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**ENGROSSED SUBSTITUTE SENATE BILL 5065**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Kuderer, Stanford, Conway, Hasegawa, Hunt, Keiser, Lovelett, Saldaña, Salomon, and Wilson, C.)

READ FIRST TIME 02/15/21.

1           AN ACT Relating to safeguarding the public safety by protecting  
2 railroad workers; adding a new chapter to Title 49 RCW; prescribing  
3 penalties; and providing an effective date.

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

5           NEW SECTION.       **Sec. 1.**       The legislature finds that railroad  
6 employees are susceptible to illness from working in confined spaces  
7 as well as the illnesses and injuries that affect the general  
8 population, yet have no paid sick leave and may be subject to  
9 discipline for absence due to illness and injury.

10          The legislature further finds that railroad operating craft  
11 employees may report to work while ill to avoid disciplinary action  
12 by railroad carrier companies, which creates a dangerous and  
13 unnecessary public health and safety issues. In addition, the  
14 legislature finds that the unique operational practices utilized to  
15 summon railroad crew employees to duty necessitate modifications to  
16 existing family and medical leave laws to provide railroad carrier  
17 employees with comparable sick leave and family leave rights to those  
18 previously granted to all other workers in this state.

19          Therefore, in the interest of public safety and railroad worker  
20 safety, the legislature enacts this chapter to assure that railroad  
21 crew employees are healthy and to assure that railroad crew employees

1 receive fair and equitable family and medical leave. The provisions  
2 of this chapter are enacted in the exercise of the police power of  
3 the state for the purpose of protecting the immediate and future  
4 health, safety, and welfare of the people of this state.

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

8 (1) "Child" means a biological, adopted, or foster child, a  
9 stepchild, a legal ward, or a child of a person standing in loco  
10 parentis, who is: (a) Under eighteen years of age; or (b) eighteen  
11 years of age or older and incapable of self-care because of a mental  
12 or physical disability.

13 (2) "Department" means the department of labor and industries.

14 (3) "Director" means the director of the department of labor and  
15 industries, or the director's authorized representative.

16 (4) "Employee" means a person who has been employed by a railroad  
17 carrier.

18 (5) "Employer" means any person, firm, corporation, partnership,  
19 business trust, legal representative, or other business entity,  
20 including any unit of local government including, but not limited to,  
21 a county, city, town, municipal corporation, quasi-municipal  
22 corporation, or political subdivision, which engages in business as a  
23 railroad carrier.

24 (6) "Employment benefits" means all benefits provided or made  
25 available to employees by an employer, including group life  
26 insurance, health insurance, disability insurance, sick leave, annual  
27 leave, educational benefits, and pensions except benefits that are  
28 provided by a practice or written policy of an employer or through an  
29 employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

30 (7) "Family member" means any of the following:

31 (a) A child, including a biological, adopted, or foster child,  
32 stepchild, or a child to whom the employee stands in loco parentis,  
33 is a legal guardian, or is a de facto parent, regardless of age or  
34 dependency status;

35 (b) A biological, adoptive, de facto, or foster parent,  
36 stepparent, or legal guardian of an employee or the employee's spouse  
37 or registered domestic partner, or a person who stood in loco  
38 parentis when the employee was a minor child;

39 (c) A spouse;

1 (d) A registered domestic partner;  
2 (e) A grandparent;  
3 (f) A grandchild; or  
4 (g) A sibling.

5 (8) "Health care provider" means: (a) A person licensed as a  
6 physician under chapter 18.71 RCW or an osteopathic physician and  
7 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced  
8 registered nurse practitioner under chapter 18.79 RCW; or (c) any  
9 other person determined by the director to be capable of providing  
10 health care services.

11 (9) "Intermittent leave" is leave taken in separate blocks of  
12 time due to a single qualifying reason.

13 (10) "Leave for a family member's serious health condition" means  
14 leave as described in section 4(1)(c) of this act.

15 (11) "Leave for the birth or placement of a child" means leave as  
16 described in section 4(1)(a) or (b) of this act.

17 (12) "Leave for the employee's serious health condition" means  
18 leave as described in section 4(1)(d) of this act.

19 (13) "Operating craft employee" means any employee of a railroad  
20 carrier who performs service in an operating craft on a railroad or  
21 directs the work of an operating craft employee as a scheduled  
22 employee, and includes any other employee of a railroad carrier who  
23 performs safety sensitive tasks associated with railroad operations.

