

# HOUSE BILL REPORT

## ESSB 5267

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

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

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

**Sponsors:** 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 History:**

**Committee Activity:**

Labor & Workplace Standards: 3/21/23, 3/28/23 [DPA].

**Brief Summary of Engrossed Substitute Bill  
(As Amended By Committee)**

- 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.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

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

**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 as follows:

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

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**Summary of Amended 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:

- due to the employee's mental or physical illness, injury, or health condition including fatigue, or the 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 "other railroad carriers," which is defined as a railroad company designated as a class III carrier that: (1) is not owned or operated by, or is a

subsidiary of, any class I or class II carrier; or (2) is not owned, operated, and managed directly by a governmental entity employing 25 or more railroad employees; or (3) is not owned or operated by a railroad holding company with annual combined operating revenue from all railroad sources that meets or exceeds the current class II railroad designation threshold.

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. Requests 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.

The following civil penalties may be assessed against class I carriers, class II carriers owned by a class I carrier, and, applicable class III carriers: (1) up to \$5,000 for a first violation; (2) up to \$25,000 for a second violation 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.

The administrative remedies apply to complaints alleging violations occurring on or after the effective date of the bill. A complaint alleging a violation may be filed within two years from the date of the last event constituting the violation.

Each employer must post on the premises a notice, prepared or approved by the Department, setting forth the 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.

**Amended Bill Compared to Engrossed Substitute Bill:**

The striking amendment: (1) adds intent language; (2) applies the bill to certain class III carriers; (3) specifies that the administrative remedies apply to complaints alleging violations occurring on or after the effective date of the bill; (4) specifies that a complaint alleging a violation may be filed within two years from the date of the last event constituting the violation; and (4) corrects a technical drafting error.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately, except for sections 6 through 10, which take effect January 1, 2024.

**Staff Summary of Public Testimony:**

(In support) Railroad employees are required to schedule when they take sick leave, but it is not possible to predict when a person is going to be sick. This bill will ensure employees are not subject to retaliation when they get sick or have to care for a family member who is sick. The bill went through radical changes in the Senate and the family leave provisions were removed. Railroad workers experienced a high rate of COVID-19 because workers would show up sick. These workers also experience a high rate of depression and suicide. They are harassed when trying to use leave. Railroad attendance policies and disciplinary actions have significant negative impacts on these workers. This bill would provide some relief to workers. It is about dignity and fairness. Workers feel they have no other option but to come to the state Legislature. It is a public safety issue.

(Opposed) This bill limits the enforcement of attendance policies and would prohibit a supervisor from taking any action if an employee fails to show up for work. Without an attendance policy, the railroad company has no way of ensuring trains will run on time. These issues are managed at the federal level because they impact commerce, trade, the supply chain, and the costs of goods. Progress has been made in recent collective bargaining agreements. The newer generation of workers values quality of life and want

more leave. The companies are listening and responding. Recent collective bargaining agreements contain more leave for preventative care, personal leave, and structured time off, along with a 24 percent wage increase. The Legislature should give the collective bargaining process a chance to work. The bill is unnecessary and burdensome. Litigation regarding preemption would take years to resolve, but the damage to the state from this bill would be immediate.

**Persons Testifying:** (In support) Senator Patty Kuderer, prime sponsor; Mike Elliott; Dylan Ekins, Brotherhood of Locomotive Engineers and Trainmen; Herb Krohn and Brent Leonard, Sheet Metal, Air, Rail, and Transportation Workers Transportation Division, United Transportation Union; and Kimberly Klontz, Brotherhood of Local Engineers and Trainmen 238.

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

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