

SSB 5267 - S AMD 223  
By Senator Keiser

ADOPTED 03/08/2023

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that railroad  
4 employees are susceptible to illness and infectious diseases from  
5 working in confined spaces, as well as the illnesses and injuries  
6 that affect the general population, yet have no protections for  
7 unpaid leave, and may be subjected to discipline and termination for  
8 unpaid absences from duty due to illnesses and injuries of themselves  
9 and their family members, or for bereavement.

10 The legislature further finds that railroad employees may report  
11 to work while ill to avoid disciplinary action by railroad companies,  
12 pursuant to their corporate attendance and availability policies.

13 The provisions of this chapter are enacted in the exercise of the  
14 police power of the state for the purpose of protecting the immediate  
15 and future health, safety, and welfare of the people of this state.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply  
17 throughout this chapter unless the context clearly requires  
18 otherwise.

19 (1) The following terms have the same meaning as provided in RCW  
20 50A.05.010: "Child," "family leave," "family member," "health care  
21 provider," "medical leave," "period of incapacity," "serious health  
22 condition," and "spouse."

23 (2) "Department" means the department of labor and industries.

24 (3) "Director" means the director of the department of labor and  
25 industries, or the director's authorized representative.

26 (4) "Employee" means a person who has been employed by a railroad  
27 carrier.

28 (5) "Employer" means any person, firm, corporation, partnership,  
29 business trust, legal representative, or other business entity,  
30 including any unit of local government including, but not limited to,  
31 a county, city, town, municipal corporation, quasi-municipal

1 corporation, or political subdivision, which engages in business as a  
2 railroad carrier.

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

9 (7) "Intermittent leave" is leave taken in separate blocks of  
10 time due to a single qualifying reason.

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

16 (9) "Railroad carrier" means any employer subject to the  
17 jurisdiction of the surface transportation board under 49 U.S.C. Sec.  
18 1301 through 1326, as it exists on the effective date of this  
19 section. "Railroad carrier" includes the officers and agents of the  
20 railroad operations regardless of physical location. "Railroad  
21 carrier" does not include class III carriers.

22 (10) "Unpaid" means a period of leave undertaken without  
23 receiving payment of lost wages from an employing railroad company.

24 NEW SECTION. **Sec. 3.** The department shall administer the  
25 provisions of this chapter.

26 NEW SECTION. **Sec. 4.** (1) No railroad carrier may dismiss,  
27 suspend, lay off, demote, engage in any adverse action against, or  
28 otherwise discipline an employee for unpaid absences pursuant to the  
29 provisions of this section if:

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

32 (b) No consecutive period of unpaid absence pursuant to the  
33 provisions of this section exceeds 15 days;

34 (c) The total number of unpaid absences the employee has taken  
35 pursuant to the provisions of this section, including railroad  
36 employer paid sick leave, is less than 91 days in the current  
37 calendar year; and

1 (d) The unpaid absence is taken pursuant to subsection (2) of  
2 this section.

3 (2) An employee's unpaid absence under this section is due to any  
4 of the following reasons:

5 (a) An absence resulting from an employee's mental or physical  
6 illness, injury, or health condition including fatigue; to  
7 accommodate the employee's need for medical diagnosis, care, or  
8 treatment of a mental or physical illness, injury, or health  
9 condition; or an employee's need for preventive medical care;

10 (b) To allow the employee to provide care for a family member  
11 with a mental or physical illness, injury, or health condition; care  
12 of a family member who needs medical diagnosis, care, or treatment of  
13 a mental or physical illness, injury, or health condition; or care  
14 for a family member who needs preventive medical care; and

15 (c) When the employee or their spouse or registered domestic  
16 partner's place of business has been closed by order of a public  
17 official for any health-related reason, or when an employee's child's  
18 school or place of care has been closed for such a reason.

19 (3) An employer may permit employees to use any accrued leave,  
20 including vacation time or personal leave, while absent pursuant to  
21 the provisions of this section. An employer may not require an  
22 employee to use paid leave while absent pursuant to the provisions of  
23 this section.