24 (14) "Parent" means a biological, adoptive, de facto, or foster  
25 parent, stepparent, or legal guardian of an employee or the  
26 employee's spouse or registered domestic partner, or a person who  
27 stood in loco parentis when the employee was a minor child.

28 (15) "Period of incapacity" means an inability to work, attend  
29 school, or perform other regular daily activities because of the  
30 serious health condition, treatment of that condition or recovery  
31 from it, or subsequent treatment in connection with such inpatient  
32 care.

33 (16) "Railroad carrier" means any employer subject to the  
34 jurisdiction of the surface transportation board under 49 U.S.C. Sec.  
35 1301 through 1326, as it exists on the effective date of this  
36 section. "Railroad carrier" includes the officers and agents of the  
37 railroad operations regardless of physical location.

38 (17) "Reduced leave schedule" means a leave schedule that reduces  
39 the usual number of hours per workweek, or hours per workday, of an  
40 employee.

1 (18) "Serious health condition" has the same meaning as in RCW  
2 50A.05.010.

3 (19) "Spouse" means a husband or wife, as the case may be, or  
4 state registered domestic partner.

5 NEW SECTION. **Sec. 3.** The department shall administer the  
6 provisions of this chapter.

7 NEW SECTION. **Sec. 4.** (1) Subject to section 10 of this act, an  
8 employee is entitled to a total of 12 workweeks of leave during any  
9 12-month period for one or more of the following:

10 (a) Because of the birth of a child of the employee and in order  
11 to care for the child;

12 (b) Because of the placement of a child with the employee for  
13 adoption or foster care;

14 (c) In order to care for a family member of the employee, if the  
15 family member has a serious health condition; or

16 (d) Because of a serious health condition that makes the employee  
17 unable to perform the functions of the position of the employee.

18 (2) The entitlement to leave for the birth or placement of a  
19 child expires at the end of the 12-month period beginning on the date  
20 of such birth or placement.

21 (3) In determining the duration of leave time remaining in 52  
22 consecutive calendar weeks, a railroad carrier may deduct only the  
23 actual amount of leave taken by an employee in increments no greater  
24 than 24 hours, and may not deduct more than one calendar day for each  
25 24-hour period the employee specifically applied for leave.

26 (4) An employee is not entitled to leave under this section  
27 unless:

28 (a)(i) The employee worked for at least six months for the  
29 employer with respect to whom leave is requested under this section;  
30 and

31 (ii) The employee worked for at least 504 hours of service with  
32 the employer during the previous 12-month period; or

33 (b)(i) The employee has been assigned to and worked on a  
34 guaranteed extra call board for at least the 12 months immediately  
35 preceding the date on which leave will commence and has worked or  
36 been paid for:

37 (A) Not less than 60 percent of the applicable total monthly  
38 guarantee, or the equivalent, during the 12-month period; and

1 (B) Not less than 504 hours, not counting personal commute time  
2 or time spent on vacation leave, sick leave, personal leave, leave of  
3 absence, or medical leave, during the 12-month period, for or by that  
4 employer; or

5 (ii) The employee has not been assigned to and worked on a  
6 guaranteed extra call board for at least 12 consecutive months  
7 preceding, but the employee has worked not less than 504 hours, not  
8 counting personal commute time or time spent on vacation leave, sick  
9 leave, personal leave, or medical leave, during the preceding twelve  
10 months of time that the employee was actively working for or by that  
11 employer.

12 NEW SECTION. **Sec. 5.** (1) Employers must allow their employees  
13 to take unpaid time off if:

14 (a) The employee has completed three consecutive months of  
15 continuous employment by the railroad carrier prior to the absence;

16 (b) No consecutive period of authorized absence pursuant to the  
17 provisions of this section exceeds 15 days;

18 (c) The total number of authorized absences the employee has  
19 taken pursuant to the provisions of this section is less than 91 days  
20 in the current calendar year; and

21 (d) The absence is authorized pursuant to subsection (2) of this  
22 section.

