

# HOUSE BILL REPORT

## HB 2944

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**As Reported by House Committee On:**  
Labor & Workplace Standards

**Title:** An act relating to safeguarding the public safety by protecting railroad workers.

**Brief Description:** Safeguarding the public safety by protecting railroad workers.

**Sponsors:** 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.

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 1/30/18, 2/1/18 [DPS].

**Brief Summary of Substitute Bill**

- Prohibits railroad carriers from disciplining employees due to layoff due to illness or injury.
- Requires Class I railroad carriers and certain Class II and III railroad carriers to establish a fatigue layoff program.
- Addresses job protection, leave balances, and other matters for railroad employees under the Family Leave Act.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

**Minority Report:** Do not pass. Signed by 2 members: Representatives McCabe, Ranking Minority Member; Manweller.

**Staff:** Joan Elgee (786-7106).

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Sick Leave.

The state paid sick leave law applies to employees covered by the state's Minimum Wage Act (MWA). Carriers, such as railroad carriers, subject to certain regulations of the federal Interstate Commerce Act, are exempt from the MWA. Under the federal Railroad Unemployment Insurance Act (RUIA), qualified employees of railroad carriers are eligible for sickness benefits for a qualifying sickness after the fourth consecutive day. The RUIA preempts "sickness benefits" under a state sickness law.

### Fatigue Management.

The federal Rail Safety Improvement Act of 2008 directed the Federal Railroad Administration (FRA) to adopt rules requiring Class I railroad carriers and certain other carriers to develop a railroad safety risk reduction program, to include a fatigue management plan. The Rail Safety Advisory Committee of the FRA formed a working group in 2011 to provide advice related to fatigue management plans but did not reach consensus on a recommendation for a rule.

### Family and Medical Leave.

Federal and state laws grant certain employees the right to unpaid family and medical leave. The federal Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected leave in a 12-month period for the birth or placement a child, or the serious health condition of the employee or the employee's family member. Generally, the FMLA applies to employees who work for a private employer with 50 or more employees and have worked for at least 12 months for the employer and for at least 1,250 hours for the employer during the previous 12 months. Upon return from leave, the employee is entitled to be returned to the same or an equivalent position. An employer may require certification of a serious health condition. An employer may request a second opinion and a third, binding opinion, under specified circumstances. An employer may require recertification on a reasonable basis.

The state Family Leave Act (FLA) is very similar to the FMLA. The FLA differs with respect to leave related to pregnancy and in certain other ways. The FLA is administered by the Department of Labor and Industries (L&I), but the L&I enforces only those provisions that are not part of the FMLA.

The state Paid Family and Medical Leave Insurance Program provides paid family and medical leave to qualifying employees beginning January 1, 2020. The FLA expires on December 31, 2019.

### Other.

The federal Department of Transportation's Surface Transportation Board (STB) is responsible for a variety of aspects of federal railroad regulatory oversight. The STB classifies types of railroads by annual carrier operating revenue:

- Class I – \$448 million or more;
- Class II – \$36 million or more; and
- Class III – less than \$36 million.

The state Utilities and Transportation Commission (UTC) administers a railroad safety program and also enforces certain laws relating specifically to railroad employees.

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### **Summary of Substitute Bill:**

The Safe Leave Act for Washington Railroad Workers (Act) is enacted.

#### Sick and Fatigue Leave.

*Sick Leave – Discipline, Documentation.* A railroad carrier is prohibited from disciplining an employee because of absence due to the employee's illness or injury, or the illness or injury of the employee's spouse or child, if the employee has completed three consecutive months of continuous employment and the period of absence does not exceed 12 weeks. The carrier may, within 10 days after the employee returns to work, require the employee to provide documentation from a health care provider that the employee was incapable of working due to illness or injury. The employer must make the request for documentation in writing and give the employee at least 30 days to provide the documentation. Employee absences for illness or injury are not subject to any type of carrier availability or attendance policy and are stated to be separate from the family and medical leave insurance program and the FLA.

*Fatigue Leave.* Class I railroad carriers and Class II and III carriers with regular operating craft working hours extending beyond 16 hours a day more frequently than once a week (exclusive of unforeseen events) must establish a fatigue layoff program (program). The carrier must submit the program to the UTC for review and approval within 90 days from the effective date of the Act. Before approving a program, the UTC must submit the program to the leadership of the operating craft rail labor organization state legislative boards. An operating craft employee may layoff due to fatigue without being subjected to discipline or any type of attendance or availability policy.

The UTC must adopt rules to implement the fatigue leave requirements. In adopting rules, the UTC must consider research addressing alertness, depression, and other consequences of irregular, nonscheduled "on-call" working conditions. The UTC must also recognize the importance of ensuring fatigue layoffs are reasonable and legitimate.

