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SENATE BILL 5306

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State of Washington

64th Legislature

2015 Regular Session

By Senators Habib, Roach, Lillas, Jayapal, Cleveland, Hasegawa, McCoy, Kohl-Welles, Nelson, Conway, Fraser, Keiser, Rolfes, McAuliffe, Chase, Darneille, Pedersen, Frockt, Mullet, Billig, and Ranker

Read first time 01/19/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to assuring that all workers may take at least  
2 forty hours of accrued paid sick or safe leave per year and that  
3 workers for employers with more than fifty full-time equivalent  
4 employees may take greater amounts of paid leave, excepting only  
5 certain occasional Washington workers, workers of employers with four  
6 or fewer full-time equivalent employees, and workers in certain new  
7 firms; adding a new chapter to Title 49 RCW; and prescribing  
8 penalties.

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

10 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. The legislature finds  
11 that paid sick and safe leave from employment is critical to the  
12 economic well-being of the state and workers and to public health and  
13 safety. Paid sick and safe leave helps workers maintain their own  
14 health and the health of their families, coworkers, and members of  
15 the public. Paid sick and safe leave is important to helping women  
16 gain greater economic security for themselves and their families and  
17 to achieving racial and gender equity. Paid sick and safe leave also  
18 helps give victims of domestic violence, sexual assault, and stalking  
19 the financial independence necessary to leave abusive situations,  
20 achieve safety, and minimize physical and emotional injuries. The  
21 legislature further finds that paid sick and safe leave helps

1 employers retain trained workers and operate competitively as well as  
2 ensures that workers and their families retain economic security.

3 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
4 section apply throughout this chapter unless the context clearly  
5 requires otherwise.

6 (1) "Child," "grandparent," "parent," "parent-in-law," and  
7 "spouse" have the same meanings as in RCW 49.12.265.

8 (2) "Department" and "director" have the same meanings as in RCW  
9 49.12.005.

10 (3) "Domestic violence" has the same meaning as in RCW 26.50.010.

11 (4)(a) "Employee" means any individual employed by an employer,  
12 including individuals employed on a temporary and part-time basis.

13 (b) An employee is a "covered employee" when the employee  
14 performs services in the state. An employee performing services in  
15 the state on an occasional basis is a covered employee only if he or  
16 she performs more than two hundred forty hours of work in the state  
17 in a calendar year. An employee performing services in the state on a  
18 temporary basis and supplied by a temporary service, staffing agency,  
19 or similar entity, absent a contractual agreement stating otherwise,  
20 is a covered employee of the staffing agency or similar entity.

21 (5)(a) "Employer" has the same meaning as in RCW 49.12.005.

22 (i) "Tier one employer" means an employer that employs more than  
23 four and fewer than fifty full-time equivalents on average per  
24 calendar week.

25 (ii) "Tier two employer" means an employer that employs at least  
26 fifty and fewer than two hundred fifty full-time equivalents on  
27 average per calendar week.

28 (iii) "Tier three employer" means an employer that employs two  
29 hundred fifty or more full-time equivalents on average per calendar  
30 week.

31 (b) The employer tier for the current year is determined by the  
32 average number of full-time equivalents paid per calendar week during  
33 the preceding year for any and all weeks during which at least one  
34 employee worked for compensation. To determine the number of full-  
35 time equivalents, all compensated hours of all employees shall be  
36 counted, including part-time employment, temporary employment,  
37 employment outside the state, and employment through the services of  
38 a staffing agency or similar entity. Separate entities that form an  
39 integrated enterprise are a single employer for purposes of

1 determining the employer tier. If an employer did not employ any  
2 employees during the previous year, the employer tier is determined  
3 based upon the average number of full-time equivalents paid per  
4 calendar week during the first ninety calendar days of the current  
5 year in which the employer engaged in business.

6 (6) "Full-time equivalent" means the number of hours worked for  
7 compensation that add up to one full-time employee, based either on  
8 an eight hour day and a five day week or as full-time is defined, in  
9 writing or in practice, by the employer.

