

HOUSE BILL REPORT

HB 1548

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 Ormsby, Walsh, Berry, Robertson, Ryu, Chambers, Chandler, Waters, Bronoske, Cheney, Chopp, Low, Stonier, Eslick, Gregerson, Griffey, Fosse, Volz, Peterson, Couture, Leavitt, Rude, Ramel, Christian, Mena, Harris, Street, Graham, Goodman, Fey, Cortes, Pollet, Taylor, Berg, Lekanoff, Riccelli, Ortiz-Self, Simmons, Paul, Shavers, Rule, Bergquist, Davis, Kloba, Doglio, Schmidt, Macri, Santos, Timmons and Duerr.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/1/23, 2/15/23 [DPS].

Brief Summary of Substitute Bill

- Establishes unpaid family, medical, and bereavement leave, and unpaid time off for railroad workers.
- Establishes civil penalties and damages for violations of requirements related to the leave provisions.
- Prohibits retaliation and provides for a private right of action.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Without recommendation. Signed by 3 members: Representatives

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

Staff: Trudes Tango (786-7384).

Background:

Sick Leave.

Federal.

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. Qualified employees apply for sickness benefits through the federal program. The RUIA preempts "sickness benefits" under a state sickness law.

State.

The state paid sick leave law applies to employees covered by the state's Minimum Wage Act (MWA), and is administered by the Department of Labor and Industries (Department). Carriers, such as railroad carriers, subject to certain regulations of the federal Interstate Commerce Act, are exempt from the MWA.

Family and Medical Leave.

Federal.

The federal Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected unpaid leave in a 12-month period for the birth or placement of 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 or a public employer, 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 opinion, under specified circumstances.

An employer may not interfere with the exercise of employee rights under the leave provisions. Retaliation for specified actions is prohibited. Damages, including liquidated damages, and a private right of action are available. Employees may pursue an action on behalf of other employees similarly situated.

State.

The state Paid Family and Medical Leave Program (PFML) provides paid family and medical leave to qualifying employees after working 820 hours in a qualifying period. The PFML benefits are provided: when an employee is bonding after the birth or placement of a child; because of an employee's or family member's serious health condition; or for a

military exigency. Under the PFML, a "serious health condition" generally means an illness, injury, impairment, or physical or mental conditions that involves: (1) inpatient hospital, hospice, or residential medical care; or (2) continuing treatment by a health care provider for periods of incapacity, pregnancy, or certain chronic conditions causing incapacity.

An employee returning from PFML leave is entitled to be restored to a same or equivalent job when: (1) the employer has 50 or more employees; (2) the employee has been with the employer for 12 months or more; and (3) the employee has worked for the employer for at least 1,250 hours during the immediately preceding 12-month period.

An employer may not interfere with the exercise of employee rights under the leave provisions. Retaliation for specified actions is prohibited. Damages, including liquidated damages, and a private right of action are available. Employees may pursue an action on behalf of other employees similarly situated.

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—\$505 million or more;
- Class II—\$40 million or more; and
- Class III—less than \$40 million.

Summary of Substitute Bill:

Family and Medical Leave.

Birth or Placement of a Child or Serious Health Conditions.

An employee of a railroad carrier (employer) is entitled to 12 workweeks of unpaid leave during any 12-month period for any of the following reasons:

- the birth of a child of the employee and to care for the child;
- the placement of a child with the employee for adoption or foster care;
- to care for a family member with a serious health condition; or
- if a serious health condition makes the employee unable to perform the functions of the employee's job.

Leave and job protection applies to employees who:

- worked for the employer from whom leave is requested for at least six months, and for at least 504 hours of service during the previous 12-month period;
- were assigned to and worked on a guaranteed extra call board for at least the 12 months preceding leave, and worked or was paid for not less than 60 percent of the applicable total monthly guarantee, or the equivalent, and not less than 504 hours, not counting commute time or time on leave; or

- were not assigned to and worked on a guaranteed extra call board for the 12 consecutive months before the leave, but has worked not less than 504 hours, not counting commute time or time on leave, during the preceding 12 months that the employee was actively working for or by that employer.

Leave may be taken intermittently or on a reduced leave schedule in specified situations. If intermittent leave or a reduced schedule is foreseeable due to planned medical treatment of serious health condition, the employer may require the employee to transfer temporarily to an available alternative position at the same geographical location and that better accommodates recurring periods of leave.

Family and medical leave must be taken concurrently with any leave under the PFML or FMLA, unless the employer permits otherwise.

Advanced Notice for Foreseeable Need.

If the need for leave is foreseeable, the employee must provide advanced notice to the employer of the intent to take leave.

Verification of Serious Health Condition.

The employer may require certification from a health care provider for leave related to a serious health condition, and may require a second and third provider's opinion if the employer has reason to doubt the validity of certification.

Job Protection.

An employee using family or medical leave must be restored to the position of employment held prior to leave or to an equivalent position with equivalent pay and benefits within 20 miles of the employee's workplace prior to leave. The employer may have a uniformly applied practice or policy that requires employees to receive certification from a health care provider of the ability to resume work, subject to any local law or collective bargaining agreement.

An employer may deny restoration to any salaried employee who is among the highest paid 10 percent of employees within 75 miles of the facility where the employee is employed if: denial is necessary to prevent substantial and grievous economic injury to employer; the employer notifies the employee of its intent to deny restoration; and the leave has commenced and the employee elects not to return to employment after receiving the notice.

