

SENATE BILL REPORT

ESHB 1313

As of February 25, 2014

Title: An act relating to establishing minimum standards for sick and safe leave from employment.

Brief Description: Establishing minimum standards for sick and safe leave from employment.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Jinkins, Farrell, Morrell, Green, Dunshee, Lytton, Sawyer, Sells, Fitzgibbon, Riccelli, Moeller, Appleton, Reykdal, Roberts, Ryu, Pollet and Moscoso).

Brief History: Passed House: 1/29/14, 52-45.

Committee Activity: Commerce & Labor: 2/26/14.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Mac Nicholson (786-7445)

Background: State and federal laws address leave from employment. These laws include the following:

1. Federal Family and Medical Leave Act (FMLA). Eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified reasons. The state Family Leave Act is very similar to the FMLA.
2. State Family Care Law. If, under state law, collective bargaining agreements, or employer policies, employees are entitled to sick leave or other paid time off, employers must allow employees to use their choice of leave to care for children with health conditions that require treatment or supervision; or spouses, parents, parents-in-law, or grandparents who have serious health conditions or emergency conditions.
3. Domestic Violence Leave Law. Victims of domestic violence, sexual assault, or stalking may take reasonable leave from work for specified legal, law enforcement, medical, and safety reasons. Family members may also take reasonable leave. The leave is with or without pay. Leave may be taken to:
 - a. seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family member;
 - b. seek treatment by a health care provider for physical or mental injuries or to attend treatment for a family member;
 - c. obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program;

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- d. 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
- e. participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or family member.

In 2011 the city of Seattle adopted an ordinance, effective October 1, 2012, requiring employers to provide paid sick and safe leave.

Summary of Bill: Minimum standards for paid sick and safe leave are established. Employees accrue and are entitled to use leave based on employer size:

- Tier one employers have more than 4 and fewer than 50 full-time equivalents (FTEs);
- Tier two employers have 50 to fewer than 250 FTEs;
- Tier three employers have 250 or more FTEs; and
- Employers with 4 or fewer FTEs are exempt.

The tier for a year is determined by the average number of FTEs paid per calendar week during the preceding year for any and all weeks during which at least one employee worked for compensation. If an employer did not have employees during the previous year, the tier is determined by the average number of FTEs paid per calendar week during the first 90 days of the year the employer was in business. All compensated hours are counted, including part-time and temporary employment, and employment through a staffing agency or similar entity. Workers, including temporary and part-time workers, accrue and may use leave if they work 240 hours or more in the state in a calendar year. A person working less than 240 hours in the state in a calendar year is an employee only for purposes of determining the employer tier.

Accrual of Sick and Safe Leave. Starting January 1, 2015, an employee accrues sick and safe leave at the following minimum amounts:

- tier one or two, one hour of leave for every 40 hours worked; and
- tier three, one hour of leave for every 30 hours worked.

Leave does not accrue for overtime work if the employee is exempt from state and federal overtime payment laws.

Unused leave carries over to the following year in the following minimum amounts:

- tier one, 40 hours;
- tier two, 56 hours; and
- tier three, 72 hours.

An employer with a combined or universal paid leave policy is not required to provide sick and safe leave under the legislation if the provided leave can be used for the same purposes and under the same conditions as safe and sick leave, and accrues and can be carried over and used at the minimum rates established for safe and sick leave. Tier three employers with a combined or universal paid leave policy must allow at least 108 hours to be carried over, and must allow use of at least 108 hours of paid leave per year.

Employees who separate from employment and are re-hired by the same employer within seven months must have their previously accrued and unused sick and safe leave reinstated.

Use of Sick and Safe Leave. Sick and safe leave can be used for the following reasons:

- an absence resulting from an employee's mental or physical illness or injury or to accommodate health care needs;
- to allow the employee to provide care for a child, grandparent, parent, parent-in-law, or spouse;
- when the employee's place of business, or the employee's child's school, has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material; and
- for any of the purposes specified in the domestic violence leave law, which includes domestic violence, sexual assault, and stalking.

Sick and safe leave are paid only for hours that an employee was scheduled to work, and must be paid at the same hourly rate and with the same benefits as the employee would otherwise earn. Employers are not required to compensate for lost tips or commissions.

The minimum amount of leave an employer must allow an employee to use in a year is as follows:

- tier one, 40 hours;
- tier two, 56 hours; and
- tier three, 72 hours.