10 (7) "Health care provider" means any person licensed to provide  
11 medical or emergency services and any other person as determined by  
12 the director to be capable of providing documentation under section  
13 5(4) of this act.

14 (8) "Sexual assault" has the same meaning as in RCW 70.125.030.

15 (9) "Sick and safe leave" means hours of paid time provided by an  
16 employer for use by a covered employee for absence from work for the  
17 purposes specified in section 4 of this act.

18 (10) "Staffing agency" means any person undertaking with or  
19 without compensation to procure opportunities to work or to procure,  
20 recruit, refer, or place individuals with an employer or in  
21 employment.

22 (11) "Stalking" has the same meaning as in RCW 9A.46.110.

23 NEW SECTION. **Sec. 3.** ACCRUAL OF SICK AND SAFE LEAVE. (1)(a)

24 Subject to (b) of this subsection and beginning January 1st of the  
25 year following the effective date of this section, a covered employee  
26 accrues sick and safe leave, which may be used as either sick leave  
27 or safe leave, as follows:

28 (i) An employee of a tier one or tier two employer must accrue at  
29 least one hour of leave for every forty hours worked.

30 (ii) An employee of a tier three employer must accrue at least  
31 one hour of leave for every thirty hours worked.

32 (b) An employer may provide paid sick and safe leave in advance  
33 of accrual as permitted front loading as long as the front loading  
34 meets or exceeds the requirements of this chapter for accrual, use,  
35 and carry over of leave.

36 (2) Sick and safe leave begins to accrue at the commencement of  
37 employment, except that an employee is not entitled to begin accruing  
38 leave before January 1st of the year following the effective date of  
39 this section.

1 (3) If an employee is exempt from overtime payment under state  
2 and federal law: (a) The employee is not entitled to accrue leave for  
3 hours worked in excess of forty hours in a work week; and (b) if the  
4 employee's normal work week is less than forty hours, leave accrues  
5 based on the employee's normal work week.

6 (4) Unused sick and safe leave carries over to the following  
7 year, except that an employer is not required to allow an employee to  
8 carry over sick and safe leave in excess of:

9 (a) Forty hours for a tier one employer;

10 (b) Fifty-six hours for a tier two employer; or

11 (c) Subject to subsection (5) of this section, seventy-two hours  
12 for a tier three employer.

13 (5)(a) A tier one or tier two employer with a combined or  
14 universal paid leave policy, including but not limited to a paid time  
15 off policy, is not required to provide sick and safe leave in  
16 addition to the leave provided by that policy if:

17 (i) Paid leave under the policy may be used for the same purposes  
18 and under the same conditions as sick and safe leave may be used  
19 under section 4 of this act;

20 (ii) Paid leave accrues at a rate of at least one hour of leave  
21 for every forty hours worked;

22 (iii) Use of paid leave within any year is limited to no less  
23 than the amounts specified for tier one and tier two employers,  
24 respectively, in section 4 of this act; and

25 (iv) Any accrued but unused paid leave may be carried over to the  
26 following year. However, this section does not require a tier one or  
27 tier two employer to carry over leave in excess of the leave  
28 specified in subsection (4)(a) and (b) of this section.

29 (b) A tier three employer with a combined or universal paid leave  
30 policy, including but not limited to a paid time off policy, is not  
31 required to provide sick and safe leave in addition to the leave  
32 provided by the policy if:

33 (i) Available paid leave may be used for the same purposes and  
34 under the same conditions as sick and safe leave may be used under  
35 section 4 of this act;

36 (ii) Paid leave accrues at a rate of at least one hour of leave  
37 for every thirty hours worked;

38 (iii) Use of paid leave within any year is limited to no less one  
39 hundred eight hours; and

1 (iv) Any accrued but unused paid leave may be carried over to the  
2 following year. However, this section does not require a tier three  
3 employer to carry over unused leave in excess of one hundred eight  
4 hours.

