

---

ENGROSSED SUBSTITUTE SENATE BILL 5267

---

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/15/23.

1 AN ACT Relating to safeguarding the public safety by protecting  
2 railroad workers; adding a new chapter to Title 49 RCW; prescribing  
3 penalties; providing an effective date; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that railroad  
6 employees are susceptible to illness and infectious diseases from  
7 working in confined spaces, as well as the illnesses and injuries  
8 that affect the general population, yet have no protections for  
9 unpaid leave, and may be subjected to discipline and termination for  
10 unpaid absences from duty due to illnesses and injuries of themselves  
11 and their family members, or for bereavement.

12 The legislature further finds that railroad employees may report  
13 to work while ill to avoid disciplinary action by railroad companies,  
14 pursuant to their corporate attendance and availability policies.

15 The provisions of this chapter are enacted in the exercise of the  
16 police power of the state for the purpose of protecting the immediate  
17 and future health, safety, and welfare of the people of this state.

18 NEW SECTION. **Sec. 2.** The definitions in this section apply  
19 throughout this chapter unless the context clearly requires  
20 otherwise.

1 (1) The following terms have the same meaning as provided in RCW  
2 50A.05.010: "Child," "family leave," "family member," "health care  
3 provider," "medical leave," "period of incapacity," "serious health  
4 condition," and "spouse."

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

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

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

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

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

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

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

29 (9) "Railroad carrier" means any employer subject to the  
30 jurisdiction of the surface transportation board under 49 U.S.C. Sec.  
31 1301 through 1326, as it exists on the effective date of this  
32 section. "Railroad carrier" includes the officers and agents of the  
33 railroad operations regardless of physical location. "Railroad  
34 carrier" does not include class III carriers.

35 (10) "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) No railroad carrier may dismiss,  
2 suspend, lay off, demote, engage in any adverse action against, or  
3 otherwise discipline an employee for unpaid absences pursuant to the  
4 provisions of this section if:

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

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

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

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

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

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

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

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

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

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

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

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

15 (5) Any employee absences pursuant to this section are not  
16 subject to any type of carrier availability or attendance policy and  
17 are separate from any protected leave under Title 50A RCW and section  
18 4 of this act.

19 NEW SECTION. **Sec. 5.** (1) It is unlawful for any employer to:

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

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

24 (2) It is unlawful for any person to discharge or in any other  
25 manner discriminate against any individual because the individual  
26 has:

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

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

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

34 NEW SECTION. **Sec. 6.** (1)(a) Upon receipt of a complaint by an  
35 employee of a railroad carrier, the department shall investigate to  
36 determine if there has been noncompliance with this chapter and  
37 related rules and issue either a citation and notice of assessment or  
38 a closure letter within 90 days after the date on which the

1 department received the complaint, unless the complaint is otherwise  
2 resolved. The department may extend the period by providing advance  
3 written notice to the employee and the employer setting forth good  
4 cause for an extension of the period, and specifying the duration of  
5 the extension.

6 (b) The department shall send the citation and notice of  
7 assessment or the closure letter to both the employer and the  
8 employee by service of process or using a method by which the mailing  
9 can be tracked or the delivery can be confirmed to their last known  
10 addresses.

11 (c) If the department's investigation finds that the employee's  
12 allegation cannot be substantiated, the department shall issue a  
13 closure letter to the employee and the employer detailing such  
14 finding.

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

19 (i) For a class I carrier and any class II or III carrier owned  
20 by a class I carrier, up to \$5,000 for the first violation, up to  
21 \$25,000 for the second violation within a three-year period following  
22 any previous violation, and up to \$100,000 for the third or  
23 subsequent violation within a three-year period following any  
24 previous violation;

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

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

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

37 (4) The department shall deposit civil penalties paid under this  
38 section in the supplemental pension fund established under RCW  
39 51.44.033.

1        NEW SECTION.        **Sec. 7.**        (1) A person, firm, or corporation  
2 aggrieved by a citation and notice of assessment by the department  
3 under this chapter, or any rules adopted under this chapter, may  
4 appeal the citation and notice of assessment to the director by  
5 filing a notice of appeal with the director within 30 days of the  
6 department's issuance of the citation and notice of assessment. A  
7 citation and notice of assessment not appealed within 30 days is  
8 final and binding, and not subject to further appeal.

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

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

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

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

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

35        NEW SECTION.        **Sec. 8.**        If any person fails to pay an assessment  
36 under this chapter, or under any rule under this chapter, after it  
37 has become a final and unappealable order, or after the court has  
38 entered final judgment in favor of the agency, the director may

1 initiate collection procedures in accordance with section 9 of this  
2 act.

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

30 (2)(a) The director may issue to any person, firm, corporation,  
31 other entity, municipal corporation, political subdivision of the  
32 state, a public corporation, or any agency of the state, a notice and  
33 order to withhold and deliver property of any kind when they have  
34 reason to believe that there is in the possession of the person,  
35 firm, corporation, other entity, municipal corporation, political  
36 subdivision of the state, public corporation, or agency of the state,  
37 property that is or will become due, owing, or belonging to an  
38 employer upon whom a notice of assessment has been served by the  
39 department for payments or civil penalties due to the department. The

1 effect of a notice and order is continuous from the date the notice  
2 and order is first made until the liability out of which the notice  
3 and order arose is satisfied or becomes unenforceable because of  
4 lapse of time. The department shall release the notice and order when  
5 the liability out of which the notice and order arose is satisfied or  
6 becomes unenforceable by reason of lapse of time and shall notify the  
7 person against whom the notice and order was made that the notice and  
8 order has been released.

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

33 (c) As an alternative to the methods of service described in this  
34 section, the department may electronically serve a financial  
35 institution with a notice and order to withhold and deliver by  
36 providing a list of its outstanding warrants, except those for which  
37 a payment agreement is in good standing, to the department of  
38 revenue. The department of revenue may include the warrants provided  
39 by the department in a notice and order to withhold and deliver  
40 served under RCW 82.32.235(3). A financial institution that is served



1 with a notice and order to withhold and deliver under this subsection  
2 (2)(c) must answer the notice within the time period applicable to  
3 service under RCW 82.32.235(3). The department and the department of  
4 revenue may adopt rules to implement this subsection (2)(c).

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

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

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

32 NEW SECTION. **Sec. 10.** 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. 11.** 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. 12.** 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. 13.** 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. 14.** The director may adopt rules as necessary  
25 to implement this chapter.

26 NEW SECTION. **Sec. 15.** This act may be known and cited as the  
27 Shahraim C. Allen safe leave act for Washington railroad workers.

28 NEW SECTION. **Sec. 16.** 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. 17.** Sections 1 through 15 of this act  
33 constitute a new chapter in Title 49 RCW.

1        NEW SECTION.    **Sec. 18.**    Except for sections 6 through 10 of this  
2 act, which take effect January 1, 2024, this act is necessary for the  
3 immediate preservation of the public peace, health, or safety, or  
4 support of the state government and its existing public institutions  
5 and takes effect immediately.

--- END ---