23 (2) An employee's absence under this section is authorized due to  
24 any of the following reasons:

25 (a) An absence resulting from an employee's mental or physical  
26 illness, injury, or health condition; to accommodate the employee's  
27 need for medical diagnosis, care, or treatment of a mental or  
28 physical illness, injury, or health condition; or an employee's need  
29 for preventive medical care;

30 (b) To allow the employee to provide care for a family member  
31 with a mental or physical illness, injury, or health condition; care  
32 of a family member who needs medical diagnosis, care, or treatment of  
33 a mental or physical illness, injury, or health condition; or care  
34 for a family member who needs preventive medical care; and

35 (c) When the employee or their spouse or registered domestic  
36 partner's place of business has been closed by order of a public  
37 official for any health-related reason, or when an employee's child's  
38 school or place of care has been closed for such a reason.

1 (3) An employer may permit employees to use any accrued leave,  
2 including vacation time or personal leave, while absent pursuant to  
3 the provisions of this section. An employer may not require an  
4 employee to use paid leave while absent pursuant to the provisions of  
5 this section.

6 (4) For employee absences under this section exceeding five  
7 consecutive days, the employer may, within 10 days of the employee's  
8 return to work, request verification that the employee's unpaid  
9 absence was for an authorized purpose pursuant to this section.

10 (a) If verification is requested by an employer, the employer  
11 must provide the employee no fewer than 30 days to obtain and provide  
12 any requested verification. An employer's requirements for  
13 verification may not result in an unreasonable burden or expense on  
14 the employee and may not exceed privacy or verification requirements  
15 otherwise established by law.

16 (b) If an employer requires an employee to provide verification  
17 from a health care provider identifying the need for use of their  
18 unpaid leave for an authorized purpose pursuant to this section, the  
19 employer must not require that the information provided explain the  
20 nature of the condition. If the employer obtains any health  
21 information about an employee or an employee's family member, the  
22 employer must treat such information in a confidential manner  
23 consistent with applicable privacy laws.

24 (5) Any employee absences pursuant to this section are not  
25 subject to any type of carrier availability or attendance policy and  
26 are separate from any protected leave under Title 50A RCW and  
27 sections 4 and 6 through 10 of this act.

28 (6) No railroad carrier may dismiss, suspend, lay off, demote,  
29 engage in any adverse action against or otherwise discipline an  
30 employee because of absences authorized pursuant to the provisions of  
31 this section.

32 NEW SECTION. **Sec. 6.** (1) Employee absences of up to seven days  
33 are authorized for bereavement purposes including arranging or  
34 attending funeral services, as well as handling matters related to  
35 the estate of a deceased family member as defined in section 2 of  
36 this act, as well as the following relatives: Aunts, uncles, nieces,  
37 nephews, and cousins; of either the employee, of their spouse, or of  
38 their registered domestic partner.

1 (2) Employee absences for bereavement purposes under this section  
2 may be unpaid.

3 (3) In addition to any paid bereavement leave offered by an  
4 employer, an employer may approve an employee's request to use any  
5 accrued vacation or personal leave time for bereavement purposes.

6 (4) Absences for bereavement purposes are not required to be  
7 taken over consecutive calendar days and may be split up over time.  
8 However, only seven days of unpaid protected leave for bereavement  
9 leave is authorized per decedent pursuant to this section.

10 (a) Employees may absent themselves for fewer than seven days if  
11 they so choose.

12 (b) Employers may provide additional compensated or unpaid time  
13 off to their employees for bereavement purposes.

14 (5) For absences related to bereavement purposes under this  
15 section, employers may require verification for the death of the  
16 family member or relative.

17 NEW SECTION. **Sec. 7.** (1)(a) When leave is taken after the birth  
18 or placement of a child for adoption or foster care, an employee may  
19 take leave intermittently or on a reduced leave schedule with the  
20 employer's agreement. The employer's agreement is not required;  
21 however, for leave during which the employee has a serious health  
22 condition in connection with the birth of a child or if the newborn  
23 child has a serious health condition.

24 (b) Leave may be taken intermittently or on a reduced leave  
25 schedule when medically necessary for treatment of a serious health  
26 condition by or under the supervision of a health care provider, or  
27 for recovery from treatment or recovery from a serious health  
28 condition. It may also be taken to provide care or psychological  
29 comfort for an immediate family member with a serious health  
30 condition.

31 (i) Intermittent leave may be taken for a serious health  
32 condition that requires treatment by a health care provider  
33 periodically, rather than for one continuous period of time, and may  
34 include leave of periods from an hour or more to several weeks.

