

SSB 5267 - S AMD 192

By Senator Stanford

WITHDRAWN 03/08/2023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 Furthermore, the legislature finds that the unique operational
14 practices utilized to summon railroad crew employees to duty
15 necessitate state protections for short-term unpaid absences by
16 railroad workers. The job protections extended by this act for unpaid
17 leave are minimums in contrast to the greater rights and benefits of
18 most employees in this state.

19 Therefore, the legislature enacts this chapter in the interest of
20 public health and infectious disease control, for protection of
21 public safety, the prevention of environmental harm, and to reduce
22 railroad operational risks across the state. The provisions of this
23 chapter are enacted in the exercise of the police power of the state
24 for the purpose of protecting the immediate and future health,
25 safety, and welfare of the people of this state.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

29 (1) The following terms have the same meaning as provided in RCW
30 50A.05.010: "Child," "family leave," "family member," "health care

1 provider," "medical leave," "period of incapacity," "serious health
2 condition," and "spouse."

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

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

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

8 (5) "Employer" means any person, firm, corporation, partnership,
9 business trust, legal representative, or other business entity,
10 including any unit of local government including, but not limited to,
11 a county, city, town, municipal corporation, quasi-municipal
12 corporation, or political subdivision, which engages in business as a
13 railroad carrier.

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

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

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

27 (9) "Railroad carrier" means any employer subject to the
28 jurisdiction of the surface transportation board under 49 U.S.C. Sec.
29 1301 through 1326, as it exists on the effective date of this
30 section. "Railroad carrier" includes the officers and agents of the
31 railroad operations regardless of physical location.

32 (10) "Reduced leave schedule" means a leave schedule that reduces
33 the usual number of hours per workweek, or hours per workday, of an
34 employee.

35 (11) "Unpaid" means a period of leave undertaken without
36 receiving payment of lost wages from an employing railroad company.

37 NEW SECTION. **Sec. 3.** The department shall administer the
38 provisions of this chapter.

1 NEW SECTION. **Sec. 4.** (1) Subject to section 10 of this act, an
2 employee is entitled to a total of 12 workweeks of leave during any
3 12-month period when family or medical leave is required.

4 (2) The entitlement to leave for family or medical leave due to
5 the birth or placement of a child expires at the end of the 12-month
6 period beginning on the date of such birth or placement.

7 (3) In determining the duration of family or medical leave time
8 remaining in 52 consecutive calendar weeks, a railroad carrier may
9 deduct only the actual amount of leave taken by an employee in
10 increments no greater than 24 hours, and may not deduct more than one
11 calendar day for each 24-hour period the employee specifically
12 applied for leave.

13 (4) An employee is not entitled to leave under this section
14 unless:

15 (a)(i) The employee worked for at least six months for the
16 employer with respect to whom leave is requested under this section;
17 and

18 (ii) The employee worked for at least 504 hours of service with
19 the employer during the previous 12-month period; or

20 (b)(i) The employee has been assigned to and worked on a
21 guaranteed extra call board for at least the 12 months immediately
22 preceding the date on which leave will commence and has worked or
23 been paid for:

24 (A) Not less than 60 percent of the applicable total monthly
25 guarantee, or the equivalent, averaged over the 12-month period; and

26 (B) Not less than 504 hours, not counting personal commute time
27 or time spent on vacation leave, sick leave, personal leave, leave of
28 absence, or medical leave, during the 12-month period, for or by that
29 employer; or

30 (ii) The employee has not been assigned to and worked on a
31 guaranteed extra call board for at least 12 consecutive months
32 preceding, but the employee has worked not less than 504 hours, not
33 counting personal commute time or time spent on vacation leave, sick
34 leave, personal leave, or medical leave, during the preceding twelve
35 months of time that the employee was actively working for or by that
36 employer.

