment of an employer.

(b) "Employee" does not include employees of the United States of America.

(5) "Employee's average weekly wage" means the quotient derived by dividing the employee's total wages during the two quarters of the employee's qualifying period in which total wages were highest by twenty-six. If the result is not a multiple of one dollar, the department must round the result to the next lower multiple of one dollar.

(6)(a) "Employer" means: (i) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter; (ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi‑municipal corporation, or political subdivision.

(b) "Employer" does not include the United States of America.

(7)(a) "Employment" means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. The term "employment" includes an individual's entire service performed within or without or both within and without this state, if:

(i) The service is localized in this state; or

(ii) The service is not localized in any state, but some of the service is performed in this state; and

(A) The base of operations of the employee is in the state, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) "Employment" does not include:

(i) Self-employed individuals;

(ii) Services for remuneration when it is shown to the satisfaction of the commissioner that:

(A)(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service; or

(B) As a separate alternative:

(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(IV) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(V) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(VI) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; or

(iii) Services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW rendered by an individual when:

(A) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact;

(B) The service is either outside the usual course of business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(C) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer for which the business has contracted to furnish services;

(D) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(E) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(F) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

(G) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

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

(9) "Family leave" means any leave taken by an employee from work:

(a) To participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

(b) To bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of a child under the age of eighteen with the employee; or

(c) Because of any qualifying exigency as permitted under the federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e) and 29 C.F.R. Sec. 825.126(a)(1) through (8), as they existed on October 19, 2017, for family members as defined in subsection (10) of this section.

(10) "Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee.

(11) "Grandchild" means a child of the employee's child.

(12) "Grandparent" means a parent of the employee's parent.

(13) "Health care provider" means: (a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or (c) any other person determined by the commissioner to be capable of providing health care services.

(14) "Medical leave" means any leave taken by an employee from work made necessary by the employee's own serious health condition.

(15) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child.

(16) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of a serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(17) "Premium" or "premiums" means the payments required by RCW 50A.04.115 and paid to the department for deposit in the family and medical leave insurance account under RCW 50A.04.220.

(18) "Qualifying period" means the first four of the last five completed calendar quarters or, if eligibility is not established, the last four completed calendar quarters immediately preceding the application for leave.

(19) "Railroad carrier" means any employer subject to the jurisdiction of the surface transportation board under 49 U.S.C. Sec. 7, as it exists on the effective date of this section.

(20)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two or more times, within thirty days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services, such as a physical therapist, under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

(B) Any period of incapacity due to pregnancy, or for prenatal care;

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits, defined as at least twice a year, for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity, including asthma, diabetes, and epilepsy;

(D) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider, including Alzheimer's, a severe stroke, or the terminal stages of a disease; or

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for: (I) Restorative surgery after an accident or other injury; or (II) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(b) The requirement in (a)(i) and (ii) of this subsection for treatment by a health care provider means an in-person visit to a health care provider. The first, or only, in-person treatment visit must take place within seven days of the first day of incapacity.

(c) Whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty-day period shall be determined by the health care provider.

(d) The term extenuating circumstances in (a)(ii)(A)(I) of this subsection means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the thirty-day period, but the health care provider does not have any available appointments during that time period.

(e) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication, such as an antibiotic, or therapy requiring special equipment to resolve or alleviate the health condition, such as oxygen. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin, antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this chapter.

(f) Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, and periodontal disease are examples of conditions that are not serious health conditions and do not qualify for leave under this chapter. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(g)(i) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a licensed substance abuse treatment provider. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for leave under this chapter.

(ii) Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take medical leave for treatment. However, if the employer has an established policy, applied in a nondiscriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking medical leave. An employee may also take family leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

(h) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this chapter even though the employee or the family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

((~~(20)~~)) (21) "Service is localized in this state" has the same meaning as described in RCW 50.04.120.