24 (4) For employee absences under this section exceeding five  
25 consecutive days, the employer may, within 10 days of the employee's  
26 return to work, request verification that the employee's unpaid  
27 absence was for a specific purpose pursuant to this section.

28 (a) If verification is requested by an employer, the employer  
29 must provide the employee no fewer than 30 days to obtain and provide  
30 any requested verification. An employer's requirements for  
31 verification may not result in an unreasonable burden or expense on  
32 the employee and may not exceed privacy or verification requirements  
33 otherwise established by law.

34 (b) If an employer requires an employee to provide verification  
35 from a health care provider identifying the need for use of their  
36 unpaid leave for a specific purpose pursuant to this section, the  
37 employer must not require that the information provided explain the  
38 nature of the condition. If the employer obtains any health  
39 information about an employee or an employee's family member, the

1 employer must treat such information in a confidential manner  
2 consistent with applicable privacy laws.

3 (5) Any employee absences pursuant to this section are not  
4 subject to any type of carrier availability or attendance policy and  
5 are separate from any protected leave under Title 50A RCW and section  
6 4 of this act.

7 NEW SECTION. **Sec. 5.** (1) It is unlawful for any employer to:

8 (a) Interfere with, restrain, or deny the exercise of, or the  
9 attempt to exercise, any right provided under this chapter; or

10 (b) Discharge or in any other manner discriminate against any  
11 individual for opposing any practice made unlawful by this chapter.

12 (2) It is unlawful for any person to discharge or in any other  
13 manner discriminate against any individual because the individual  
14 has:

15 (a) Filed any complaint or charge, or has instituted or caused to  
16 be instituted any proceeding, under or related to this chapter;

17 (b) Given, or is about to give, any information in connection  
18 with any inquiry or proceeding relating to any right provided under  
19 this chapter; or

20 (c) Testified, or is about to testify, in any inquiry or  
21 proceeding relating to any right provided under this chapter.

22 NEW SECTION. **Sec. 6.** (1)(a) Upon receipt of a complaint by an  
23 employee of a railroad carrier, the department shall investigate to  
24 determine if there has been noncompliance with this chapter and  
25 related rules and issue either a citation and notice of assessment or  
26 a closure letter within 90 days after the date on which the  
27 department received the complaint, unless the complaint is otherwise  
28 resolved. The department may extend the period by providing advance  
29 written notice to the employee and the employer setting forth good  
30 cause for an extension of the period, and specifying the duration of  
31 the extension.

32 (b) The department shall send the citation and notice of  
33 assessment or the closure letter to both the employer and the  
34 employee by service of process or using a method by which the mailing  
35 can be tracked or the delivery can be confirmed to their last known  
36 addresses.

37 (c) If the department's investigation finds that the employee's  
38 allegation cannot be substantiated, the department shall issue a

1 closure letter to the employee and the employer detailing such  
2 finding.

3 (2) (a) If the department's investigation finds that a railroad  
4 carrier violated this chapter or related rules, the department may  
5 order the employer to pay the department a civil penalty. Civil  
6 penalties may be assessed as follows:

7 (i) For a class I carrier and any class II or III carrier owned  
8 by a class I carrier, up to \$5,000 for the first violation, up to  
9 \$25,000 for the second violation within a three-year period following  
10 any previous violation, and up to \$100,000 for the third or  
11 subsequent violation within a three-year period following any  
12 previous violation;

13 (ii) For a class II carrier, up to \$1,000 for the first  
14 violation, up to \$5,000 for the second violation within a three-year  
15 period following any previous violation, and up to \$10,000 for the  
16 third or subsequent violation within a three-year period following  
17 any previous violation.

18 (b) The department may, at any time, waive or reduce any civil  
19 penalty assessed against an employer under this section if the  
20 department determines that the employer has taken corrective action  
21 to remedy the retaliatory action.