37 NEW SECTION. **Sec. 5.** (1) No railroad carrier may dismiss,
38 suspend, lay off, demote, engage in any adverse action against, or

1 otherwise discipline an employee for unpaid absences pursuant to the
2 provisions of this section if:

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

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

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

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

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

15 (a) An absence resulting from an employee's mental or physical
16 illness, injury, or health condition including fatigue; to
17 accommodate the employee's need for medical diagnosis, care, or
18 treatment of a mental or physical illness, injury, or health
19 condition; or an employee's need for preventive medical care;

20 (b) To allow the employee to provide care for a family member
21 with a mental or physical illness, injury, or health condition; care
22 of a family member who needs medical diagnosis, care, or treatment of
23 a mental or physical illness, injury, or health condition; or care
24 for a family member who needs preventive medical care; and

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

29 (3) An employer may permit employees to use any accrued leave,
30 including vacation time or personal leave, while absent pursuant to
31 the provisions of this section. An employer may not require an
32 employee to use paid leave while absent pursuant to the provisions of
33 this section.

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

38 (a) If verification is requested by an employer, the employer
39 must provide the employee no fewer than 30 days to obtain and provide
40 any requested verification. An employer's requirements for

1 verification may not result in an unreasonable burden or expense on
2 the employee and may not exceed privacy or verification requirements
3 otherwise established by law.

4 (b) If an employer requires an employee to provide verification
5 from a health care provider identifying the need for use of their
6 unpaid leave for a specific purpose pursuant to this section, the
7 employer must not require that the information provided explain the
8 nature of the condition. If the employer obtains any health
9 information about an employee or an employee's family member, the
10 employer must treat such information in a confidential manner
11 consistent with applicable privacy laws.

12 (5) Any employee absences pursuant to this section are not
13 subject to any type of carrier availability or attendance policy and
14 are separate from any protected leave under Title 50A RCW and
15 sections 4 and 6 through 10 of this act.

16 NEW SECTION. **Sec. 6.** (1) No railroad carrier may dismiss,
17 suspend, lay off, demote, engage in any adverse action against, or
18 otherwise discipline an employee because of unpaid absences pursuant
19 to the provisions of this section.

20 (2) Employee may take absences of up to seven days for
21 bereavement purposes including arranging or attending funeral
22 services, as well as handling matters related to the estate of a
23 deceased family member as defined in section 2 of this act.

24 (3) In addition to any paid bereavement leave offered by an
25 employer, an employer may approve an employee's request to use any
26 accrued vacation or personal leave time for bereavement purposes.

27 (4) Unpaid absences for bereavement purposes are not required to
28 be taken over consecutive calendar days and may be split up over
29 time. However, only seven days of unpaid protected leave for
30 bereavement leave is allowed per decedent pursuant to this section.

31 (a) Employees may absent themselves for fewer than seven days if
32 they so choose.

33 (b) Employers may provide additional compensated or unpaid time
34 off to their employees for bereavement purposes.

35 (5)(a) For absences related to bereavement purposes under this
36 section, employers may require verification for the death of the
37 family member or relative.

38 (b) For unpaid employee absences under this section, the employer
39 may, within 10 days of the employee's return to work, request

1 verification that the employee's unpaid absence was for bereavement
2 purposes pursuant to this section.

3 (c) If verification is requested by an employer, the employer
4 must provide the employee no fewer than 30 days to obtain and provide
5 any requested verification. An employer's requirements for
6 verification may not result in an unreasonable burden or expense on
7 the employee, and may not exceed privacy or verification requirements
8 otherwise established by law.

9 NEW SECTION. **Sec. 7.** (1)(a) When leave is taken after the birth
10 or placement of a child for adoption or foster care, an employee may
11 take leave intermittently or on a reduced leave schedule with the
12 employer's agreement. The employer's agreement is not required;
13 however, for leave during which the employee has a serious health
14 condition in connection with the birth of a child or if the newborn
15 child has a serious health condition.

16 (b) Leave may be taken intermittently or on a reduced leave
17 schedule when medically necessary for treatment of a serious health
18 condition by or under the supervision of a health care provider, or
19 for recovery from treatment or recovery from a serious health
20 condition. It may also be taken to provide care or psychological
21 comfort for an immediate family member with a serious health
22 condition.

23 (i) Intermittent leave may be taken for a serious health
24 condition that requires treatment by a health care provider
25 periodically, rather than for one continuous period of time, and may
26 include leave of periods from an hour or more to several weeks.

