
SUBSTITUTE SENATE BILL 5900

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Regala, Haugen, Shin, Kline,
Keiser, Spanel and Delvin)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to increasing the safety of victims of domestic
2 violence, sexual assault, or stalking by ensuring leave from
3 employment; adding a new chapter to Title 49 RCW; prescribing
4 penalties; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature makes the following
7 findings:

8 (1) It is in the public interest to reduce domestic violence,
9 sexual assault, and stalking by enabling victims to maintain the
10 financial independence necessary to leave abusive situations, achieve
11 safety, and minimize physical and emotional injuries, and to reduce the
12 devastating economic consequences of domestic violence, sexual assault,
13 and stalking to employers and employees. Victims of domestic violence,
14 sexual assault, and stalking should be able to recover from and cope
15 with the effects of such violence and participate in criminal and civil
16 justice processes without fear of adverse economic consequences.

17 (2) One of the best predictors of whether a victim of domestic
18 violence, sexual assault, or stalking will be able to stay away from an

1 abuser is his or her degree of economic independence. However,
2 domestic violence, sexual assault, and stalking often negatively impact
3 the victims' ability to maintain employment.

4 (3) An employee who is a victim of domestic violence, sexual
5 assault, or stalking, or an employee whose family member is a victim,
6 must often take leave from work due to injuries, court proceedings, or
7 safety concerns requiring legal protection.

8 (4) Thus, it is in the public interest to provide reasonable leave
9 from employment for employees who are victims of domestic violence,
10 sexual assault, or stalking, or for employees whose family members are
11 victims, to participate in legal proceedings, receive medical
12 treatment, or obtain other necessary services.

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

15 (1) "Department" means the department of labor and industries.

16 (2) "Director" means the director of the department of labor and
17 industries.

18 (3) "Employer" has the same meaning as defined in RCW 49.12.005.

19 (4) "Employee" has the same meaning as defined in RCW 49.12.005.

20 (5) "Domestic violence" has the same meaning as set forth in RCW
21 26.50.010.

22 (6) "Sexual assault" has the same meaning as set forth in RCW
23 70.125.030.

24 (7) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

25 (8) "Family member" means any individual whose relationship to the
26 employee can be classified as a child, spouse, parent, parent-in-law,
27 grandparent, or person with whom the employee has a dating
28 relationship.

29 (9) "Child," "spouse," "parent," "parent-in-law," and "grandparent"
30 have the same meaning as set forth in RCW 49.12.265.

31 (10) "Dating relationship" has the same meaning as set forth in RCW
32 26.50.010(3).

33 (11) "Reduced leave schedule" has the same meaning as set forth in
34 RCW 49.78.020.

35 NEW SECTION. **Sec. 3.** An employee may take reasonable leave from
36 work or a reduced leave schedule, with or without pay, to:

1 (1) Seek legal or law enforcement assistance or remedies to ensure
2 the health and safety of the employee or employee's family members,
3 including but not limited to preparing for or participating in any
4 civil or criminal legal proceeding related to or derived from domestic
5 violence, sexual assault, or stalking;

6 (2) Seek treatment by a health care provider for physical or mental
7 injuries caused by domestic violence, sexual assault, or stalking, or
8 to attend to health care treatment for a victim who is the employee's
9 family member;

10 (3) Obtain, or assist a family member in obtaining, services from
11 a domestic violence shelter, rape crisis center, or other social
12 services program for relief from domestic violence, sexual assault, or
13 stalking;

14 (4) Obtain, or assist a family member in obtaining, mental health
15 counseling related to an experience of domestic violence, sexual
16 assault, or stalking; or

17 (5) Participate in safety planning, temporarily or permanently
18 relocate, or take other actions to increase the safety of the employee
19 or employee's family members from future domestic violence, sexual
20 assault, or stalking.

21 NEW SECTION. **Sec. 4.** (1) As a condition of taking time off for
22 any purpose set forth in section 3 of this act, an employee shall give
23 an employer reasonable advance notice of the employee's intention to
24 take time off, unless advance notice is not feasible.

25 (2) When an employee requests leave under section 3 of this act and
26 is not able to provide advance notice, the employer may require that a
27 request for leave under this chapter be supported by verification of
28 the following:

29 (a) The employee or employee's family member is a victim of
30 domestic violence, sexual assault, or stalking; and

31 (b) The leave taken was for one of the purposes described in
32 section 3 of this act.