22 (3) The director may also order other remedies such as back pay  
23 and reinstatement, and may increase the fines by rule based on  
24 changing economic conditions.

25 (4) The department shall deposit civil penalties paid under this  
26 section in the supplemental pension fund established under RCW  
27 51.44.033.

28 NEW SECTION. **Sec. 7.** (1) A person, firm, or corporation  
29 aggrieved by a citation and notice of assessment by the department  
30 under this chapter, or any rules adopted under this chapter, may  
31 appeal the citation and notice of assessment to the director by  
32 filing a notice of appeal with the director within 30 days of the  
33 department's issuance of the citation and notice of assessment. A  
34 citation and notice of assessment not appealed within 30 days is  
35 final and binding, and not subject to further appeal.

36 (2) A notice of appeal filed with the director under this section  
37 shall stay the effectiveness of the citation and notice of assessment  
38 pending final review of the appeal by the director as provided for in  
39 chapter 34.05 RCW.

1 (3) Upon receipt of a notice of appeal, the director shall assign  
2 the hearing to an administrative law judge of the office of  
3 administrative hearings to conduct the hearing and issue an initial  
4 order. The hearing and review procedures shall be conducted in  
5 accordance with chapter 34.05 RCW, and the standard of review by the  
6 administrative law judge of an appealed citation and notice of  
7 assessment shall be de novo. Any party who seeks to challenge an  
8 initial order shall file a petition for administrative review with  
9 the director within 30 days after service of the initial order. The  
10 director shall conduct an administrative review in accordance with  
11 chapter 34.05 RCW.

12 (4) The director shall issue all final orders after appeal of the  
13 initial order. The final order of the director is subject to judicial  
14 review in accordance with chapter 34.05 RCW.

15 (5) Orders that are not appealed within the time period specified  
16 in this section and chapter 34.05 RCW are final and binding, and not  
17 subject to further appeal.

18 (6) An employer who fails to allow adequate inspection of records  
19 in an investigation by the department under this chapter within a  
20 reasonable time period may not use such records in any appeal under  
21 this section to challenge the correctness of any determination by the  
22 department of the penalty assessed.

23 NEW SECTION. **Sec. 8.** If any person fails to pay an assessment  
24 under this chapter, or under any rule under this chapter, after it  
25 has become a final and unappealable order, or after the court has  
26 entered final judgment in favor of the agency, the director may  
27 initiate collection procedures in accordance with section 9 of this  
28 act.

29 NEW SECTION. **Sec. 9.** (1) After a final order is issued under  
30 this chapter, or any rules under this chapter, if an employer  
31 defaults in the payment of: (a) Any amount determined by the  
32 department to be owed to an employee, including interest; or (b) any  
33 civil penalty ordered by the department under this chapter, or any  
34 rules under this chapter, the director may file with the clerk of any  
35 county within the state a warrant in the amount of the payment plus  
36 any filing fees. The clerk of the county in which the warrant is  
37 filed shall immediately designate a superior court cause number for  
38 the warrant, and the clerk shall cause to be entered in the judgment

1 docket under the superior court cause number assigned to the warrant,  
2 the name of the employer mentioned in the warrant, the amount of  
3 payment due on it plus any filing fees, and the date when the warrant  
4 was filed. The aggregate amount of the warrant as docketed becomes a  
5 lien upon the title to, and interest in, all real and personal  
6 property of the employer against whom the warrant is issued, the same  
7 as a judgment in a civil case docketed in the office of the clerk.  
8 The sheriff shall proceed upon the warrant in all respects and with  
9 like effect as prescribed by law with respect to execution or other  
10 process issued against rights or property upon judgment in a court of  
11 competent jurisdiction. The warrant so docketed is sufficient to  
12 support the issuance of writs of garnishment in favor of the state in  
13 a manner provided by law in case of judgment, wholly or partially  
14 unsatisfied. The clerk of the court is entitled to a filing fee which  
15 shall be added to the amount of the warrant. A copy of the warrant  
16 shall be mailed to the employer within three days of filing with the  
17 clerk.

