

HOUSE BILL REPORT

HB 1356

As Passed House:
March 3, 2015

Title: An act relating to assuring that all workers may take at least forty hours of accrued paid sick or safe leave per year and that workers for employers with more than fifty full-time equivalent employees may take greater amounts of paid leave, excepting only certain occasional Washington workers, workers of employers with four or fewer full-time equivalent employees, and workers in certain new firms.

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

Sponsors: Representatives Jinkins, Riccelli, S. Hunt, Farrell, Stanford, McBride, Cody, Tharinger, Goodman, Ortiz-Self, Sullivan, Bergquist, Pettigrew, Dunshee, Fitzgibbon, Peterson, Moscoso, Ryu, Appleton, Sells, Pollet, Robinson, Reykdal, Walkinshaw, Senn, Wylie, Ormsby, Lytton, Moeller, Kagi, Hansen, Hudgins, Tarleton, Sawyer, Fey, Gregerson, Gregory, Van De Wege, Kilduff, Blake, Kirby, Orwall and Clibborn.

Brief History:

Committee Activity:

Labor: 1/26/15, 1/29/15 [DP];

Appropriations: 2/16/15, 2/19/15 [DP].

Floor Activity:

Passed House: 3/3/15, 51-46.

Brief Summary of Bill

- Requires employers with more than four full-time equivalent employees to provide paid leave to employees for: (1) specified medical reasons relating to the employee's or a family member's health; (2) reasons permitted under existing law requiring unpaid leave for purposes related to domestic violence, sexual assault, and stalking; or (3) closure of the employee's place of business or child's school or place of care due to specified public health emergencies.

HOUSE COMMITTEE ON LABOR

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member; McCabe.

Staff: Joan Elgee (786-7106).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Sawyer, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 13 members: Representatives Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Condotta, Dent, Haler, G. Hunt, MacEwen, Magendanz, Schmick, Stokesbary, Taylor and Van Werven.

Minority Report: Without recommendation. Signed by 2 members: Representatives Parker, Assistant Ranking Minority Member; Fagan.

Staff: Derek Rutter (786-7157).

Background:

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

- 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.
- 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.
- 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. 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.

The City of Seattle adopted an ordinance, effective October 1, 2012, requiring employers to provide paid sick and safe leave.

Summary of Bill:

Intent.

The Legislature finds that paid sick and safe leave is critical to the economic well-being of the state and workers and to public health and safety. A finding is also made that paid sick and safe leave helps workers maintain their own health and the health of others and helps victims of domestic violence, sexual assault, and stalking. Paid leave is important to helping women and achieving racial and gender equality. Further, paid sick and safe leave helps employers retain trained workers and operate competitively as well as ensures economic security for workers and their families.

Coverage.

Employees performing services in the state are covered, including temporary and part-time employees. However, an employee working in the state on an occasional basis is covered only if he or she works more than 240 hours in the state in a calendar year. Employees accrue and are entitled to use leave based on employer size. Employers with four or fewer full-time equivalent (FTE) employees are exempt.

- "Tier 1" employers have more than four and fewer than 50 FTEs.
- "Tier 2" employers have 50 to fewer than 250 FTEs.
- "Tier 3" employers have 250 or more FTEs.

The tier for a year is determined by the average number of FTEs paid per calendar week during the preceding year for 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. Separate entities that form an integrated enterprise are a single employer for purposes of determining the tier.

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

Accrual of Leave.

Employees accrue leave beginning January 1 following enactment. Minimum leave accrual, use, and carry over are based on employer size.

| Employer Tier | Hours worked to accrue hour of leave | Hour use per year | Carry-over |
|---------------|--------------------------------------|-------------------|------------|
| Tier 1 | 40 | 40 | 40 |
| Tier 2 | 40 | 56 | 56 |
| Tier 3 | 30 | 72 | 72 |

However, for a Tier 3 employer, the use per year and carry over must be no less than 108 hours if the employer has a paid time off policy. An employer may front load leave, as long as the front loading meets or exceeds the requirements for accrual, use, and carry over of leave.

Employees exempt from overtime are not entitled to accrue leave for hours worked in excess of 40 in a work week.

For seasonal employees who are rehired by the same employer within seven months of separation, the employer must reinstate accrued and unused sick and safe leave.

Use of Leave.

Sick leave may be used:

- for an absence resulting from or for medical diagnosis, care or treatment of the employee's mental or physical illness, injury, or health condition, and for preventative medical care; or
- to care for specified family members with a mental or physical illness, injury, or health condition, or to care for a family member who needs medical diagnosis, care, or treatment, or preventive medical care.

Safe leave may be used:

- for any of the purposes specified in the domestic violence leave law;
- when the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material; or
- to care for a child whose school or place of care has been closed by a public official for the same reasons as specified for the employee's place of business.