A carrier must report data requested by the UTC. If the UTC identifies additional actions to address fatigue that require legislative action, the UTC must report its findings to the appropriate legislative committees.

An operating craft employee is an employee who performs service in an operating craft on a railroad or directs the work of an operating craft employee as a scheduled employee and other employees who perform safety sensitive tasks.

*Data.* A carrier must provide data to the UTC regarding the number of employees laying off for injury, illness, or fatigue and the length of layoff no later than January 31 of each year for the preceding year. No personal identifying information may be submitted.

*Enforcement.* Upon complaint by an employee regarding the sick leave and fatigue leave provisions, the UTC must investigate. If the UTC finds a violation, the UTC must issue a notice of infraction and may impose a fine of up to \$500 for the first infraction, up to \$5,000 for a second infraction, and up to \$25,000 for each subsequent infraction committed within three years of a previous infraction. The UTC may also order back pay and reinstatement and may increase the penalties by rule based on changing economic conditions.

Family Leave Act.

In determining the duration of leave time remaining in a year, a carrier may deduct only the actual amount of leave taken by an employee in increments no greater than 24 hours, and may not deduct more than one day for each date the employee specifically applied for leave.

Job protection applies to railroad carrier employees who:

1. for at least 12 months before the leave, worked on a guaranteed extra call board and worked and were paid for: not less than 60 percent of the applicable total monthly guarantee, or the equivalent; and not less than 504 hours (not counting vacation leave and other specified time) for or by that employer; or
2. for those employees who did not work on a guaranteed extra call board for the 12 months before the leave, worked not less than 504 hours (not counting vacation leave and other specified time) during the preceding 12 months that the employee was actively working for or by that employer.

The "applicable monthly guarantee" is the minimum number of hours for which a carrier has agreed to compensate an employee for a month, other than an employee on reserve status, and for an employee on reserve status, the number of hours for which an employer has agreed to pay the employee as established in the collective bargaining agreement or the employer's policies.

In adopting rules to implement the certification requirements, L&I must adopt rules applicable to carriers that at least address: (1) what constitutes complete and sufficient certification from a medical provider, such that no additional details may be requested; and (2) limits on employer requests for recertification after approval has been granted for that year.

**Substitute Bill Compared to Original Bill:**

The substitute bill clarifies that the sick leave provisions apply to leave due to illness or injury of the employee's spouse or child, as well as the illness or injury of the employee. It also adds that the sick leave is separate from any leave under the state FLA. In addition, the substitute bill amends the FLA rather than the family and medical leave insurance program provisions, and makes a technical numbering correction.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 2, 2018.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 through 6, relating to sick and fatigue leave, which contain an emergency clause and take effect immediately.

**Staff Summary of Public Testimony:**

(In support) Railroad workers are forced or intimidated to work when they are fatigued or sick. Workers are allowed only three days in a 90-day period when they can layoff. Fatigue is epidemic and leads to depression and suicide. Many workers are disciplined for availability. Train lineups do not work because they can be off by 10 hours. Predictability of crew lineups will not happen. It is impossible to plan when to sleep because you do not know when you will get the call to report to work. Workers may be called to work shortly after going to bed. The carrier does not care if a worker says he or she is fatigued. Workers used to have 15 days layoff but this was taken away by the courts. The state paid sick leave law does not apply to railroad carriers. Having crew work when sick or fatigued is a safety issue for the crew and for the public. Trains may carry hazardous materials. The federal Railroad Safety Improvement Act is not working. A 10 hour rest is not enough time.

Some workers have been denied FMLA leave, disciplined for taking leave, and charged leave for more hours than the worker was out of work.

(Opposed) This is a federal issue. Federal law covers mandatory rest periods, fatigue avoidance, and discipline of workers for seeking medical care. Workers could bargain for shorter hours. Workers have generous health benefits resulting from the Railway Labor Act collective bargaining process. Safety is very important and railroad workers have a lower injury rate than other transportation workers.

(Other) The changes to the Paid Family and Medical Leave Insurance Program may have unintended consequences.

**Persons Testifying:** (In support) Representative Chapman, prime sponsor; Bruce Smith; Murat Kusaev, Julian Johnson; Chris Wierman; Tracey Council, Korey McDaniel, Troy Shtogren, Herb Krohn, and Paul McGill, International Association of Sheet Metal, Air, Rail, and Transportation Workers; and Sharaim Allen and Brian Kennedy, Brotherhood of Locomotive Engineers and Trainmen.

(Other) Nick Streuli, Employment Security Department.

(Opposed) Johan Hellman, Burlington Northern Santa Fe Railway; and Tom Parker, Union Pacific Railroad.

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