18 (2) (a) The director may issue to any person, firm, corporation,  
19 other entity, municipal corporation, political subdivision of the  
20 state, a public corporation, or any agency of the state, a notice and  
21 order to withhold and deliver property of any kind when they have  
22 reason to believe that there is in the possession of the person,  
23 firm, corporation, other entity, municipal corporation, political  
24 subdivision of the state, public corporation, or agency of the state,  
25 property that is or will become due, owing, or belonging to an  
26 employer upon whom a notice of assessment has been served by the  
27 department for payments or civil penalties due to the department. The  
28 effect of a notice and order is continuous from the date the notice  
29 and order is first made until the liability out of which the notice  
30 and order arose is satisfied or becomes unenforceable because of  
31 lapse of time. The department shall release the notice and order when  
32 the liability out of which the notice and order arose is satisfied or  
33 becomes unenforceable by reason of lapse of time and shall notify the  
34 person against whom the notice and order was made that the notice and  
35 order has been released.

36 (b) The notice and order to withhold and deliver must be served  
37 by the sheriff of the county or by the sheriff's deputy, by certified  
38 mail, return receipt requested, or by the director. A person, firm,  
39 corporation, other entity, municipal corporation, political  
40 subdivision of the state, public corporation, or agency of the state

1 upon whom service has been made shall answer the notice within 20  
2 days exclusive of the day of service, under oath and in writing, and  
3 shall make true answers to the matters inquired of in the notice and  
4 order. Upon service of the notice and order, if the party served  
5 possesses any property that may be subject to the claim of the  
6 department, the party shall promptly deliver the property to the  
7 director. The director shall hold the property in trust for  
8 application on the employer's indebtedness to the department, or for  
9 return without interest, in accordance with a final determination of  
10 a petition for review. In the alternative, the party shall furnish a  
11 good and sufficient surety bond satisfactory to the director  
12 conditioned upon final determination of liability. If a party served  
13 and named in the notice fails to answer the notice within the time  
14 prescribed in this section, the court may render judgment by default  
15 against the party for the full amount claimed by the director in the  
16 notice, together with costs. If a notice is served upon an employer  
17 and the property subject to the notice is wages, the employer may  
18 assert in the answer all exemptions provided for by chapter 6.27 RCW  
19 to which the wage earner is entitled.

20 (c) As an alternative to the methods of service described in this  
21 section, the department may electronically serve a financial  
22 institution with a notice and order to withhold and deliver by  
23 providing a list of its outstanding warrants, except those for which  
24 a payment agreement is in good standing, to the department of  
25 revenue. The department of revenue may include the warrants provided  
26 by the department in a notice and order to withhold and deliver  
27 served under RCW 82.32.235(3). A financial institution that is served  
28 with a notice and order to withhold and deliver under this subsection  
29 (2)(c) must answer the notice within the time period applicable to  
30 service under RCW 82.32.235(3). The department and the department of  
31 revenue may adopt rules to implement this subsection (2)(c).

32 (3) In addition to the procedure for collection of amounts owed,  
33 including interest, and civil penalties as set forth in this section,  
34 the department may recover amounts owed, including interest, and  
35 civil penalties assessed under this chapter, and any rules under this  
36 chapter, in a civil action brought in a court of competent  
37 jurisdiction of the county where the violation is alleged to have  
38 occurred.

39 (4) Whenever any employer quits business, sells out, exchanges,  
40 or otherwise disposes of the employer's business or stock of goods,



1 any person who becomes a successor to the business becomes liable for  
2 the full amount of any outstanding citation and notice of assessment  
3 or penalty against the employer's business under this chapter if, at  
4 the time of the conveyance of the business, the successor has: (a)  
5 Actual knowledge of the fact and amount of the outstanding citation  
6 and notice of assessment; or (b) a prompt, reasonable, and effective  
7 means of accessing and verifying the fact and amount of the  
8 outstanding citation and notice of assessment from the department. If  
9 the citation and notice of assessment or penalty is not paid in full  
10 by the employer within 10 days of the date of the sale, exchange, or  
11 disposal, the successor is liable for the payment of the full amount  
12 of the citation and notice of assessment or penalty, and payment  
13 thereof by the successor must, to the extent thereof, be deemed a  
14 payment upon the purchase price. If the payment is greater in amount  
15 than the purchase price, the amount of the difference becomes a debt  
16 due to the successor from the employer.

