

# SENATE BILL REPORT

## ESSB 5267

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As Passed Senate, March 8, 2023

**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 & Commerce: 1/31/23, 2/14/23 [DPS, DNP, w/oRec].

**Floor Activity:** Passed Senate: 3/8/23, 42-7.

**Brief Summary of Engrossed First Substitute Bill**

- Prohibits a railroad carrier from taking adverse employment actions against certain employees for unpaid absences, subject to certain limitations.
- Establishes civil penalties for violations of the bill.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** That Substitute Senate Bill No. 5267 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Robinson and Stanford.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Member; Braun.

**Minority Report:** That it be referred without recommendation.

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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.*

Signed by Senators MacEwen and Schoesler.

**Staff:** Jarrett Sacks (786-7448)

**Background:** Sick Leave. The state paid sick leave law applies to employees covered by the state's Minimum Wage Act (MWA). Carriers, such as railroad carriers, subject to certain regulations of the federal Interstate Commerce Act, are exempt from the MWA. 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. The RUIA preempts sickness benefits under a state sickness law.

Family and Medical Leave. 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, who have worked for at least 12 months for the employer, and for at 1250 hours 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, binding opinion, under specified circumstances. An employer may require recertification on a reasonable basis.

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. Paid family leave benefits are provided when an employee is bonding after the birth or placement of a child; because of a family member's serious health condition; or for a military exigency. Paid medical leave benefits are provided for an employee's own serious health condition.

Regulatory Oversight. 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—\$448 million or more;
- Class II—\$36 million or more; and
- Class III—less than \$36 million.

The state Utilities and Transportation Commission administers a railroad safety program and enforces certain laws relating to railroad employees, such as on crew size, shelters, apparel, and the cost of records or medical examinations.

**Summary of Engrossed First Substitute Bill:**

Unpaid Leave. No railroad carrier may dismiss, suspend, lay off, demote, engage in any adverse action, or otherwise discipline an employee for unpaid absences if:

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

- the railroad carrier prior to the absence;
- no consecutive period of absence exceeds 15 days;
- the total number of unpaid absences the employee has taken, including railroad employer paid sick leave, is less than 91 days in the current calendar year; and
- the unpaid absence is for a reason listed in the bill.

Reasons unpaid absences may be taken are for:

- specified mental or physical illnesses, including fatigue, or health conditions of the employee;
- to allow the employee to provide care for a family member with a specified mental or physical illness, injury, or health condition; and
- when the employee or their spouse or registered domestic partner's place of business, or child's school or place of care has been closed due to an official public health order.

If verification is requested by an employer, the employer must provide the employee no fewer than 30 days to provide the verification. The employer may not require the verification include the nature of the employee's condition. Unpaid leave granted by the bill is not subject to any type of carrier attendance policy and is separate from any protected family and medical leave.

The provisions of the bill do not apply to class III railroad carriers.

Employers must post in a conspicuous place on the employer's premises where notices are customarily posted, a notice on the pertinent provisions of the bill. A violation of this posting requirement may be subject to a civil penalty of not more than \$1,000 for each offense.

Prohibited Acts and Retaliation. It is unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by the bill, or to discharge or otherwise discriminate against an individual for opposing any practice made unlawful by the bill. Additionally, it is unlawful for a person to discharge or discriminate against an individual because the individual has:

- filed any complaint or instituted an action under or related to the bill;
- given any information in connection with any inquiry or proceeding relating to any right granted by the bill; or
- testified in any inquiry or proceeding related to any right granted by the bill.

Enforcement and Penalties. The Department of Labor and Industries (L&I) must investigate employee complaints regarding noncompliance with the act, and either issue a citation and notice of assessment or a closure letter within 90 days after receiving the complaint. L&I 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, up to \$1,000, \$5,000, and \$10,000 for first, second, or subsequent infractions within those periods.

L&I may also order back pay and reinstatement, and may increase the penalties by rule based on changing economic conditions. L&I may waive or reduce any civil penalty if the employer has taken corrective action to remedy the retaliatory action.

Provisions relating to appeal of L&I orders and collection procedures are specified.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: Railroad workers are the only category of worker who does not have access to sickness leave. This issue almost caused a railroad worker strike. The bill mirrors what was given to the airline employees at the federal level. Gaps in statutes leave workers unprotected. The bill does not require the leave to be paid. Railroad employees get zero rest days and the flexible days off provided are used for weekends. There are no designated days off for taking care of sick family members. Some of the leave currently provided cannot be used for sick days because of notice requirements in employer policies. Employees are disciplined for unpaid absences through strict employer attend. Employers do not have to compromise in collective bargaining because they know the federal government will step in and force railroad workers back to work. Compensated time off is usually pre-arranged and many times requests are rejected.

CON: The collective bargaining process is designed to promote compromise. Labor made many gains in the process, including wage increases, platinum level health care, better retirement benefits, and more predictable schedules. They also got additional paid time off. The RUIA provides railroad employees with sick leave and paid time off. These types of things should be negotiated in collective bargaining. Railroad workers are in the the top 10 percent of wage earners in the country. The bill and liquidated damages will increase costs of moving freight. The Legislature should give the new collective bargaining agreements and the Railway Labor Act a chance to work. Federal law preempts the field in which this bill occupies. Negotiations over these issues are still ongoing.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor; Kimberly Klontz; Bruce Smith, P.O. BOX 304; Jonathan Tisdale; April Sims, Washington State Labor Council,

AFL-CIO; Luke Edington, General Chairman, SMART Transportation Division; Mike Elliott, Retired Railroad Workers, former State Leg. Chair - Locomotive Engineers; Dylan Ekins, Wash. State Legislative Board Chairperson - Brotherhood of Locomotive Engineers & Trainmen; Herb Krohn, Wash. State Legislative Director - SMART Transp. Division/United Transportation Union.

CON: Mike Ennis, Association of Washington Business; Aaron Hunt, Union Pacific Railroad; Naomi Deines, Union Pacific Railroad; Johan Hellman, BNSF Railway; Sam Macedonio, BNSF Railway.

**Persons Signed In To Testify But Not Testifying:** No one.