27 (ii) Intermittent or reduced schedule leave may be taken for
28 absences where the employee or family member is incapacitated or
29 unable to perform the essential functions of the position because of
30 a chronic serious health condition even if he or she is not receiving
31 current or ongoing treatment by a health care provider.

32 (c) There is no limit on the size of an increment of leave when
33 an employee takes intermittent leave or leave on a reduced leave
34 schedule. However, an employer may limit leave increments to the
35 shortest period of time that the employer's payroll system uses to
36 account for absences or use of leave.

37 (d) The taking of leave intermittently or on a reduced leave
38 schedule under this section may not result in a reduction in the

1 total amount of leave to which the employee is entitled under section
2 8 of this act beyond the amount of leave actually taken.

3 (2) If an employee requests intermittent leave, or leave on a
4 reduced leave schedule, for a family member's serious health
5 condition or the employee's serious health condition when the
6 condition is foreseeable based on planned medical treatment, the
7 employer may require such employee to transfer temporarily to an
8 available alternative position at the same geographical location for
9 which the employee is qualified and that:

10 (a) Has equivalent pay and benefits; and

11 (b) Better accommodates recurring periods of leave than the
12 regular employment position of the employee.

13 NEW SECTION. **Sec. 8.** (1) Leave granted under section 4 of this
14 act may consist of unpaid leave.

15 (2) Except as provided in subsection (3) of this section, this
16 chapter does not affect an employee's entitlement to paid leave under
17 Title 50A RCW.

18 (3) Unless otherwise expressly permitted by the employer, leave
19 taken under section 4 of this act must be taken concurrently with any
20 paid leave taken under Title 50A RCW or any leave taken under the
21 federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L.
22 103-3, 107 Stat. 6, as it existed on October 19, 2017).

23 NEW SECTION. **Sec. 9.** (1) If the necessity for leave for the
24 birth or placement of a child is foreseeable based on an expected
25 birth or placement, the employee shall provide the employer with not
26 less than 30 days' notice, before the date the leave is to begin, of
27 the employee's intention to take leave for the birth or placement of
28 a child, except that if the date of the birth or placement requires
29 leave to begin in less than 30 days, the employee shall provide such
30 notice as is practicable.

31 (2) If the necessity for leave for a family member's serious
32 health condition or the employee's serious health condition is
33 foreseeable based on planned medical treatment, the employee:

34 (a) Must make a reasonable effort to schedule the treatment so as
35 not to disrupt unduly the operations of the employer, subject to the
36 approval of the health care provider of the employee or the health
37 care provider of the family member, as appropriate; and

1 (b) Must provide the employer with not less than 30 days' notice,
2 before the date the leave is to begin, of the employee's intention to
3 take leave for a family member's serious health condition or the
4 employee's serious health condition, except that if the date of the
5 treatment requires leave to begin in less than 30 days, the employee
6 must provide such notice as is practicable.

7 NEW SECTION. **Sec. 10.** If spouses entitled to leave under this
8 chapter are employed by the same employer, the aggregate number of
9 workweeks of leave to which both may be entitled may be limited to 12
10 workweeks during any 12-month period, if such leave is taken: (1) For
11 the birth or placement of a child; or (2) for a family member's
12 serious health condition.

13 NEW SECTION. **Sec. 11.** (1) An employer may require that a
14 request for leave for a family member's serious health condition or
15 the employee's serious health condition be supported by a
16 certification issued by the health care provider of the employee or
17 of the family member, as appropriate. The employee must provide, in a
18 timely manner, a copy of the certification to the employer.