33 (3) Verification must be provided in a timely manner. In the event
34 that advance notice of the leave is not feasible, verification must be
35 provided to the employer within a reasonable time period during or
36 after the leave.

1 (4) An employee may satisfy the verification requirement of this
2 section by providing the employer with one or more of the following:

3 (a) A police report indicating that the employee or employee's
4 family member was a victim of domestic violence, sexual assault, or
5 stalking;

6 (b) A court order protecting or separating the employee or
7 employee's family member from the perpetrator of the act of domestic
8 violence, sexual assault, or stalking, or other evidence from the court
9 or the prosecuting attorney that the employee or employee's family
10 member appeared in court;

11 (c) Documentation from an advocate for victims of domestic
12 violence, sexual assault, or stalking, an attorney, a member of the
13 clergy, or a medical or other professional, from whom the employee or
14 employee's family member sought assistance in addressing domestic
15 violence, sexual assault, or stalking and the effects of the violence.
16 The provision of documentation under this section does not waive or
17 diminish the confidential or privileged nature of communications
18 between a victim of domestic violence, sexual assault, or stalking with
19 one or more of the above-named individuals pursuant to RCW 5.60.060,
20 70.123.075, 70.123.076, or 70.125.065; or

21 (d) An employee's written statement that the employee or the
22 employee's family member is a victim of domestic violence, sexual
23 assault, or stalking and that the leave taken was for one of the
24 purposes described in section 3 of this act.

25 (5) If the victim of domestic violence, sexual assault, or stalking
26 is the employee's family member, verification of the familial
27 relationship between the employee and the victim may include, but is
28 not limited to, a statement from the employee, a birth certificate, a
29 court document, or other similar documentation.

30 (6) An employee who is absent from work pursuant to section 3 of
31 this act may elect to use the employee's available paid vacation time,
32 personal leave time, sick leave time, compensatory time off that is
33 otherwise available to the employee, or unpaid leave time.

34 (7) An employee is required to provide only the information
35 enumerated in subsection (2) of this section to establish that the
36 employee's leave is protected under this chapter. An employee is not
37 required to produce or discuss any information with the employer that
38 is beyond the scope of subsection (2) of this section, or that would

1 compromise the employee's safety or the safety of the employee's family
2 member in any way, and an employer is prohibited from mandating any
3 such disclosure.

4 (8) To the extent allowed by law, an employer shall maintain the
5 confidentiality of all information provided by the employee under this
6 section, including the fact that the employee or employee's family
7 member is a victim of domestic violence, sexual assault, or stalking,
8 that the employee has requested or obtained leave under this chapter,
9 and any written or oral statement, documentation, record, or
10 corroborating evidence provided by the employee. Information given by
11 an employee shall not be disclosed by an employer unless:

- 12 (a) Requested or consented to by the employee;
- 13 (b) Ordered by a court or administrative agency; or
- 14 (c) Otherwise required by applicable federal or state law.

15 NEW SECTION. **Sec. 5.** (1) Taking leave under section 3 of this act
16 shall not result in the loss of any pay or benefits to the employee
17 that accrued before the date on which the leave commenced.

18 (2) Upon an employee's return, an employer shall either:

19 (a) Restore the employee to the position of employment held by the
20 employee when the leave commenced; or

21 (b) Restore the employee to an equivalent position with equivalent
22 employment benefits, pay, and other terms and conditions of employment.

23 (3) To the extent allowed by law, an employer shall maintain
24 coverage under any health insurance plan for an employee who takes
25 leave under section 3 of this act. The coverage must be maintained,
26 for the duration of such leave, at the level and under the conditions
27 coverage would have been provided if the employee had not taken leave
28 under this chapter.

29 NEW SECTION. **Sec. 6.** (1) The rights provided in this chapter are
30 in addition to any other rights provided by state and federal law.

31 (2) Nothing in this chapter shall be construed to discourage
32 employers from adopting policies that provide greater leave rights to
33 employees who are victims of domestic violence, sexual assault, or
34 stalking than those required by this chapter.

