
Labor & Workplace Standards Committee

ESSB 5267

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

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Kuderer, Stanford, Conway, Frame, Hasegawa, Hunt, Keiser, Lovelett, Lovick, Nguyen, Nobles, Pedersen, Saldaña, Shewmake, Trudeau, Wellman and Wilson, C.).

Brief Summary of Engrossed Substitute Bill

- Prohibits railroad carriers from taking adverse action against an employee for taking unpaid leave due to illness, injury, health conditions including fatigue, or other reasons, when certain conditions are met.
- Creates an administrative complaint process through the Department of Labor and Industries to enforce leave provisions and allows for the imposition of civil penalties.

Hearing Date: 3/21/23

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.

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.

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 Bill:

A railroad carrier may not dismiss, suspend, lay off, demote, engage in any adverse action against, or otherwise discipline an employee for unpaid absences if:

- The employee completed three consecutive months of continuous employment with the railroad carrier prior to the absence;
- no consecutive period of unpaid absence exceeded 15 days;
- the total number of unpaid absences taken, including railroad employer paid sick leave, is less than 91 days in the current calendar year; and
- the unpaid absence is taken due to any of the reasons specifically authorized.

An employee's unpaid absence may be for any of the following reasons:

- the employee's mental or physical illness, injury, or health condition including fatigue, or need for medical diagnosis, care, treatment, or preventive medical care;
- to allow the employee to care for a family member with a mental or physical illness, injury, or health condition, or who needs medical diagnosis, care, treatment or preventive medical care; or
- when the place of business or child's school or place of care is closed by order of a public official for any health-related reason.

"Railroad carrier" does not include class III carriers.

An employer may permit employees to use any accrued leave, including vacation time or personal leave, while absent, but the employer may not require the employee to use paid leave.

The employer may request verification from the employee regarding the purpose of the employee's unpaid leave, if the leave exceeds five consecutive days. Request for verification must be within 10 days of the employee's return to work and may not place an unreasonable burden or expense on the employee or require the employee to exceed any privacy requirements established by law.

Any employee absences under these provisions are not subject to any type of carrier availability or attendance policy and are separate from any protected leave under the PFML.

It is unlawful for any employer to interfere with, restrain, or deny the exercise of, any right

established by these provisions, or to discriminate against any individual for opposing any practice made unlawful by the provisions.

It is unlawful for any person to discriminate against any individual for filing a complaint, instituting a proceeding, providing information, or testifying in any inquiry, related to any right provided under these provisions.

The Department must investigate complaints filed by employees regarding noncompliance, and must either issue a citation and notice of assessment or a closure letter within 90 days after receipt of the complaint. Administrative procedures are established for filing and investigating complaints, appealing the Department's decisions, and collecting unpaid civil penalties.

Civil penalties for violations may be assessed for class I carriers and any class II or III carriers owned by a class I carrier, as follows: (1) up to \$5,000 for a first violation; (2) up to \$25,000 for second violations within a three-year period; and (3) up to \$100,000 for third and subsequent violations. For class II carriers, those amounts are \$1,000; \$5,000; and \$10,000. The Department may order other remedies and increase fines by rule. The Department may waive or reduce penalties if the employer took corrective action to remedy the retaliatory action.

Each employer must post on the premises a notice, prepared or approved by the Department, setting forth provisions of the bill. An employer willfully violating the notice requirement is subject to civil penalties of not more than \$1,000.

An employer's obligation to comply with a collective bargaining agreement or any employment benefit program that provides greater family or medical leave rights are not diminished by the provisions of the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for sections 6 through 10, relating to administrative procedures and notice requirements, which take effect January 1, 2024.