35 (ii) Intermittent or reduced schedule leave may be taken for  
36 absences where the employee or family member is incapacitated or  
37 unable to perform the essential functions of the position because of  
38 a chronic serious health condition even if he or she is not receiving  
39 current or ongoing treatment by a health care provider.

1 (c) There is no limit on the size of an increment of leave when  
2 an employee takes intermittent leave or leave on a reduced leave  
3 schedule. However, an employer may limit leave increments to the  
4 shortest period of time that the employer's payroll system uses to  
5 account for absences or use of leave.

6 (d) The taking of leave intermittently or on a reduced leave  
7 schedule under this section may not result in a reduction in the  
8 total amount of leave to which the employee is entitled under section  
9 8 of this act beyond the amount of leave actually taken.

10 (2) If an employee requests intermittent leave, or leave on a  
11 reduced leave schedule, for a family member's serious health  
12 condition or the employee's serious health condition when the  
13 condition is foreseeable based on planned medical treatment, the  
14 employer may require such employee to transfer temporarily to an  
15 available alternative position at the same geographical location for  
16 which the employee is qualified and that:

17 (a) Has equivalent pay and benefits; and

18 (b) Better accommodates recurring periods of leave than the  
19 regular employment position of the employee.

20 NEW SECTION. **Sec. 8.** (1) Leave granted under section 4 of this  
21 act may consist of unpaid leave.

22 (2) Except as provided in subsection (3) of this section, this  
23 chapter does not affect an employee's entitlement to paid leave under  
24 Title 50A RCW.

25 (3) Unless otherwise expressly permitted by the employer, leave  
26 taken under this chapter must be taken concurrently with any paid  
27 leave taken under Title 50A RCW or any leave taken under the federal  
28 family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3,  
29 107 Stat. 6, as it existed on October 19, 2017).

30 NEW SECTION. **Sec. 9.** (1) If the necessity for leave for the  
31 birth or placement of a child is foreseeable based on an expected  
32 birth or placement, the employee shall provide the employer with not  
33 less than 30 days' notice, before the date the leave is to begin, of  
34 the employee's intention to take leave for the birth or placement of  
35 a child, except that if the date of the birth or placement requires  
36 leave to begin in less than 30 days, the employee shall provide such  
37 notice as is practicable.



1 (2) If the necessity for leave for a family member's serious  
2 health condition or the employee's serious health condition is  
3 foreseeable based on planned medical treatment, the employee:

4 (a) Must make a reasonable effort to schedule the treatment so as  
5 not to disrupt unduly the operations of the employer, subject to the  
6 approval of the health care provider of the employee or the health  
7 care provider of the family member, as appropriate; and

8 (b) Must provide the employer with not less than 30 days' notice,  
9 before the date the leave is to begin, of the employee's intention to  
10 take leave for a family member's serious health condition or the  
11 employee's serious health condition, except that if the date of the  
12 treatment requires leave to begin in less than 30 days, the employee  
13 must provide such notice as is practicable.

14 NEW SECTION. **Sec. 10.** If spouses entitled to leave under this  
15 chapter are employed by the same employer, the aggregate number of  
16 workweeks of leave to which both may be entitled may be limited to 12  
17 workweeks during any 12-month period, if such leave is taken: (1) For  
18 the birth or placement of a child; or (2) for a family member's  
19 serious health condition.

20 NEW SECTION. **Sec. 11.** (1) An employer may require that a  
21 request for leave for a family member's serious health condition or  
22 the employee's serious health condition be supported by a  
23 certification issued by the health care provider of the employee or  
24 of the family member, as appropriate. The employee must provide, in a  
25 timely manner, a copy of the certification to the employer.

26 (2) Certification provided under subsection (1) of this section  
27 is sufficient if it states:

28 (a) The date on which the serious health condition commenced;

29 (b) The probable duration of the condition;

30 (c) The appropriate medical facts within the knowledge of the  
31 health care provider regarding the condition;

32 (d) (i) For purposes of leave for a family member's serious health  
33 condition, a statement that the employee is needed to care for the  
34 family member and an estimate of the amount of time that such  
35 employee is needed to care for the family member; and

36 (ii) For purposes of leave for the employee's serious health  
37 condition, a statement that the employee is unable to perform the  
38 functions of the position of the employee;

