

HOUSE BILL REPORT

EHB 1965

As Passed House:

March 11, 2009

Title: An act relating to leave for service animal training.

Brief Description: Granting leave to employees with sensory disabilities to attend service animal training.

Sponsors: Representatives Hunt, Upthegrove, Dickerson and Simpson.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/19/09 [DP].

Floor Activity

Passed House: 3/11/09, 97-0.

Brief Summary of Engrossed Bill

- Directs the Department of Personnel to adopt rules that authorize state agencies to provide allowances to employees with sensory disabilities who must attend training necessary to obtain a new service animal.
- Mandates that an employee's absence to attend training necessary to obtain a new service animal be treated in the same manner as that granted to employees who are absent to attend training that supports or improves their job performance.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

Staff: Kyle Gotchy (786-7119); Marsha Reilly (786-7135)

Background:

Statutory Overview.

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.

Under federal and state law, employers are not required to provide additional paid leave as a reasonable accommodation to employees who wish to attend training for a new guide dog. Such employees may nonetheless utilize paid time off in the form of accrued paid leave. Under the Americans with Disabilities Act (ADA), employers must allow disabled employees to exhaust accrued paid leave first and then must provide unpaid leave as a reasonable accommodation. Under the Washington Law Against Discrimination (WLAD), however, there is no directive for employers to exhaust accrued paid leave before utilizing unpaid leave.

Employers and Reasonable Accommodation Requirements.

Under the ADA and the WLAD, once an employer has knowledge or notice of the limitations of an otherwise qualified individual, the employer and such individual must enter into an interactive process where they cooperate to identify the limitations resulting from the disability and what accommodations may be reasonably made.

The U.S. Equal Employment Opportunity Commission (EEOC) explains that permitting the use of accrued paid or unpaid leave is a form of reasonable accommodation when necessitated by an employee's disability. Employers, however, do not have a duty to provide paid leave beyond that which is provided to similarly-situated employees. Whether or not the timing or length of the leave is reasonable depends on multiple factual issues such as job duties, the nature of the job, and the disability. Each situation must be assessed on a case-by-case basis to determine whether or not leave is reasonable and what amount is reasonable.

The EEOC specifically cites "training a service animal (e.g., a guide dog)" as a possible reason why an employee with a disability may require unpaid leave as a reasonable accommodation. In affording leave, the EEOC directs employers to allow disabled employees to exhaust accrued paid leave first and then to provide unpaid leave.

Undue Hardship Limitation.

Under both the ADA and the WLAD, an employer does not have to provide a reasonable accommodation that would cause an "undue hardship" to the employer. A finding of undue hardship must be based on case-by-case assessment of current circumstances that show that a specific reasonable accommodation would cause specific difficulty or expense. If an employer determines that one particular reasonable accommodation will cause undue hardship, but a second type of reasonable accommodation will be effective and will not cause an undue hardship, then the employer must provide the second accommodation.

Leave as a Reasonable Accommodation for State Employees.

Under the WLAD there is no directive for public employees or employees working for private businesses to use paid leave *before* utilizing unpaid leave. In many circumstances, an employer is required to provide some type of leave (sick, vacation, leave without pay, and/or leave under the Family Medical Leave Act [FMLA]) for a person with a disability as a reasonable accommodation. This medical leave for a reasonable accommodation may need to extend beyond accrued leave time, and may even extend beyond FMLA leave, depending on the circumstances, the doctor's recommendation, and any undue hardship issues.

Under the FMLA, employees who are eligible can choose leave without pay instead of using annual or sick leave. State agencies designate the leave under the FMLA, and the practice is to use sick leave and annual leave unless the employee wishes to use leave without pay.

Summary of Engrossed Bill:

The Department of Personnel must adopt rules that authorize state agencies to provide allowances to employees with sensory disabilities who must attend training necessary to obtain a new service animal. The employee's absence must be treated in the same manner as that granted to employees who are absent to attend training that supports or improves their job performance.

If the employee can anticipate the need to miss work in order to attend training for a new service animal, the employee must provide the employer with not less than 30 days notice before the absence is to begin. Alternatively, where the employee cannot provide 30 days notice, the employee must provide notice as is practicable.

An agency may require that a request to attend service animal training be supported by a certification issued by the relevant training organization. Such certification is sufficient if it states: (1) the date on which the service animal training session is scheduled to commence; and (2) the session's duration.

Appropriation: None.

Fiscal Note: Requested on February 17, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) When an employee is compelled to use his or her accrued paid time off to obtain a new service animal, they may not have enough time left over in order to attend to unforeseen events and circumstances.

(Opposed) None.

Persons Testifying: Representative Hunt, prime sponsor; Brian Horst; and Larry Watkinson.

Persons Signed In To Testify But Not Testifying: None.