5 (6) If a covered employee separates from employment and the same  
6 employer rehires the employee within seven months of the separation:

7 (a) The employer must reinstate previously accrued and unused sick  
8 and safe leave; (b) the employee is entitled to use accrued sick and  
9 safe leave immediately upon reemployment if the employee previously  
10 had been eligible to use the leave; and (c) the employee accrues  
11 additional leave immediately upon reemployment. If a covered employee  
12 separates from employment and the same employer rehires the employee  
13 more than seven months after the separation, this section does not  
14 require the employer to reinstate accrued sick and safe leave and the  
15 employee is considered to have newly commenced employment for  
16 purposes of sick and safe leave.

17 (7) This section does not require an employer to provide  
18 financial or other reimbursement for accrued and unused sick and safe  
19 leave to any employee upon the employee's termination, resignation,  
20 retirement, or other separation from employment.

21 NEW SECTION. **Sec. 4.** USE OF SICK AND SAFE LEAVE. (1) A covered  
22 employee may use accrued sick and safe leave beginning one hundred  
23 eighty days after the commencement of employment with the employer.  
24 If a covered employee separates from employment and is rehired by the  
25 same employer within seven months of separation, the previous period  
26 of employment is counted for purposes of meeting the one hundred  
27 eighty day requirement.

28 (2) An employer must compensate a covered employee who uses sick  
29 and safe leave at the same hourly rate and with the same benefits,  
30 including health care benefits, as the employee would have earned  
31 during the time the leave is taken. An employer is not required to  
32 compensate an employee for lost tips or commissions and compensation  
33 is required only for hours that an employee was scheduled to work.

34 (3) A covered employee may use sick leave for the following  
35 reasons:

36 (a) An absence resulting from an employee's mental or physical  
37 illness, injury, or health condition; to accommodate the employee's  
38 need for medical diagnosis, care, or treatment of a mental or

1 physical illness, injury, or health condition; or the employee's need  
2 for preventive medical care; or

3 (b) To allow the employee to provide care for a child,  
4 grandparent, parent, parent-in-law, or spouse with a mental or  
5 physical illness, injury, or health condition; care for a child,  
6 grandparent, parent, parent-in-law, or spouse who needs medical  
7 diagnosis, care, or treatment of a mental or physical illness,  
8 injury, or health condition; or care for a child, grandparent,  
9 parent, parent-in-law, or spouse who needs preventive medical care.

10 (4) A covered employee may use safe leave for the following  
11 reasons:

12 (a) When the employee's place of business has been closed by  
13 order of a public official to limit exposure to an infectious agent,  
14 biological toxin, or hazardous material; or to accommodate the  
15 employee's need to care for a child whose school or place of care has  
16 been closed by order of a public official to limit exposure to an  
17 infectious agent, biological toxin, or hazardous material; or

18 (b) For any of the reasons identified in RCW 49.76.030.

19 (5) An employer is not required to allow an employee to use in  
20 excess of the following hours of sick and safe leave in a year:

21 (a) Forty hours for a tier one employer;

22 (b) Fifty-six hours for a tier two employer; or

23 (c) Subject to section 3(5)(b) of this act, seventy-two hours for  
24 a tier three employer.

25 NEW SECTION. **Sec. 5.** REQUESTS AND DOCUMENTATION. (1) An  
26 employer must provide sick and safe leave upon the request of a  
27 covered employee.

28 (2) When possible, the request must include the expected duration  
29 of the absence. An employer may require an employee to comply with  
30 the employer's usual and customary notice and procedural requirements  
31 for absences and requesting leave, as long as the requirements do not  
32 interfere with the purposes for which the leave is needed. If the  
33 leave is foreseeable, the employee must: (a) Make a reasonable effort  
34 to schedule the leave in a manner that does not unduly disrupt the  
35 operations of the employer; (b) make the request in writing; and (c)  
36 make the request at least ten days, or as early as possible, in  
37 advance of the leave unless the employer's usual and customary notice  
38 requirements provide for less advance notice. If the leave is  
39 unforeseeable, the employee must provide notice as soon as

1 practicable and must comply with the employer's usual and customary  
2 notice and procedural requirements for absences as long as the  
3 requirements do not interfere with the purposes for which the leave  
4 is needed.

