

HOUSE BILL REPORT

SHB 2602

As Amended by the Senate

Title: An act relating to increasing the safety and economic security of victims of domestic violence, sexual assault, or stalking.

Brief Description: Regarding employment leave for victims of domestic violence, sexual assault, or stalking.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Kessler, Dickerson, Williams, O'Brien, Hurst, Lantz, Moeller, Hasegawa, Pedersen, Ormsby, VanDeWege, Conway, Goodman, Hudgins, Santos, Campbell, Upthegrove, Chase, Darneille, Barlow, Green and Simpson).

Brief History:

Committee Activity:

Commerce & Labor: 1/25/08, 2/5/08 [DPS].

Floor Activity:

Passed House: 2/18/08, 81-14.

Senate Amended.

Passed Senate: 3/4/08, 49-0.

Brief Summary of Substitute Bill

- Requires employers to provide reasonable leave to employees who are victims of domestic violence, sexual assault, or stalking, or whose family members are victims.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member.

Staff: Joan Elgee (786-7106).

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

Background:

Under federal and state family leave laws, larger employers must grant family leave to employees who meet certain requirements. Family leave may be taken for the birth and care of a child, the placement of a child for adoption or foster care, and for the employee's own or a family member's serious health condition. Beginning in October 2009, paid family leave will be available for certain employees for the birth and care of a child or placement of a child for adoption.

The state family care law applies to nearly all employers. Under this law, employees may use sick leave and other paid time off to care for: (1) a child with a health condition that requires treatment or supervision; or (2) certain family members with a serious health or emergency condition.

Individuals who voluntarily leave work because of domestic violence or stalking are entitled to unemployment benefits under some circumstances.

Summary of Substitute Bill:

Findings and Declaration: The Legislature finds that it is in the public interest to reduce domestic violence, sexual assault, and stalking by enabling victims to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries, and to reduce the devastating economic consequences of these crimes to employers and employees.

Leave: An employee may take reasonable leave from work, intermittent leave, or leave on a reduced leave schedule for specified activities related to an employee or family member being a victim of domestic violence, sexual assault, or stalking. These activities are to:

- seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family member;
- seek treatment by a health care provider for physical or mental injuries or to attend treatment for a family member;
- obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program;
- obtain, or assist a family member in obtaining, mental health counseling related to an incident in which the employee or the employee's family member was a victim; or
- participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or family member.

The leave is with or without pay. The employee may choose to use sick leave and other paid time off, compensatory time, or unpaid leave time.

A "family member" is a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship. A "dating relationship" is a social relationship of a romantic nature.

"Domestic violence," "sexual assault," and "stalking" are defined by reference to existing definitions in various laws.

Eligibility: Any employee working for an employer of one or more persons, including a public employer, is eligible for the leave.

Notice/Verification: An employee must give an employer advance notice of leave. The timing of the notice must be consistent with the employer's stated policy for requesting such leave, if the employer has a policy. If advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or his or her designee must give notice no later than the end of the first day that the employee takes leave.

An employer may require verification that the employee or the family member is a victim and that the leave was taken for one of the permitted purposes. If the employer requires verification, it must be provided in a timely manner. If advance notice cannot be given, verification must be provided within a reasonable time during or after the leave. Verification may be satisfied by providing:

- a police report indicating that the employee or family member was a victim;
- a court order protecting or separating the employee or family member from the perpetrator, or other evidence from the court or prosecuting attorney that the employee or family member appeared or is scheduled to appear in court in connection with an incident;
- documentation from an advocate for victims, an attorney, a clergy member, or a medical or other professional from whom the employee or family member sought assistance; or
- an employee's written statement that the employee or the family member is a victim and that the leave was taken for a permitted purpose.

Verification of familial status may be made by a statement from the employee, a birth certificate, a court document, or other similar documentation.

Confidentiality: An employee is not required to produce or discuss any information with the employer beyond the scope of the verification, or that would compromise the employee's or family member's safety. An employer must maintain the confidentiality of all notice and verification information unless requested or consented to by the employee, ordered by a court or administrative agency, or otherwise required by law.