((~~(21)~~)) (22) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

((~~(22)~~)) (23) "State average weekly wage" means the most recent average weekly wage calculated under RCW 50.04.355 and available on January 1st of each year.

((~~(23)~~)) (24) "Typical workweek hours" means:

(a) For an hourly employee, the average number of hours worked per week by an employee since the beginning of the qualifying period; and

(b) Forty hours for a salaried employee, regardless of the number of hours the salaried employee typically works.

((~~(24)~~)) (25) "Wage" means the same as "wages" under RCW 50.04.320(2), except that: (a) The term employment as used in RCW 50.04.320(2) is defined in this chapter; and (b) the maximum wages subject to a premium assessment are those wages as set by the commissioner under RCW 50A.04.115(4). "Wages" for purposes of elective coverage under ((~~RCW 50A.04.120~~)) RCW 50A.04.105 has the meaning as defined by rule.

**Sec.**  RCW 50A.04.020 and 2017 3rd sp.s. c 5 s 6 are each amended to read as follows:

(1) Beginning January 1, 2020, family and medical leave are available and benefits are payable to a qualified employee under this section. Following a waiting period consisting of the first seven calendar days of leave, benefits are payable when family or medical leave is required. However, no waiting period is required for leave for the birth or placement of a child. Benefits may continue during the continuance of the need for family and medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this chapter. Successive periods of family and medical leave caused by the same or related injury or sickness are deemed a single period of family and medical leave only if separated by less than four months.

(2) The weekly benefit shall be prorated by the percentage of hours on leave compared to the number of hours provided as the typical workweek hours as defined in RCW 50A.04.010.

(a) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(b) Hours on leave claimed for benefits under this chapter, if not a multiple of one hour, shall be reduced to the next lower multiple of one hour.

(c) The minimum claim duration payment is for eight consecutive hours of leave.

(3)(a) The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks.

(b) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks. This leave may be extended an additional two times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(c) An employee is not entitled to paid family and medical leave benefits under this chapter that exceeds a combined total of sixteen times the typical workweek hours. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(d) In determining the duration of leave time remaining in fifty-two consecutive calendar weeks, a railroad carrier may deduct only the actual amount of leave taken by an employee in increments no greater than twenty-four hours, and may not deduct more than one day for each date the employee specifically applied for leave.

(4) The weekly benefit for family and medical leave shall be determined as follows: If the employee's average weekly wage is: (a) Fifty percent or less of the state average weekly wage, the employee's weekly benefit is ninety percent of the employee's average weekly wage; or (b) greater than fifty percent of the state average weekly wage, the employee's weekly benefit is the sum of: (i) Ninety percent of the employee's average weekly wage up to fifty percent of the state average weekly wage; and (ii) fifty percent of the employee's average weekly wage that is greater than fifty percent of the state average weekly wage.

(5)(a) The maximum weekly benefit for family and medical leave that occurs on or after January 1, 2020, shall be one thousand dollars. By September 30, 2020, and by each subsequent September 30th, the commissioner shall adjust the maximum weekly benefit amount to ninety percent of the state average weekly wage. The adjusted maximum weekly benefit amount takes effect on the following January 1st.

(b) The minimum weekly benefit shall not be less than one hundred dollars per week except that if the employee's average weekly wage at the time of family and medical leave is less than one hundred dollars per week, the weekly benefit shall be the employee's full wage.

**Sec.**  RCW 50A.04.025 and 2017 3rd sp.s. c 5 s 31 are each amended to read as follows:

(1) Except as provided in RCW 50A.04.600(5) and subsection (6) of this section, any employee who takes family or medical leave under this chapter is entitled, on return from the leave:

(a) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(b) To be restored by the employer to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The taking of leave under this chapter may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

(3) Nothing in this section shall be construed to entitle any restored employee to:

(a) The accrual of any seniority or employment benefits during any period of leave; or

(b) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) As a condition of restoration under subsection (1) of this section for an employee who has taken medical leave, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the employee's health care provider that the employee is able to resume work.