5 (3) For employees covered by federal or state overtime  
6 requirements, sick and safe leave may be used in hourly increments,  
7 or smaller increments if an employer so designates. For employees  
8 exempt from state and federal overtime requirements, the employer may  
9 make deductions of sick and safe leave in accordance with state and  
10 federal law.

11 (4) An employer may require reasonable documentation for use of  
12 more than three consecutive days of sick leave. Documentation signed  
13 by a health care provider stating that sick leave is necessary is  
14 reasonable documentation. An employer may not require the  
15 documentation to explain the nature of the illness, injury, or health  
16 condition. The employer and employee must each pay one-half the cost  
17 of any out-of-pocket expense incurred by the employee in obtaining  
18 the documentation requested by the employer. Out-of-pocket expenses  
19 are limited to the costs of services provided by health care  
20 providers, services of health care facilities, testing prescribed by  
21 health care providers, and transportation to the location where the  
22 services are provided.

23 (5) An employer may require verification for use of more than  
24 three consecutive days of safe leave. For leave under section 4(4)(a)  
25 of this act, the employer may require verification of a closure  
26 order. Notice of the closure order in whatever format the employee  
27 received the notice satisfies the verification request. For leave  
28 under section 4(4)(b) of this act, the employer may require  
29 verification that the employee or employee's family member is a  
30 victim of domestic violence, sexual assault, or stalking, and that  
31 the leave taken was for one of the purposes under section 4(4)(b) of  
32 this act. An employee may satisfy the verification requirement in the  
33 same manner as provided in RCW 49.76.040(4) and verification does not  
34 waive or diminish the confidential or privileged nature of  
35 communications in the same manner as under RCW 49.76.040(4).

36 (6) Upon mutual consent of the employee and employer, an employee  
37 may work additional hours or shifts during the same or next pay  
38 period instead of using accrued sick and safe leave for leave taken  
39 under this section. An employer may not require the employee to work

1 additional shifts or hours. The employer must comply with any  
2 applicable laws regarding overtime pay.

3 (7) This chapter does not prohibit an employer from establishing  
4 a policy under which employees may: (a) Voluntarily exchange assigned  
5 hours or trade shifts; or (b) donate unused accrued sick and safe  
6 leave to another employee.

7 NEW SECTION. **Sec. 6.** RECORDKEEPING. (1)(a) An employer must  
8 provide at the time wages are paid information in writing stating an  
9 updated amount of sick and safe leave available to each covered  
10 employee. Employers may choose a reasonable system for providing this  
11 information including, but not limited to, listing remaining  
12 available sick and safe leave on each pay stub or providing an online  
13 system where employees can access their own sick and safe leave  
14 information.

15 (b) This section does not require employers to modify their  
16 recordkeeping policies as long as records reasonably indicate accrued  
17 and used sick and safe leave. When an issue arises as to the amount  
18 of accrued sick and safe leave and the employer does not maintain or  
19 retain adequate records or does not allow the department reasonable  
20 access to the records, it is presumed that the employer violated this  
21 chapter.

22 (2) Employers shall retain records documenting hours worked by  
23 employees and sick and safe leave taken by employees for a period of  
24 three years, and shall allow the department access to such records,  
25 with appropriate notice and at a mutually agreeable time, to  
26 investigate potential violations and to monitor compliance with this  
27 chapter.

28 (3)(a) Except as provided in (b) of this subsection, an employer  
29 must maintain the confidentiality of information provided by the  
30 employee or others in support of an employee's request for sick or  
31 safe leave, including health information and the fact the employee or  
32 employee's family member is a victim of domestic violence, sexual  
33 assault, or stalking, that the employee has requested or taken leave  
34 under this chapter, and any written or oral statement, documentation,  
35 record, or corroborating evidence provided by the employee.