1 (e) In the case of certification for intermittent leave, or leave  
2 on a reduced leave schedule, for planned medical treatment, the dates  
3 on which the treatment is expected to be given and the duration of  
4 the treatment;

5 (f) In the case of certification for intermittent leave, or leave  
6 on a reduced leave schedule, for the employee's serious health  
7 condition, a statement of the medical necessity for the intermittent  
8 leave or leave on a reduced leave schedule, and the expected duration  
9 of the intermittent leave or reduced leave schedule; and

10 (g) In the case of certification for intermittent leave, or leave  
11 on a reduced leave schedule, for a family member's serious health  
12 condition, a statement that the employee's intermittent leave or  
13 leave on a reduced leave schedule is necessary for the care of the  
14 family member who has a serious health condition, or will assist in  
15 their recovery, and the expected duration and schedule of the  
16 intermittent leave or reduced leave schedule.

17 (3) If the employer has reason to doubt the validity of the  
18 certification provided under subsection (1) of this section for leave  
19 for a family member's serious health condition or the employee's  
20 serious health condition, the employer may require, at the expense of  
21 the employer, that the employee obtain the opinion of a second health  
22 care provider designated or approved by the employer concerning any  
23 information certified under subsection (2) of this section for the  
24 leave. The second health care provider may not be contracted by a  
25 vendor or service provider of, or employed on any prior basis by, the  
26 employer.

27 (4) If the second opinion described in subsection (3) of this  
28 section differs from the opinion in the original certification  
29 provided under subsection (1) of this section, the employer may  
30 require, at the expense of the employer, that the employee obtain the  
31 opinion of a third health care provider designated or approved  
32 jointly by the employer and the employee concerning the information  
33 certified under subsection (2) of this section. The opinion of the  
34 third health care provider concerning the information certified under  
35 subsection (2) of this section is considered to be final and is  
36 binding on the employer and the employee.

37 (5) The employer may require that the employee obtain subsequent  
38 recertifications on a reasonable basis.

1 (6) In adopting rules to implement this section, the department  
2 shall adopt rules applicable to railroad carriers that at least  
3 address the following matters:

4 (a) What constitutes complete and sufficient certification from a  
5 medical provider, such that no additional details may be requested;

6 (b) Limitations on employer requests for recertification,  
7 including defining what constitutes a reasonable basis after approval  
8 has previously been granted for that year.

9 NEW SECTION. **Sec. 12.** (1)(a) Except as provided in (b) of this  
10 subsection, any employee who uses leave for the authorized purposes  
11 under section 4 of this act, on return to work, is entitled:

12 (i) To be restored by the employer to the position of employment  
13 held by the employee when the leave commenced; or

14 (ii) To be restored to an equivalent position with equivalent  
15 employment benefits, pay, and other terms and conditions of  
16 employment at a workplace within 20 miles of the employee's workplace  
17 when leave commenced.

18 (b) The taking of leave under section 4 of this act may not  
19 result in the loss of any employment benefits accrued before the date  
20 on which the leave commenced.

21 (c) Nothing in this subsection (1) entitles any restored employee  
22 to:

23 (i) The accrual of any seniority or employment benefits during  
24 any period of leave; or

25 (ii) Any right, benefit, or position of employment other than any  
26 right, benefit, or position to which the employee would have been  
27 entitled had the employee not taken the leave.

28 (d) As a condition of restoration under (a) of this subsection  
29 for an employee who has taken leave for the employee's serious health  
30 condition, the employer may have a uniformly applied practice or  
31 policy that requires each such employee to receive certification from  
32 the health care provider of the employee that the employee is able to  
33 resume work, except that nothing in this subsection (1)(d) supersedes  
34 a valid local law or a collective bargaining agreement that governs  
35 the return to work of such employees.

36 (e) Nothing in this subsection (1) prohibits an employer from  
37 requiring an employee on leave to report periodically to the employer  
38 on the status and intention of the employee to return to work.

1 (2) An employer may deny restoration under subsection (1) of this  
2 section to any salaried employee who is among the highest paid 10  
3 percent of the employees employed by the employer within 75 miles of  
4 the facility at which the employee is employed if:

5 (a) Denial is necessary to prevent substantial and grievous  
6 economic injury to the operations of the employer;

7 (b) The employer notifies the employee of its intent to deny  
8 restoration on such basis at the time the employer determines that  
9 the injury would occur; and

10 (c) The leave has commenced and the employee elects not to return  
11 to employment after receiving the notice.