(5) Nothing in this section shall be construed to prohibit an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

(6)(a) This section does not apply unless the employee: ((~~(i)~~))(A) Works for an employer with fifty or more employees; ((~~(ii)~~)) (B) has been employed by the current employer for twelve months or more; and ((~~(iii)~~)) (C) has worked for the current employer for at least one thousand two hundred fifty hours during the twelve months immediately preceding the date on which leave will commence; or

(ii) Is an employee of a railroad carrier and:

(A) Has been assigned to and worked on a guaranteed extra call board for at least the twelve months immediately preceding the date on which leave will commence and has worked or been paid for:

(I) Not less than sixty percent of the applicable total monthly guarantee, or the equivalent, during the twelve-month period; and

(II) Not less than five hundred four hours, not counting personal commute time or time spent on vacation leave, sick leave, personal leave, or medical leave, during the twelve-month period, for or by that employer; or

(B) If the employee has not been assigned to and worked on a guaranteed extra call board for at least twelve consecutive months preceding, the employee has worked not less than five hundred four hours, not counting personal commute time or time spent on vacation leave, sick leave, personal leave, or medical leave, during the preceding twelve months of time that the employee was actively working for or by that employer.

(b) For the purposes of this subsection((~~,~~)):

(i) An employer shall be considered to employ fifty or more employees if the employer employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year.

((~~(b)~~)) (ii) "Applicable monthly guarantee" means: (A) The minimum number of hours for which an employer has agreed to compensate such employee for any given month for an employee described in (a)(ii)(A) of this subsection other than an employee on reserve status; and (B) the number of hours for which an employer has agreed to pay such employee on reserve status for any given month, as established in the applicable collective bargaining agreement or, if none exists, in the employer's policies for an employee described in (a)(ii)(A) of this subsection who is on reserve status.

(c) An employer may deny restoration under this section to any salaried employee who is among the highest paid ten percent of the employees employed by the employer within seventy-five miles of the facility at which the employee is employed if:

(i) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(ii) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and

(iii) The leave has commenced and the employee elects not to return to employment after receiving the notice.

**Sec.**  RCW 50A.04.035 and 2017 3rd sp.s. c 5 s 13 are each amended to read as follows:

(1) Family and medical leave insurance benefits are payable to an employee during a period in which the employee is unable to perform his or her regular or customary work because he or she is on family and medical leave if the employee:

(a) Files an application for benefits as required by rules adopted by the commissioner;

(b) Has met the eligibility requirements of RCW 50A.04.015 or the elective coverage requirements under RCW 50A.04.105;

(c) Consents to the disclosure of information or records deemed private and confidential under state law. Initial disclosure of this information and these records by another state agency to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to chapter 50.13 RCW and RCW 50A.04.195(3) and 50A.04.080;

(d) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050;

(e) Provides his or her social security number;

(f) Provides a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of the certification of a serious health condition;

(g) Provides the employer from whom family and medical leave is to be taken with written notice of the employee's intention to take family leave in the same manner as an employee is required to provide notice in RCW 50A.04.030 and, in the employee's initial application for benefits, attests that written notice has been provided; and

(h) If requested by the employer, provides documentation of a military exigency.

(2) An employee who is not in employment for an employer at the time of filing an application for benefits is exempt from subsection (1)(g) and (h) of this section.

(3) In adopting rules to implement this section, the department shall adopt rules applicable to railroad carriers that at least address the following matters:

(a) What constitutes complete and sufficient certification from a medical provider, such that no additional details may be requested; and

(b) Limits on employer requests for recertification after approval has previously been granted for that year.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act are each added to chapter 81.40 RCW.

NEW SECTION. **Sec.**  This act shall be known and cited as the safe leave act for Washington railroad workers.

NEW SECTION. **Sec.**  Sections 1 through 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

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

**--- END ---**