36 (b) Information provided by an employee may be disclosed by an  
37 employer only if the disclosure is: (i) Requested or consented to by  
38 the employee; (ii) ordered by a court or administrative agency; or  
39 (iii) otherwise required by applicable federal or state law.



1        NEW SECTION.    **Sec. 7.**    NOTICE OF RIGHTS. (1) Beginning January  
2 1st of the year following the effective date of this section, a tier  
3 one, tier two, and tier three employer shall give notice to  
4 employees:

5        (a) That covered employees are entitled to sick and safe leave;

6        (b) Of the amount of sick and safe leave and the terms of its use  
7 guaranteed under this chapter;

8        (c) That retaliation against employees who request or use sick or  
9 safe leave is prohibited; and

10       (d) That an employee has the right to file a complaint or bring a  
11 civil action if sick or safe leave as required by this chapter is  
12 denied by the employer or the employee is retaliated against for  
13 requesting or taking sick or safe leave.

14       (2) An employer may comply with this section by providing the  
15 information in subsection (1) of this section in English and in any  
16 language that is the first language spoken by at least five percent  
17 of the employer's workforce: (a) On a notice to each of the  
18 employer's covered employees; or (b) on a poster displayed in a  
19 conspicuous and accessible place in each establishment where the  
20 employer's covered employees are employed.

21       (3) The department must create and make available to employers  
22 posters for use under subsection (2) of this section.

23       (4) The department must provide notice to employers regarding the  
24 requirements of this chapter when the department updates information  
25 for employers about employment standards requirements.

26       NEW SECTION.    **Sec. 8.**    RETALIATION. (1) An employer may not  
27 discharge, threaten to discharge, demote, deny a promotion to,  
28 sanction, discipline, retaliate against, harass, or otherwise  
29 discriminate against an employee with respect to compensation, terms,  
30 conditions, or privileges of employment because the employee:

31       (a) Exercised rights under section 4 of this act;

32       (b) Filed or communicated to the employer an intent to file a  
33 complaint under section 9 or 11 of this act; or

34       (c) Participated or assisted, as a witness or otherwise, in  
35 another employee's attempt to exercise rights under section 4, 9, or  
36 11 of this act.

37       (2) Counting use of paid sick and safe leave as an absence that  
38 may lead to or result in adverse action against the employee is  
39 unlawful retaliation under this section.

1        NEW SECTION.        **Sec. 9.**        ADMINISTRATIVE ENFORCEMENT. (1) Upon  
2 complaint by an employee, the director must investigate to determine  
3 if there has been compliance with this chapter and the rules adopted  
4 under this chapter. The director may also investigate if the director  
5 obtains information that a violation may have occurred. If upon  
6 investigation the director determines that a violation has occurred,  
7 the director must endeavor with reasonable promptness to eliminate  
8 the violation by agreement. The terms of the agreement may include  
9 any of the relief specified in section 10 of this act. If an  
10 agreement cannot be reached, the director must issue a notice of  
11 infraction. Appeal from the director's decision is governed by  
12 chapter 34.05 RCW.

13        (2) Within the first twenty-four months after a tier one or tier  
14 two employer's hiring of the employer's first employee, the  
15 department may educate and advise the employer and employees but may  
16 not investigate or order any other relief.