Employees can use accrued leave after a 180-day waiting period. For new employers, leave cannot be used until 24 months after the hire date of the employer's first employee.

With the employer's consent, an employee may work additional hours or swap shifts instead of using leave. Eating and drinking establishments may arrange shift trades. If the employee agrees to the trade, the employer may deduct sick and safe time.

Requests and Documentation. Sick and safe leave must be provided upon request. When possible, the request must include an expected duration for the absence. If the leave is foreseeable, the employee must make a reasonable effort to schedule leave so as to not unduly disrupt employer operations, and make the request in writing with at least ten day's notice, or as early as possible. If the leave is unforeseeable, the employee must provide notice as soon as practicable. An employer may require compliance with the usual and customary notice and procedural requirements for leave.

An employer may require reasonable documentation for use of more than three consecutive sick leave days. An employer cannot require the documentation to explain the nature of the illness or health condition, and a statement signed by a health care provider is considered reasonable documentation. Employers who do not offer health insurance must reimburse the employee for one-half of any out-of-pocket costs incurred to obtain the documentation. Reimbursable expenses are limited to costs of services provided by health care providers and facilities, testing prescribed by providers, and transportation.

For safe leave, an employer may require verification for use of more than three consecutive days of leave. Notice of a closure order satisfies the verification request. For safe leave associated with domestic violence, stalking, or sexual assault, an employee may satisfy the verification requirement in the same manner as provided in the domestic violence leave law.

Information provided to an employer in support of a safe or sick leave request must be maintained in a confidential manner and can be disclosed only at the request or consent of the employee, by court or administrative order, or as otherwise required by law.

Recordkeeping Provisions. Employers must provide an updated sick and safe leave balance each payday in a manner of their choosing. An employer will be presumed to violate the provisions of the legislation if the employer does not retain adequate records or does not allow the Department of Labor and Industries (L&I) reasonable access to the records. Records documenting hours worked and leave taken must be retained for three years.

Notice. Starting January 1, 2015, employers must give notice of the entitlement to sick and safe leave, the amount of leave and terms of its use, that retaliation for a request or use of leave is prohibited, and that an employee has the right to file a complaint or bring a civil action. The notice requirement can be fulfilled by providing individual notice to each employee or by displaying a poster in a conspicuous and accessible place. L&I must create and make posters available to employers.

Retaliation. Employers cannot retaliate against an employee who has exercised sick and safe leave rights, filed or communicated an intent to file a complaint related to sick and safe leave, or participated in another employee's attempt to exercise sick and safe leave rights

Enforcement. L&I can conduct compliance investigations. If L&I determines a violation has occurred, a hearing must be held, written findings and determinations must be made, and appropriate relief may be ordered, which can include the following:

- damages, back pay, payment of leave unlawfully withheld, and interest;
- if leave was unlawfully withheld, liquidated damages of \$250 or three times the dollar amount of leave withheld, whichever is greater;
- if the violation resulted in other harm to the employee or any other person, liquidated damages of \$50 per day to each employee whose rights were violated;
- investigation costs of up to \$50 per day per person whose rights were violated;
- attorneys' fees and costs; and
- equitable relief, including reinstatement.

L&I may issue a notice of infraction and impose a civil penalty of up to \$125 for a willful violation of the notice and posting requirements. The civil penalty can increase to \$250 for the second and each subsequent violation. An aggrieved employee or a person awarded liquidated damages who prevails on a judicial appeal is entitled to attorneys' fees and costs.

L&I, any person aggrieved, any entity a member of which is aggrieved, or any other person or entity acting on behalf of the public health and welfare may bring a civil action against any person violating the sick and safe leave requirements. The court may order appropriate relief, except that any person or entity acting on behalf of the public health and welfare is not

entitled to liquidated damages. The court must award reasonable attorneys' fees and costs to the party bringing the civil action if the party prevails.

Miscellaneous. L&I has rulemaking authority.

The sick and safe leave requirements do not preempt any other laws or standards that provide for greater accrual or use by employees of sick or safe leave. The requirements are not intended to discourage employers from adopting or retaining more generous policies or to diminish the obligation of any employer to comply with any agreement providing more generous sick and safe leave.

Sick and safe leave requirements do not apply to any employees covered by a bona fide collective bargaining agreement to the extent that the requirements are expressly waived in the agreement in clear and unambiguous terms.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.