A 180-day waiting period after hire applies before an employee may use leave. For seasonal employees who separate and are rehired by the same employer within seven months, the previous period of employment counts for purposes of the 180-day requirement.

An employer must compensate an employee who uses sick and safe leave at the same hourly rate and with the same benefits as the employee would have earned during the time leave is taken. No compensation is required for lost tips or commissions and compensation is only required for hours that the employee was scheduled to work.

With the employer's consent, an employee may work additional hours or swap shifts instead of using leave.

Leave Requests and Documentation.

Requests.

An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, so long as they do not interfere with the purposes for which leave is requested. If the leave is foreseeable, the employee must make a reasonable effort to schedule the leave so as not to unduly disrupt the employer's operations, and make the request in writing, and at least 10 days before the leave, or as early as possible, unless the employer's usual and customary policy provides for shorter notice. For unforeseeable leave, the employee must give notice as soon as practicable and must comply with the usual and customary notice and procedural requirements so long as they do not interfere with the purposes for which leave is needed.

Documentation and Verification.

An employer may require reasonable documentation for use of more than three consecutive days of sick time. Documentation signed by a health care provider is reasonable. The employer and employee split the cost of any out-of-pocket expense of obtaining the documentation. An employer also may require reasonable verification for use of more than three consecutive days of safe time, and methods of satisfying the verification requirement are specified.

Records.

When an employer pays an employee, the employer must provide information in writing stating an updated amount of sick and safe leave available. Employers may choose a reasonable system, including listing time on each pay stub or providing an on-line system. Employers must maintain records regarding leave for three years. If an employer does not have adequate records, or does not allow reasonable access, it is presumed that the employer violated the requirements. With some exceptions, an employer must maintain the confidentiality of information provided by the employee or others in support of a request for leave.

Notice.

Tier 1, 2, and 3 employers must notify employees about the requirements of the law. Employers may comply by providing the information in English and in any language that is the first language spoken by at least 5 percent of the employer's workforce either on a notice to each of the employees or on a poster displayed in a conspicuous and accessible place. The Department of Labor and Industries (Department) must create and make available posters.

Retaliation.

An employer may not discharge, demote, take other listed actions, or otherwise discriminate against an employee because the employee exercised rights, used sick and safe leave, filed a complaint or communicated an intent to file a complaint, or participated or assisted in another employee's attempt to exercise the employee's rights under the sick and safe leave law.

Enforcement.

Administrative and judicial remedies are provided. The Director of the Department (Director) must investigate complaints and may investigate if the Director obtains information that a violation may have occurred. If the Director finds a violation, the Director must try to negotiate a settlement. If an agreement cannot be reached, the Director must issue a notice of infraction and may order appropriate relief, including damages (including back pay), payment of any sick or safe leave unlawfully withheld, and liquidated damages of three times the dollar amount of the leave withheld or \$250, whichever is greater. If the violation resulted in other harm to the employee or other person, or otherwise violated the rights of employees or other persons, such as a failure to provide notice or retaliation, the Director may order liquidated damages of \$50 per day to each employee or person whose rights were violated. The Director may also order no more than \$50 for each day and for each person or employee whose rights were violated to compensate the Department, attorney's fees and costs, and equitable relief, including reinstatement. For a willful violation of the notice requirements, the Director may impose a civil penalty not to exceed \$125 for the first violation and \$250 for subsequent violations.

The Department and 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, including the relief the Director may order, 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.

Other.

The Department has rule-making 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.

Definitions are provided, including for "full-time equivalent," "health care provider," and the various family members.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Labor):

(In support) We need a minimum level of sick leave so highly contagious diseases, such as norovirus and diseases carried by food workers, are not spread. It's uncomfortable working at a grocery store touching groceries while your nose is running. Most grocery workers do not have sick leave until the third day. Sick employees come in to work so they don't lose their pay, which is minimum wage. An employer required an employee to get a note, but this would have cost more than the employee lost in a day's pay. Seniors are more susceptible to illness, and illness increases health care costs. When older workers get sick, it adversely affects their wages and social security income. Employees have to choose between staying home with a sick child or putting food on the table. Children come to school sick because their parents have to work. Sometimes children spend the day in the health room. A school employee was unable to meet with a parent to develop a 504 plan because the parent could not get off work. This bill would protect victims of abuse and makes fiscal sense. The unpaid leave law does not help victims who are barely able to make ends meet. Having limited resources puts people at risk by keeping victims trapped in relationships.

One Seattle small business which provides sick leave has grown tremendously. Providing paid sick leave increases standing in the community. There is no perfect number of days but this bill is similar to what other states are doing.