19 (2) Certification provided under subsection (1) of this section
20 is sufficient if it states:

21 (a) The date on which the serious health condition commenced;

22 (b) The probable duration of the condition;

23 (c) The appropriate medical facts within the knowledge of the
24 health care provider regarding the condition;

25 (d) (i) For purposes of leave for a family member's serious health
26 condition, a statement that the employee is needed to care for the
27 family member and an estimate of the amount of time that such
28 employee is needed to care for the family member; and

29 (ii) For purposes of leave for the employee's serious health
30 condition, a statement that the employee is unable to perform the
31 functions of the position of the employee;

32 (e) In the case of certification for intermittent leave, or leave
33 on a reduced leave schedule, for planned medical treatment, the dates
34 on which the treatment is expected to be given and the duration of
35 the treatment;

36 (f) In the case of certification for intermittent leave, or leave
37 on a reduced leave schedule, for the employee's serious health
38 condition, a statement of the medical necessity for the intermittent

1 leave or leave on a reduced leave schedule, and the expected duration
2 of the intermittent leave or reduced leave schedule; and

3 (g) In the case of certification for intermittent leave, or leave
4 on a reduced leave schedule, for a family member's serious health
5 condition, a statement that the employee's intermittent leave or
6 leave on a reduced leave schedule is necessary for the care of the
7 family member who has a serious health condition, or will assist in
8 their recovery, and the expected duration and schedule of the
9 intermittent leave or reduced leave schedule.

10 (3) If the employer has reason to doubt the validity of the
11 certification provided under subsection (1) of this section for leave
12 for a family member's serious health condition or the employee's
13 serious health condition, the employer may require, at the expense of
14 the employer, that the employee obtain the opinion of a second health
15 care provider designated or approved by the employer concerning any
16 information certified under subsection (2) of this section for the
17 leave. The second health care provider may not be contracted by a
18 vendor or service provider of, or employed on any prior basis by, the
19 employer.

20 (4) If the second opinion described in subsection (3) of this
21 section differs from the opinion in the original certification
22 provided under subsection (1) of this section, the employer may
23 require, at the expense of the employer, that the employee obtain the
24 opinion of a third health care provider designated or approved
25 jointly by the employer and the employee concerning the information
26 certified under subsection (2) of this section. The opinion of the
27 third health care provider concerning the information certified under
28 subsection (2) of this section is considered to be final and is
29 binding on the employer and the employee.

30 (5) The employer may require that the employee obtain subsequent
31 recertifications on a reasonable basis.

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

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

37 (b) Limitations on employer requests for recertification,
38 including defining what constitutes a reasonable basis after approval
39 has previously been granted for that year.

1 NEW SECTION. **Sec. 12.** (1)(a) Except as provided in (b) of this
2 subsection, any employee who uses leave for the specified purposes
3 under section 4 of this act, on return to work, is entitled:

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

6 (ii) To be restored to an equivalent position with equivalent
7 employment benefits, pay, and other terms and conditions of
8 employment at a workplace within 20 miles of the employee's workplace
9 when leave commenced.

10 (b) The taking of leave under section 4 of this act may not
11 result in the loss of any employment benefits accrued before the date
12 on which the leave commenced.

13 (c) Nothing in this subsection (1) entitles any restored employee
14 to:

15 (i) The accrual of any seniority or employment benefits during
16 any period of leave; or

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

20 (d) As a condition of restoration under (a) of this subsection
21 for an employee who has taken leave for the employee's serious health
22 condition, the employer may have a uniformly applied practice or
23 policy that requires each such employee to receive certification from
24 the health care provider of the employee that the employee is able to
25 resume work, except that nothing in this subsection (1)(d) supersedes
26 a valid local law or a collective bargaining agreement that governs
27 the return to work of such employees.

28 (e) Nothing in this subsection (1) prohibits an employer from
29 requiring an employee on leave to report periodically to the employer
30 on the status and intention of the employee to return to work.

31 (2) An employer may deny restoration under subsection (1) of this
32 section to any salaried employee who is among the highest paid 10
33 percent of the employees employed by the employer within 75 miles of
34 the facility at which the employee is employed if:

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

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

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

3 NEW SECTION. **Sec. 13.** During any period of leave taken under
4 section 4 of this act, if the employee is not eligible for any
5 employer contribution to medical or dental benefits under an
6 applicable collective bargaining agreement or employer policy during
7 any period of leave, an employer shall allow the employee to
8 continue, at the employee's expense, medical or dental insurance
9 coverage, including any spouse and dependent coverage, in accordance
10 with state or federal law. The premium to be paid by the employee
11 shall not exceed 102 percent of the applicable premium for the leave
12 period.