Insurance Coverage.

An employer must allow an employee to continue medical and dental insurance coverage during family or medical leave.

Unpaid Time Off.

An employer must allow employees to take unpaid time off if:

- the employee has completed three consecutive months of continuous employment by

- the employer prior to the absence;
- consecutive periods of leave do not exceed 15 days;
- the total number of authorized absences are less than 91 days; and
- the absence is authorized.

Absences are authorized for: the employee's mental or physical illness, injury, or health condition; the need for medical diagnosis, care, or treatment; the need for preventive medical care; providing care for a family member with mental or physical illness, injury, or health condition; and when the employee or their partner's place of business, or child's school or place of care has been closed due to an official public health order. A railroad carrier may not dismiss or otherwise engage in an adverse action due to leave taken under these provisions.

An employer may require verification from a health care provider for an employee's authorized absence that exceeds five consecutive days. Authorized absences are not subject to any type of carrier availability or attendance policy and are stated to be separate from PFML.

Bereavement Leave.

Employees may take up to seven days of unpaid leave for bereavement purposes, including arranging or attending funeral services and other matters related to the decedent's estate. Bereavement leave extends to the death of aunts, uncles, nieces, nephews, and cousins.

Prohibited Acts and Retaliation.

An employer may not interfere with the exercise of employee rights under the leave provisions. Retaliation for specified actions is prohibited.

Employer Notice Requirements.

An employer must post a notice of the provisions and information on filing a charge. Willful violations of this requirement may be subject to a civil penalty of up to \$1,000 for each offense.

Enforcement and Penalties.

The Department must investigate complaints regarding noncompliance with the leave provisions, and either issue a citation and notice of assessment or a closure letter within 90 days after receiving the complaint. The Department may impose civil penalties as follows:

- for a Class I carrier, up to \$5,000 for the first infraction, up to \$25,000 for a second infraction within a three-year period, and up to \$100,000 for each subsequent infraction within a three-year period; or
- for a Class II or III carrier, up to \$1,000, \$5,000, and \$10,000 for first, second, or subsequent infractions within those three-year periods.

The Department may also order back pay and reinstatement and may increase the penalties by rule based on changing economic conditions.

Provisions relating to appeal of the Department's orders and collection procedures are specified.

An employer who interferes with the exercise of rights of, or retaliates against, an employee is liable for specified damages, including wages or actual monetary losses sustained by the employee. Liquidated damages of up to \$5 million are permitted for violations related to retaliation for bringing a complaint or providing information or testimony. Equitable relief may also be granted. Employees have a private right of action to pursue this relief on behalf of themselves and other employees similarly situated.

Other Laws.

Other laws prohibiting discrimination or providing greater family or medical leave are not affected or superseded.

Substitute Bill Compared to Original Bill:

The substitute bill provides a delayed effective date of January 1, 2024, for provisions related to family and medical leave, notices, administrative enforcement, collections of assessments, and employer postings of notices.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 15, 2023.

Effective Date of Substitute Bill: Sections 1 through 3, 5, 6, 14, 19, and 21 through 27, contain an emergency clause and take effect immediately. The remainder of the bill takes effect on January 1, 2024.

Staff Summary of Public Testimony:

(In support) This bill protects employees from discipline for taking time off. It provides unpaid time off for bereavement for other family members. It provides employees with family and medical leave that is identical to FMLA protections provided to airline employees. Workers are often disciplined for taking time off and they lose points based on the employer's attendance policies. This bill gives workers a level of protection to be free from retaliation when taking sick leave. This bill is a common sense approach to protecting workers who experience illnesses that do not rise to the level of activating the federal sick leave benefits.

(Opposed) This bill is extremely complicated and it is difficult to understand how it interacts with benefits that are already provided. Railroad workers are among the highest paid workers and are provided many options for time off and scheduling. They already

have sick days, bereavement leave, and vacation days. These types of provisions have been handled through the collective bargaining process. This bill attempts to erode the process of collective bargaining that has been established for centuries and that is overseen by the federal government. Attendance policies are there to help balance the need for scheduling flexibility and the need to make sure the trains keep moving. The bill is trying to occupy a field that is already covered by collective bargaining and parties are currently in negotiations to address many issues, including quality of life and attendance policies. There have been historic gains for workers in recent collective bargaining agreements.

Persons Testifying: (In support) Representative Timm Ormsby, prime sponsor; Dylan Ekins, Brotherhood of Locomotive Engineers and Trainmen and Washington State Legislative Board; Mike Elliott; Herb Krohn, International Association of Sheet Metal, Air, Rail, and Transportation Workers Transportation Division, United Transportation Union, and Washington State Legislative Board; and Jeremy Ferguson, Korey McDaniel, and Josh Roberts, International Association of Sheet Metal, Air, Rail, and Transportation Workers Transportation Division

(Opposed) Mike Ennis, Association of Washington Business; Aaron Hunt and Maqui Parkerson, Union Pacific Railroad; and Johan Hellman and Sam Macedonio, Burlington Northern and Santa Fe Railway.

Persons Signed In To Testify But Not Testifying: Bruce Smith; Luke Edington, International Association of Sheet Metal, Air, Rail, and Transportation Workers Transportation Division; Larry Romine; Kimberly Klontz, Brotherhood of Locomotive Engineers and Trainmen Division 238; Jon Tisdale, Brotherhood of Locomotive Engineers and Trainmen; and Tammy Fellin, Department of Labor and Industries.