

SENATE BILL REPORT

SB 5559

As of January 24, 2022

Title: An act relating to verification for use of paid sick leave.

Brief Description: Concerning verification for use of paid sick leave.

Sponsors: Senators Van De Wege, Keiser, Randall, Stanford and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/24/22.

Brief Summary of Bill

- Provides for paid sick leave absences exceeding three days, an employer who does not offer a health insurance plan as an employee benefit and pays at least 85 percent of the cost of the insurance may only require an oral or written explanation provided by the employee as verification that an employee's use of paid sick leave is for the authorized purpose; and may not require a medical examination or statement from a health care provider.
- Requires that this verification be consistent with any the Department of Labor and Industries rules.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Susan Jones (786-7404)

Background: Employer Provided Sick Leave. Every employer must provide each of its employees at least one hour of paid sick leave for every 40 hours worked as an employee.

Authorized Purposes and Use. An employee is authorized to use paid sick leave for the following reasons:

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- an absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;
- to allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care; and
- when the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a reason.

An employee may also use paid sick leave for absences that qualify for leave under the Domestic Violence Leave Act.

An employee is entitled to use accrued paid sick leave beginning on the 90th calendar day after the commencement of employment. An employer may require employees to give reasonable notice of an absence from work, so long as such notice does not interfere with an employee's lawful use of paid sick leave.

Paid Sick Leave Rate. For each hour of paid sick leave used, an employee must be paid the greater of the state minimum hourly wage rate or the employee's normal hourly compensation. The employer is responsible for providing regular notification to employees about the amount of paid sick leave available to the employee.

Unused Leave. Unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of 40 hours. An employer is not required to provide financial or other reimbursement for accrued and unused paid sick leave to any employee upon the employee's termination, resignation, retirement, or other separation from employment. When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, whether at the same or a different business location of the employer, previously accrued unused paid sick leave must be reinstated and the previous period of employment count for purposes of determining the employee's eligibility to use paid sick leave.

Verification. For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose. If an employer requires verification, verification must be provided to the employer within a reasonable time period during or after the leave. An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

Department of Labor and Industries Rule on Verification. The Department of Labor and Industries (L&I) adopted a rule related to verification for absences exceeding three days. If

an employer requires verification, the employer must have a written policy or a collective bargaining agreement outlining any such requirements. The employer must notify the employee of such policy or agreement, including the employee's right to assert that the verification requirement results in an unreasonable burden or expense, prior to requiring the employee to provide verification. An employer must make this information readily available to all employees.

If an employer requires an employee to provide verification from a health care provider identifying the need for use of paid sick leave, the employer must not require that the information provided explain the nature of the condition.

If the employee anticipates that the requirement will result in an unreasonable burden or expense, the employee must be allowed to provide an oral or written explanation which asserts that the use of paid sick leave was for an authorized purpose; and how the verification requirement creates an unreasonable burden or expense. The employer must consider the employee's explanation. Within ten calendar days, the employer must make a reasonable effort to identify and provide alternatives for the employee to meet the employer's verification requirement without an unreasonable burden or expense. A reasonable effort by the employer to identify and provide alternatives could include accepting the oral or written explanation; or mitigating the employee's out-of-pocket expenses associated with obtaining medical verification.

If after the employer considers the employee's explanation, the employer and employee disagree that the employer's verification requirement results in an unreasonable burden or expense on the employee, the employer and employee may consult with L&I regarding the verification requirement; and the employee may file a complaint with L&I.

A reasonable time period may not be less than ten calendar days following the first day of the use of paid sick leave.

Prohibited Actions. An employer may not:

- require, as a condition of an employee taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during the leave;
- adopt or enforce any policy that counts the use of paid sick leave time as an absence that may lead to or result in discipline against the employee; or
- discriminate or retaliate against an employee for exercising any of their rights under this chapter including the use of paid sick leave.

Definition. "Family member" means any of the following:

- a child, including a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;
- a biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who

- stood in loco parentis when the employee was a minor child;
- a spouse;
 - a registered domestic partner;
 - a grandparent;
 - a grandchild; or
 - a sibling.

Summary of Bill: For verification for an authorized purpose for paid sick leave absences exceeding three days, an employer who does not offer a health insurance plan as an employee benefit and pays at least 85 percent of the cost of the insurance:

- may only require an oral or written explanation provided by the employee as verification that an employee's use of paid sick leave is for the authorized purpose; and
- may not require a medical examination or statement from a health care provider.

Any such verification must also be consistent with any rules adopted by the Department of Labor and Industries.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: The employer has discretion in requiring medical verification. Seeking medical verification has real cost, especially if the employee doesn't have medical insurance, they are paying out of pocket. It stands to reason that if the employer is going to force a cost on the employee, they should provide a health insurance benefit that allows an employee to go get that verification without a cost and doctor's visit to use sick leave.

CON: Small businesses cannot afford to provide health care insurance. This will disproportionately impact small businesses. It will make it easier for employees of small businesses to misuse the system. Small businesses are less likely to be able to absorb the cost of lengthy absences. This is protected leave. Employees must give the leave. The protections were put in place to ensure verification after three days. The bills remove protection for this higher level leave.

OTHER: L&I doesn't have any concern about the policy but they have technical concerns. L&I doesn't have a way to verify if an employer provides this health insurance. If there is a source for that information, that would help them administer the bill. They would prefer more than 90 days to implement the bill and do rule-making. They have a question about

the insurance coverage language.

Persons Testifying: PRO: Joe Kendo, Washington State Labor Council, AFL-CIO.

CON: Tom Kwieciak, Building Industry Association of WA/ WA Farm Bureau; Robert Battles, Association of Washington Business (AWB).

OTHER: Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.