13 NEW SECTION. **Sec. 14.** (1) It is unlawful for any employer to:

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

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

18 (2) It is unlawful for any person to discharge or in any other
19 manner discriminate against any individual because the individual
20 has:

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

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

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

28 NEW SECTION. **Sec. 15.** (1)(a) Upon receipt of a complaint by an
29 employee of a railroad carrier, the department shall investigate to
30 determine if there has been noncompliance with this chapter and
31 related rules and issue either a citation and notice of assessment or
32 a closure letter within 90 days after the date on which the
33 department received the complaint, unless the complaint is otherwise
34 resolved. The department may extend the period by providing advance
35 written notice to the employee and the employer setting forth good
36 cause for an extension of the period, and specifying the duration of
37 the extension.

1 (b) The department shall send the citation and notice of
2 assessment or the closure letter to both the employer and the
3 employee by service of process or using a method by which the mailing
4 can be tracked or the delivery can be confirmed to their last known
5 addresses.

6 (c) If the department's investigation finds that the employee's
7 allegation cannot be substantiated, the department shall issue a
8 closure letter to the employee and the employer detailing such
9 finding. A closure finding does not diminish any right provided under
10 section 19 of this act.

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

15 (i) For a class I carrier and any class II or III carrier owned
16 by a class I carrier, up to \$5,000 for the first violation, up to
17 \$25,000 for the second violation within a three-year period following
18 any previous violation, and up to \$100,000 for the third or
19 subsequent violation within a three-year period following any
20 previous violation;

21 (ii) For a class II or III carrier, up to \$1,000 for the first
22 violation, up to \$5,000 for the second violation within a three-year
23 period following any previous violation, and up to \$10,000 for the
24 third or subsequent violation within a three-year period following
25 any previous violation.

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

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

33 (4) The department shall deposit civil penalties paid under this
34 section in the supplemental pension fund established under RCW
35 51.44.033.

36 NEW SECTION. **Sec. 16.** (1) A person, firm, or corporation
37 aggrieved by a citation and notice of assessment by the department
38 under this chapter, or any rules adopted under this chapter, may
39 appeal the citation and notice of assessment to the director by

1 filing a notice of appeal with the director within 30 days of the
2 department's issuance of the citation and notice of assessment. A
3 citation and notice of assessment not appealed within 30 days is
4 final and binding, and not subject to further appeal.

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

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

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

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

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

31 NEW SECTION. **Sec. 17.** If any person fails to pay an assessment
32 under this chapter, or under any rule under this chapter, after it
33 has become a final and unappealable order, or after the court has
34 entered final judgment in favor of the agency, the director may
35 initiate collection procedures in accordance with section 18 of this
36 act.

37 NEW SECTION. **Sec. 18.** (1) After a final order is issued under
38 this chapter, or any rules under this chapter, if an employer

1 defaults in the payment of: (a) Any amount determined by the
2 department to be owed to an employee, including interest; or (b) any
3 civil penalty ordered by the department under this chapter, or any
4 rules under this chapter, the director may file with the clerk of any
5 county within the state a warrant in the amount of the payment plus
6 any filing fees. The clerk of the county in which the warrant is
7 filed shall immediately designate a superior court cause number for
8 the warrant, and the clerk shall cause to be entered in the judgment
9 docket under the superior court cause number assigned to the warrant,
10 the name of the employer mentioned in the warrant, the amount of
11 payment due on it plus any filing fees, and the date when the warrant
12 was filed. The aggregate amount of the warrant as docketed becomes a
13 lien upon the title to, and interest in, all real and personal
14 property of the employer against whom the warrant is issued, the same
15 as a judgment in a civil case docketed in the office of the clerk.
16 The sheriff shall proceed upon the warrant in all respects and with
17 like effect as prescribed by law with respect to execution or other
18 process issued against rights or property upon judgment in a court of
19 competent jurisdiction. The warrant so docketed is sufficient to
20 support the issuance of writs of garnishment in favor of the state in
21 a manner provided by law in case of judgment, wholly or partially
22 unsatisfied. The clerk of the court is entitled to a filing fee which
23 shall be added to the amount of the warrant. A copy of the warrant
24 shall be mailed to the employer within three days of filing with the
25 clerk.