35 (3) Nothing in this chapter shall be construed to diminish an
36 employer's obligation to comply with any collective bargaining

1 agreement or any employment benefit program or plan that provides
2 greater leave rights to employees than the rights provided by this
3 chapter.

4 NEW SECTION. **Sec. 7.** Upon complaint by an employee, the director
5 shall investigate to determine if there has been compliance with this
6 chapter and the rules adopted under this chapter. If the investigation
7 indicates that a violation has occurred, the director shall issue a
8 notice of infraction. Appeal from the director's decision is governed
9 by chapter 34.05 RCW.

10 NEW SECTION. **Sec. 8.** Any finding, determination, conclusion,
11 declaration, or notice of infraction made by the director, or his or
12 her representative or delegate, or by an appeal tribunal,
13 administrative law judge, reviewing officer, or other agent of the
14 department for purposes of enforcing this chapter, shall not be
15 conclusive nor binding in any civil action filed pursuant to section 12
16 of this act or in any other common law or other claim, whether the
17 prior action was between the same or related parties or involved the
18 same facts.

19 NEW SECTION. **Sec. 9.** (1) An employer found to have committed an
20 infraction of this chapter may be subject to a fine of up to five
21 hundred dollars for the first infraction and may be subject to a fine
22 of up to one thousand dollars for each subsequent infraction committed
23 within three years of a previous infraction.

24 (2) An employer found to have committed an infraction may also be
25 ordered to:

26 (a) Restore the employee to the position of employment held by the
27 employee when the leave commenced; or

28 (b) Restore the employee to an equivalent position with equivalent
29 employment benefits, pay, and other terms and conditions of employment.

30 NEW SECTION. **Sec. 10.** Information contained in the complaint
31 files and records of employees, under the provisions of this chapter,
32 shall be deemed confidential and shall not be open to public
33 inspection: PROVIDED, That except as limited by state or federal
34 statutes or regulations, such information may be provided to public

1 employees in the performance of their official duties: PROVIDED
2 FURTHER, That except as otherwise limited by state or federal statutes
3 or regulations, a complainant or a representative of a complainant, be
4 it an individual or an organization, may review a complaint file or
5 receive specific information therefrom upon the presentation of the
6 signed authorization of the complainant.

7 NEW SECTION. **Sec. 11.** (1) No employer shall discharge, threaten
8 to discharge, demote, deny a promotion to, sanction, discipline,
9 harass, or otherwise discriminate against an employee with respect to
10 compensation, terms, conditions, or privileges of employment because
11 the employee exercised rights under section 3 of this act.

12 (2) No employer may discharge, threaten to discharge, demote, deny
13 a promotion to, sanction, discipline, retaliate, harass, or otherwise
14 discriminate against an employee because such employee has filed or
15 communicated to the employer an intent to file a complaint under
16 section 7 or 12 of this act.

17 (3) No employer may discharge, threaten to discharge, demote, deny
18 a promotion to, sanction, discipline, retaliate, harass, or otherwise
19 discriminate against an employee for participation or assistance, as a
20 witness or otherwise, in another employee's attempt to exercise rights
21 under section 3, 7, or 12 of this act.

22 NEW SECTION. **Sec. 12.** (1) Any employee deeming herself or himself
23 injured by any act in violation of this chapter shall have a civil
24 action in a court of competent jurisdiction to enjoin further
25 violations, or to recover the actual damages sustained by the person,
26 or both, together with the cost of suit including reasonable attorneys'
27 fees.

28 (2) The remedy provided by this section is in addition to any
29 common law remedy or other remedy that may be available to an employee.

30 (3) An employee is not required to exhaust administrative remedies
31 before filing a civil action to enforce this chapter.

32 NEW SECTION. **Sec. 13.** The department shall include notice of the
33 provisions of this chapter in the next reprinting of employment posters
34 printed under RCW 49.78.340. Employers must post this notice as
35 required in RCW 49.78.340.

1 NEW SECTION. **Sec. 14.** Prosecuting attorney and victim/witness
2 offices are encouraged to make information regarding this chapter
3 available for distribution at their offices.

4 NEW SECTION. **Sec. 15.** The director shall, in accordance with
5 chapter 34.05 RCW, adopt rules necessary for the administration of this
6 chapter.

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

9 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 immediately.

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