Job Protection: Upon return from leave, an employer must restore the employee to his or her former position or a position with equivalent benefits, pay, and other terms and conditions of employment. An employer must also maintain coverage under any health insurance plan to the extent allowed by law.

Relationship to Other Laws: The leave rights are in addition to other rights. Nothing in the provisions is to discourage employers from adopting greater leave rights for victims or to diminish an employer's obligation to comply with any collective bargaining agreement, or any benefit program or plan that provides greater leave rights.

Administrative Remedy: The Department of Labor and Industries (Department) must investigate complaints that the law has been violated. An employer may be fined up to \$500 for the first infraction and \$1,000 for a subsequent infraction within three years of a previous infraction. The Director of the Department may also order the employer to restore the employee to his or her former position or an equivalent position.

Civil Remedy: Regardless of whether the employee complained to the Department and regardless of any finding under an administrative action, an employee injured by a violation has a civil cause of action to enjoin further violations and to recover actual damages, reasonable attorneys' fees, and costs.

Discrimination: It is a violation to discriminate against an employee for exercising his or her rights, filing a complaint, or participating or assisting in another employee's attempt to exercise rights under the provisions.

Publicity: The Department must include notice of the provisions in the next reprinting of employment posters and employers must post the notice. Prosecuting attorney and victim/witness offices are encouraged to make information about the provisions available for distribution. In any criminal or juvenile court proceeding, victims must be notified of their right to reasonable leave under the provisions.

EFFECT OF SENATE AMENDMENT(S):

An exception for certain individuals taking leave from staffing companies is added. The job protection provisions do not apply if an individual takes leave from employment with a staffing company and the individual is temporarily assigned to perform work at or services for another organization to support or supplement the other organization's workforces, or to provide assistance in certain special work situations. An exception for employees hired for specific terms or only to work on discrete projects is also added. The job restoration provisions do not apply to such an employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill addresses situations when victims of domestic violence have been asked to leave employment or have been fired or threatened. People have been let go, fired, demoted, and otherwise discriminated against during a chaotic time when they need to find shelter and protect themselves. There is no effective remedy now for discrimination or retaliation. Victims also need a job so they can be independent. For domestic violence, if persons can't be independent, they often stay in the home with the abuser.

A survey showed that 75 percent of survivors were unable to follow through on protective orders, more than 70 percent were not able to participate in support groups or counseling, almost 60 percent were unable to follow through on prosecutions, and over 50 percent of advocates reported working with survivors who had lost jobs or been demoted. This bill will allow survivors to participate in the criminal justice system. It hurts all of society when people lose jobs and cannot follow through on prosecution.

This bill will not be that hard to enforce and not many people will need it. Ten other states allow leave. In Maine, businesses who first opposed the bill later joined in the effort to add family members. Survivors would not scam the system. The earlier bill allowing unemployment compensation has had a de minimus impact.

(In support with concerns) We need clarity so everyone understands the law. An employee should have to produce other items beyond just their own statement to verify the leave.

(With concerns) This bill adds another layer of leave to overlapping and uncoordinated leave policies. The vagueness is of concern, as are the significant fines.

(Opposed) The breadth and ambiguity of the standards causes concern. What does "reasonable" or "timely manner" mean? The bill is also burdensome because it applies to all employers. The reduced and intermittent leave allowed in this bill has been controversial in other leave laws. There is also the issue of competitiveness. Few other states impose this type of leave and employers are still struggling with paid family leave.

Using 608/609 funds is inappropriate.

Persons Testifying: (In support) Representative Kessler, prime sponsor; Kathy Barnard, Northwest Women's Law Center; Ramona Danny; Evelyn Larsen, Washington Coalition of Sexual Assault Programs; Kelli Myer; and Julie Stuhlman and Grace Huang, Washington State Coalition Against Domestic Violence.

(In support with concerns) Julie Suhauneck, The Evergreen State College; and Sherry Burkey, Western Washington University.

(With concerns) Mel Sorensen, Washington Defense Trail Lawyers; and Vicky Marin, Washington Retail Association.

(Opposed) Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.