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

1 becomes unenforceable by reason of lapse of time and shall notify the
2 person against whom the notice and order was made that the notice and
3 order has been released.

4 (b) The notice and order to withhold and deliver must be served
5 by the sheriff of the county or by the sheriff's deputy, by certified
6 mail, return receipt requested, or by the director. A person, firm,
7 corporation, other entity, municipal corporation, political
8 subdivision of the state, public corporation, or agency of the state
9 upon whom service has been made shall answer the notice within 20
10 days exclusive of the day of service, under oath and in writing, and
11 shall make true answers to the matters inquired of in the notice and
12 order. Upon service of the notice and order, if the party served
13 possesses any property that may be subject to the claim of the
14 department, the party shall promptly deliver the property to the
15 director. The director shall hold the property in trust for
16 application on the employer's indebtedness to the department, or for
17 return without interest, in accordance with a final determination of
18 a petition for review. In the alternative, the party shall furnish a
19 good and sufficient surety bond satisfactory to the director
20 conditioned upon final determination of liability. If a party served
21 and named in the notice fails to answer the notice within the time
22 prescribed in this section, the court may render judgment by default
23 against the party for the full amount claimed by the director in the
24 notice, together with costs. If a notice is served upon an employer
25 and the property subject to the notice is wages, the employer may
26 assert in the answer all exemptions provided for by chapter 6.27 RCW
27 to which the wage earner is entitled.

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

1 (3) In addition to the procedure for collection of amounts owed,
2 including interest, and civil penalties as set forth in this section,
3 the department may recover amounts owed, including interest, and
4 civil penalties assessed under this chapter, and any rules under this
5 chapter, in a civil action brought in a court of competent
6 jurisdiction of the county where the violation is alleged to have
7 occurred.

8 (4) Whenever any employer quits business, sells out, exchanges,
9 or otherwise disposes of the employer's business or stock of goods,
10 any person who becomes a successor to the business becomes liable for
11 the full amount of any outstanding citation and notice of assessment
12 or penalty against the employer's business under this chapter if, at
13 the time of the conveyance of the business, the successor has: (a)
14 Actual knowledge of the fact and amount of the outstanding citation
15 and notice of assessment; or (b) a prompt, reasonable, and effective
16 means of accessing and verifying the fact and amount of the
17 outstanding citation and notice of assessment from the department. If
18 the citation and notice of assessment or penalty is not paid in full
19 by the employer within 10 days of the date of the sale, exchange, or
20 disposal, the successor is liable for the payment of the full amount
21 of the citation and notice of assessment or penalty, and payment
22 thereof by the successor must, to the extent thereof, be deemed a
23 payment upon the purchase price. If the payment is greater in amount
24 than the purchase price, the amount of the difference becomes a debt
25 due to the successor from the employer.

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

28 NEW SECTION. **Sec. 19.** (1) Except as provided in subsection (2)
29 of this section, any employer who violates section 14 of this act is
30 liable:

31 (a) For damages equal to:

32 (i) The amount of:

33 (A) Any wages, salary, employment benefits, or other compensation
34 denied or lost to such employee by reason of the violation;

35 (B) In a case in which wages, salary, employment benefits, or
36 other compensation have not been denied or lost to the employee, any
37 actual monetary losses sustained by the employee as a direct result
38 of the violation, such as the cost of providing care, up to a sum
39 equal to 12 weeks of wages or salary for the employee;

1 (ii) The interest on the amount described in (a)(i) of this
2 subsection calculated at the prevailing rate of inflation plus 10
3 percent; and

4 (iii) An additional amount as liquidated damages equal to the sum
5 of the amount described in (a)(i) of this subsection and the interest
6 described in (a)(ii) of this subsection, except that if an employer
7 who has violated section 14 of this act proves to the satisfaction of
8 the court that the act or omission that violated section 14 of this
9 act was in good faith and that the employer had reasonable grounds
10 for believing that the act or omission was not a violation of section
11 14 of this act, the court may, in the discretion of the court, reduce
12 the amount of the liability to the amount and interest determined
13 under (a)(i) and (ii) of this subsection, respectively; and

14 (b) For such equitable relief as may be appropriate, including
15 employment, reinstatement, and promotion.