12 NEW SECTION. **Sec. 13.** During any period of leave taken under  
13 section 4 of this act, if the employee is not eligible for any  
14 employer contribution to medical or dental benefits under an  
15 applicable collective bargaining agreement or employer policy during  
16 any period of leave, an employer shall allow the employee to  
17 continue, at the employee's expense, medical or dental insurance  
18 coverage, including any spouse and dependent coverage, in accordance  
19 with state or federal law. The premium to be paid by the employee  
20 shall not exceed 102 percent of the applicable premium for the leave  
21 period.

22 NEW SECTION. **Sec. 14.** (1) It is unlawful for any employer to:

23 (a) Interfere with, restrain, or deny the exercise of, or the  
24 attempt to exercise, any right provided under this chapter; or

25 (b) Discharge or in any other manner discriminate against any  
26 individual for opposing any practice made unlawful by this chapter.

27 (2) It is unlawful for any person to discharge or in any other  
28 manner discriminate against any individual because the individual  
29 has:

30 (a) Filed any complaint or charge, or has instituted or caused to  
31 be instituted any proceeding, under or related to this chapter;

32 (b) Given, or is about to give, any information in connection  
33 with any inquiry or proceeding relating to any right provided under  
34 this chapter; or

35 (c) Testified, or is about to testify, in any inquiry or  
36 proceeding relating to any right provided under this chapter.

1        NEW SECTION.    **Sec. 15.**    (1)(a) Upon receipt of a complaint by an  
2 employee of a railroad carrier, the department shall investigate to  
3 determine if there has been noncompliance with this chapter and  
4 related rules and issue either a citation and notice of assessment or  
5 a closure letter within 90 days after the date on which the  
6 department received the complaint, unless the complaint is otherwise  
7 resolved. The department may extend the period by providing advance  
8 written notice to the employee and the employer setting forth good  
9 cause for an extension of the period, and specifying the duration of  
10 the extension.

11        (b) The department shall send the citation and notice of  
12 assessment or the closure letter to both the employer and the  
13 employee by service of process or using a method by which the mailing  
14 can be tracked or the delivery can be confirmed to their last known  
15 addresses.

16        (c) If the department's investigation finds that the employee's  
17 allegation cannot be substantiated, the department shall issue a  
18 closure letter to the employee and the employer detailing such  
19 finding.

20        (2)(a) If the department's investigation finds that a railroad  
21 carrier violated this chapter or related rules, the department may  
22 order the employer to pay the department a civil penalty. Civil  
23 penalties may be assessed as follows:

24        (i) For a class I carrier, up to \$5,000 for the first violation,  
25 up to \$25,000 for the second violation within a three-year period  
26 following any previous violation, and up to \$100,000 for the third or  
27 subsequent violation within a three-year period following any  
28 previous violation;

29        (ii) For a class II or III carrier, up to \$1,000 for the first  
30 violation, up to \$5,000 for the second violation within a three-year  
31 period following any previous violation, and up to \$10,000 for the  
32 third or subsequent violation within a three-year period following  
33 any previous violation.

34        (b) The department may, at any time, waive or reduce any civil  
35 penalty assessed against an employer under this section if the  
36 department determines that the employer has taken corrective action  
37 to remedy the retaliatory action.

38        (3) The director may also order other remedies such as back pay  
39 and reinstatement, and may increase the fines by rule based on  
40 changing economic conditions.

1 (4) The department shall deposit civil penalties paid under this  
2 section in the supplemental pension fund established under RCW  
3 51.44.033.

4 NEW SECTION. **Sec. 16.** (1) A person, firm, or corporation  
5 aggrieved by a citation and notice of assessment by the department  
6 under this chapter, or any rules adopted under this chapter, may  
7 appeal the citation and notice of assessment to the director by  
8 filing a notice of appeal with the director within 30 days of the  
9 department's issuance of the citation and notice of assessment. A  
10 citation and notice of assessment not appealed within 30 days is  
11 final and binding, and not subject to further appeal.

12 (2) A notice of appeal filed with the director under this section  
13 shall stay the effectiveness of the citation and notice of assessment  
14 pending final review of the appeal by the director as provided for in  
15 chapter 34.05 RCW.