17 (5) This section does not affect other collection remedies that  
18 are otherwise provided by law.

19 NEW SECTION. **Sec. 10.** Each employer shall post and keep posted,  
20 in conspicuous places on the premises of the employer where notices  
21 to employees and applicants for employment are customarily posted, a  
22 notice, to be prepared or approved by the director, setting forth  
23 excerpts from, or summaries of, the pertinent provisions of this  
24 chapter and information pertaining to the filing of a charge. Any  
25 employer that willfully violates this section may be subject to a  
26 civil penalty of not more than \$1,000 for each separate offense. Any  
27 penalties collected by the department under this section shall be  
28 deposited into the supplemental pension fund established under RCW  
29 51.44.033.

30 NEW SECTION. **Sec. 11.** Nothing in this chapter shall be  
31 construed:

32 (1) To modify or affect any state or local law prohibiting  
33 discrimination on the basis of race, religion, color, national  
34 origin, sex, sexual orientation, gender identity, age, or disability;  
35 or

36 (2) To supersede any provision of any local law that provides  
37 greater family or medical leave rights than the rights established  
38 under this chapter.

1 NEW SECTION. **Sec. 12.** Nothing in this chapter diminishes the  
2 obligation of an employer to comply with any collective bargaining  
3 agreement or any employment benefit program or plan that provides  
4 greater family or medical leave rights to employees than the rights  
5 established under this chapter. The rights established for employees  
6 under this chapter may not be diminished by any collective bargaining  
7 agreement or any employment benefit program or plan.

8 NEW SECTION. **Sec. 13.** Nothing in this chapter shall be  
9 construed to discourage employers from adopting or retaining leave  
10 policies more generous than any policies that comply with the  
11 requirements under this chapter.

12 NEW SECTION. **Sec. 14.** The director may adopt rules as necessary  
13 to implement this chapter.

14 NEW SECTION. **Sec. 15.** This act may be known and cited as the  
15 Shahrain C. Allen safe leave act for Washington railroad workers.

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

20 NEW SECTION. **Sec. 17.** Sections 1 through 15 of this act  
21 constitute a new chapter in Title 49 RCW.

22 NEW SECTION. **Sec. 18.** Except for sections 6 through 10 of this  
23 act, which take effect January 1, 2024, this act is necessary for the  
24 immediate preservation of the public peace, health, or safety, or  
25 support of the state government and its existing public institutions  
26 and takes effect immediately."

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**ADOPTED 03/08/2023**

27 On page 1, line 2 of the title, after "workers;" strike the  
28 remainder of the title and insert "adding a new chapter to Title 49

1 RCW; prescribing penalties; providing an effective date; and  
2 declaring an emergency."

EFFECT: Removes the section granting family and medical leave and related provisions, including provisions regarding intermittent leave, verification by employers, job protection, and notice requirements. Removes the section allowing employees to take bereavement leave. Excludes class III carriers from the bill. Removes the private right of action and related provisions for violations of the antiretaliation provisions of the bill. Modifies the intent. Removes the definition of "reduced leave schedule." Changes the requirement that an employer must allow their employees to take unpaid leave to a prohibition on an employer taking an adverse employment action against an employee for unpaid absences. Changes the term "authorized absence" to "unpaid absence." Changes the term "authorized purpose" to "specified purpose." Provides that the total number of unpaid absences and absences taken pursuant to railroad employer paid sick leave, rather than paid leave allowed under federal law, must be less than 91 days in the current calendar year. Includes fatigue as a health condition for which unpaid absences may be taken.

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