16 (2) For a violation of section 14 of this act by any carrier
17 because the employee complained, opposed, gave information or was
18 about to give information, or testified or was about to testify,
19 regarding a railroad safety matter, the additional amount as
20 liquidated damages shall be up to \$5,000,000.

21 (3) An action to recover the damages or equitable relief
22 prescribed in subsection (1) of this section may be maintained
23 against any employer in any court of competent jurisdiction by any
24 one or more employees for and on behalf of:

25 (a) The employees; or

26 (b) The employees and other employees similarly situated.

27 (4) The court in such an action shall, in addition to any
28 judgment awarded to the plaintiff, allow reasonable attorneys' fees,
29 reasonable expert witness fees, and an additional amount to
30 compensate for any taxes owed on a lump sum damage award payment, and
31 any other costs of the action to be paid by the defendant.

32 NEW SECTION. **Sec. 20.** Each employer shall post and keep posted,
33 in conspicuous places on the premises of the employer where notices
34 to employees and applicants for employment are customarily posted, a
35 notice, to be prepared or approved by the director, setting forth
36 excerpts from, or summaries of, the pertinent provisions of this
37 chapter and information pertaining to the filing of a charge. Any
38 employer that willfully violates this section may be subject to a
39 civil penalty of not more than \$1,000 for each separate offense. Any

1 penalties collected by the department under this section shall be
2 deposited into the supplemental pension fund established under RCW
3 51.44.033.

4 NEW SECTION. **Sec. 21.** Nothing in this chapter shall be
5 construed:

6 (1) To modify or affect any state or local law prohibiting
7 discrimination on the basis of race, religion, color, national
8 origin, sex, sexual orientation, gender identity, age, or disability;
9 or

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

13 NEW SECTION. **Sec. 22.** Nothing in this chapter diminishes the
14 obligation of an employer to comply with any collective bargaining
15 agreement or any employment benefit program or plan that provides
16 greater family or medical leave rights to employees than the rights
17 established under this chapter. The rights established for employees
18 under this chapter may not be diminished by any collective bargaining
19 agreement or any employment benefit program or plan.

20 NEW SECTION. **Sec. 23.** Nothing in this chapter shall be
21 construed to discourage employers from adopting or retaining leave
22 policies more generous than any policies that comply with the
23 requirements under this chapter.

24 NEW SECTION. **Sec. 24.** The director may adopt rules as necessary
25 to implement this chapter.

26 NEW SECTION. **Sec. 25.** This act may be known and cited as the
27 Shahraim C. Allen safe leave act for Washington railroad workers.

28 NEW SECTION. **Sec. 26.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 27.** Sections 1 through 25 of this act
33 constitute a new chapter in Title 49 RCW.

1 NEW SECTION. **Sec. 28.** Except for sections 4, 7 through 13, 15
2 through 18, and 20 of this act, which take effect January 1, 2024,
3 this act is necessary for the immediate preservation of the public
4 peace, health, or safety, or support of the state government and its
5 existing public institutions and takes effect immediately."

SSB 5267 - S AMD 192
By Senator Stanford

WITHDRAWN 03/08/2023

6 On page 1, line 2 of the title, after "workers;" strike the
7 remainder of the title and insert "adding a new chapter to Title 49
8 RCW; prescribing penalties; providing an effective date; and
9 declaring an emergency."

EFFECT: Modifies the intent section. Provides that the definitions of child, family leave, family member, health care provider, medical leave, period of incapacity, serious health condition, and spouse are the same as under the paid family and medical leave statutes. Modifies provisions of the bill to align with the definitional changes. Provides that, for purposes of qualifying for family and medical leave, an employee working on a guaranteed extra call board must be paid for not less than 60 percent of the total monthly guarantee, averaged over the 12-month period, rather than during the 12-month period. 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. Allows an employer to request verification for bereavement leave and establishes timelines for the verification. Provides that class II or III carriers owned by a class I carrier are subject to the same penalties as class I carriers. Corrects cross-references. Modifies the effective date of certain sections.

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