17        NEW SECTION.        **Sec. 10.**        ADMINISTRATIVE RELIEF. (1) If an employer  
18 is found to have committed an infraction, the director may order  
19 appropriate relief which may include:

20        (a) Damages, including back pay, payment of any sick or safe  
21 leave unlawfully withheld, and interest on the damages at the  
22 prevailing rate;

23        (b) If any sick or safe leave was unlawfully withheld, statutory  
24 damages of three times the dollar amount of leave withheld, or two  
25 hundred fifty dollars, whichever is greater;

26        (c) If a violation resulted in other harm to the employee or any  
27 other person, such as discharge from employment, or otherwise  
28 violated the rights of employees or other persons, such as a failure  
29 to provide notice to employees or a prohibited act of retaliation,  
30 statutory damages of fifty dollars to each employee or person whose  
31 rights were violated for each day or portion of each day that the  
32 violation occurred or continued;

33        (d) To compensate the department for the costs of investigating  
34 or remedying the violation, not more than fifty dollars for each day  
35 or portion of each day and for each person or employee as to whom the  
36 violation occurred or continued;

37        (e) Attorneys' fees and costs; and

38        (f) Equitable relief, including reinstatement.

1 (2) In addition to any other remedies, if the director finds that  
2 an employer has willfully violated the notice and posting  
3 requirements of section 7 of this act, the director may impose a  
4 civil penalty not to exceed one hundred twenty-five dollars for the  
5 first violation and two hundred fifty dollars for subsequent  
6 violations.

7 (3) A judicial appeal from the director's determination may be  
8 taken in accordance with chapter 34.05 RCW, and an aggrieved employee  
9 who prevails and a person awarded statutory damages who prevails are  
10 entitled to attorneys' fees and costs.

11 NEW SECTION. **Sec. 11.** CIVIL ENFORCEMENT. (1) The department and  
12 any person aggrieved by a violation of this chapter, any entity a  
13 member of which is aggrieved by a violation of this chapter, or any  
14 other person or entity acting on behalf of the public health and  
15 welfare may bring a civil action in a court of competent jurisdiction  
16 against any person who violates this chapter. The court may order  
17 appropriate relief including the relief specified in section 10 of  
18 this act, except that any person or entity enforcing this chapter on  
19 behalf of the public health and welfare is not entitled to statutory  
20 damages. In addition, the court shall award reasonable attorneys'  
21 fees and costs to the party bringing the civil action if the party  
22 prevails.

23 (2) Exhaustion of administrative remedies is not required before  
24 filing a civil action.

25 (3) The remedies in this section are in addition to any common  
26 law or other remedies that may be available.

27 (4) This section does not apply to any violations during the  
28 first twenty-four months after a tier one or tier two employer's  
29 hiring of the employer's first employee.

30 NEW SECTION. **Sec. 12.** MORE GENEROUS POLICIES. This chapter  
31 provides minimum requirements pertaining to sick and safe leave and  
32 is not intended to discourage and does not prohibit an employer from  
33 adopting or retaining a sick and safe leave policy more generous than  
34 any policies that comply with the requirements under this chapter, or  
35 as diminishing the obligation of any employer to comply with any  
36 contract, collective bargaining agreement, employment benefit plan,  
37 or other agreement providing more generous sick and safe leave than  
38 required under this chapter.

1        NEW SECTION.    **Sec. 13.**    RELATIONSHIP TO OTHER LAWS. This chapter  
2 does not preempt, limit, or otherwise affect the applicability of any  
3 other law, regulation, requirement, policy, or standard that provides  
4 for greater accrual or use by employees of sick or safe leave,  
5 whether paid or unpaid, or that extends other protections to  
6 employees.

7        NEW SECTION.    **Sec. 14.**    WAIVER. (1) The requirements of this  
8 chapter do not apply to any employees covered by a bona fide  
9 collective bargaining agreement to the extent that the requirements  
10 are expressly waived in the collective bargaining agreement in clear  
11 and unambiguous terms.

12        (2) Any waiver by an employee of any requirements of this chapter  
13 is contrary to public policy and is void and unenforceable.

14        NEW SECTION.    **Sec. 15.**    RULES. The department may adopt rules to  
15 implement this chapter.

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

18        NEW SECTION.    **Sec. 17.**    SEVERABILITY. If any provision of this  
19 act or its application to any person or circumstance is held invalid,  
20 the remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

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