(Opposed) This bill will add another cost to businesses, which eventually cannot survive if more costs are added. Grocery stores have low margins and independent grocers do not have

the ability to pass on costs. The three-day policy for grocery workers was collectively bargained. The health code keeps us from having sick people around food. There is a cost when a worker is gone. In a survey of grocery stores, one store saw annual costs before and after the Seattle paid sick leave law went into effect go from \$26,000 to \$74,000. A store in Pierce County saw its costs go down. Another Seattle store saw its costs go from \$25,000 to \$65,000. Small businesses want the flexibility to design a program that meets their needs. There is a large abuse of sick leave but no ability under the bill to seek documentation when abuse is suspected. It is burdensome to the employer to pay half the cost of documentation. The civil penalty is of concern and the bill could result in greater litigation as other parties may bring a claim. In agriculture, where employees move from employer to employer, it will be difficult to know when the benefits kick and difficult for the grower to know. The bill will create an administrative burden.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is a measured approach to strengthening the economy by helping people keep their jobs. The bill will also promote public health by curbing the transmission of communicable disease and making workplaces safer. Forty percent of Washington workers don't receive any paid sick days and even fewer low-income workers receive paid sick days. There are many stories of parents having to choose between staying home with a sick child or putting food on the table. Sick children show up at school and say their parents have to go to work. Low-income children are more likely to go to school sick. They can't learn and they spread disease. The bill will help children be healthier and help close the achievement and drop-out gaps for low-income children and children of color. A parent without sick leave delayed getting medical care for a child and another had to quit.

In the 20 cities and three states that have passed paid sick leave, there is no evidence that job or business growth has suffered. Sick leave will cost a business just \$50 per month, compared to credit card costs of \$50 per day. Sick people working in retail expose vulnerable people. Seniors are more likely to be seriously harmed by sick people in the workplace. Current policies encourage people to come to work sick because they get written up if they call in sick more than three times a year. Some employees can't take the first two days of an illness as sick leave, which can be a big financial loss. A required doctor's note may cost more than a person makes in a day. Businesses that offer sick leave have little employee turnover. Workers who don't have sick leave are more likely to suffer a workplace injury. Most complaints in Seattle have been dealt with by a letter. Putting wages in people's pockets is good for the economy. Not having paid sick days costs the nation \$160 billion yearly in lost productivity. For people in an abusive relationship, paid sick and safe leave is a lifeline and makes financial sense, as unpaid leave is not practical.

(Opposed) Smaller grocers have a 1 percent profit margin. In a survey of Seattle grocers, costs have gone up between 159 and 264 percent since Seattle passed a paid sick and safe leave ordinance. Some of these stores will not be able to survive, which have an impact on the unemployment system. Unionized employees already have paid sick leave. The bill will increase the cost of doing business. Look at the impact on business and jobs when evaluating the cost of the bills.

Persons Testifying (Labor): (In support) Representative Jenkins, prime sponsor; Demetrius Bolden; Joan Lankford, School Nurse Organization of Washington; Tim Burns, Puget Sound Advocates for Retirement Action; Makini Howell, Main Street Alliance; Panayiota Lipsou, Washington State Coalition Against Domestic Violence; and Marilyn Watkins, Economic Opportunity Institute.

(Opposed) Robert Battles, Association of Washington Business; Carolyn Logue, Washington Food Industry; Patrick Connor, National Federation of Independent Business; and Scott Dilley, Washington Farm Bureau.

Persons Testifying (Appropriations): (In support) Representative Jinkins, prime sponsor; Lori Pflugst, Budget Policy Center; Marilyn Watkins, Economic Opportunity Institute; Andrea Schmitt, Columbia Legal Services; Wendy Brown; Jesse Inman, Downtown Emergency Services Center; Kyong Berry; Don Orange, Hoesly Eco Automotive; Laura Waite, Jay's Professional Automotive; Dan Olmstead, Poverty Bay Coffee Company; Liz Atkinson-Pattinson; Kristen Rowe Finkbiener, MomsRising; Joan Lankford; Anne Guerrein; Bianca Bailey; Demetrius Bolden; Irene Garcia; Autumn Brown; Pam Crone, Washington State Coalition Against Domestic Violence; Alex Hur, Statewide Poverty Action; Rachel Dehn, Restaurant Opportunity Center; and Michael Warren, Puget Sound Advocates for Retirement Action.

(Opposed) Mark Johnson, Washington Retail Association; Carolyn Logue, Washington Food Industry; Bob Battles, Association of Washington Business; and Dolores Chiechi, Recreational Gaming Association.

Persons Signed In To Testify But Not Testifying (Labor): Linda Morton, Terra Plate; and Adriana Calzada.

Persons Signed In To Testify But Not Testifying (Appropriations): None.