16 (3) Upon receipt of a notice of appeal, the director shall assign  
17 the hearing to an administrative law judge of the office of  
18 administrative hearings to conduct the hearing and issue an initial  
19 order. The hearing and review procedures shall be conducted in  
20 accordance with chapter 34.05 RCW, and the standard of review by the  
21 administrative law judge of an appealed citation and notice of  
22 assessment shall be de novo. Any party who seeks to challenge an  
23 initial order shall file a petition for administrative review with  
24 the director within 30 days after service of the initial order. The  
25 director shall conduct an administrative review in accordance with  
26 chapter 34.05 RCW.

27 (4) The director shall issue all final orders after appeal of the  
28 initial order. The final order of the director is subject to judicial  
29 review in accordance with chapter 34.05 RCW.

30 (5) Orders that are not appealed within the time period specified  
31 in this section and chapter 34.05 RCW are final and binding, and not  
32 subject to further appeal.

33 (6) An employer who fails to allow adequate inspection of records  
34 in an investigation by the department under this chapter within a  
35 reasonable time period may not use such records in any appeal under  
36 this section to challenge the correctness of any determination by the  
37 department of the penalty assessed.

1        NEW SECTION.    **Sec. 17.**    If any person fails to pay an assessment  
2 under this chapter, or under any rule under this chapter, after it  
3 has become a final and unappealable order, or after the court has  
4 entered final judgment in favor of the agency, the director may  
5 initiate collection procedures in accordance with section 18 of this  
6 act.

7        NEW SECTION.    **Sec. 18.**    (1) After a final order is issued under  
8 this chapter, or any rules under this chapter, if an employer  
9 defaults in the payment of: (a) Any amount determined by the  
10 department to be owed to an employee, including interest; or (b) any  
11 civil penalty ordered by the department under this chapter, or any  
12 rules under this chapter, the director may file with the clerk of any  
13 county within the state a warrant in the amount of the payment plus  
14 any filing fees. The clerk of the county in which the warrant is  
15 filed shall immediately designate a superior court cause number for  
16 the warrant, and the clerk shall cause to be entered in the judgment  
17 docket under the superior court cause number assigned to the warrant,  
18 the name of the employer mentioned in the warrant, the amount of  
19 payment due on it plus any filing fees, and the date when the warrant  
20 was filed. The aggregate amount of the warrant as docketed becomes a  
21 lien upon the title to, and interest in, all real and personal  
22 property of the employer against whom the warrant is issued, the same  
23 as a judgment in a civil case docketed in the office of the clerk.  
24 The sheriff shall proceed upon the warrant in all respects and with  
25 like effect as prescribed by law with respect to execution or other  
26 process issued against rights or property upon judgment in a court of  
27 competent jurisdiction. The warrant so docketed is sufficient to  
28 support the issuance of writs of garnishment in favor of the state in  
29 a manner provided by law in case of judgment, wholly or partially  
30 unsatisfied. The clerk of the court is entitled to a filing fee which  
31 shall be added to the amount of the warrant. A copy of the warrant  
32 shall be mailed to the employer within three days of filing with the  
33 clerk.

34        (2) (a) The director may issue to any person, firm, corporation,  
35 other entity, municipal corporation, political subdivision of the  
36 state, a public corporation, or any agency of the state, a notice and  
37 order to withhold and deliver property of any kind when they have  
38 reason to believe that there is in the possession of the person,  
39 firm, corporation, other entity, municipal corporation, political

1 subdivision of the state, public corporation, or agency of the state,  
2 property that is or will become due, owing, or belonging to an  
3 employer upon whom a notice of assessment has been served by the  
4 department for payments or civil penalties due to the department. The  
5 effect of a notice and order is continuous from the date the notice  
6 and order is first made until the liability out of which the notice  
7 and order arose is satisfied or becomes unenforceable because of  
8 lapse of time. The department shall release the notice and order when  
9 the liability out of which the notice and order arose is satisfied or  
10 becomes unenforceable by reason of lapse of time and shall notify the  
11 person against whom the notice and order was made that the notice and  
12 order has been released.

13 (b) The notice and order to withhold and deliver must be served  
14 by the sheriff of the county or by the sheriff's deputy, by certified  
15 mail, return receipt requested, or by the director. A person, firm,  
16 corporation, other entity, municipal corporation, political  
17 subdivision of the state, public corporation, or agency of the state  
18 upon whom service has been made shall answer the notice within 20  
19 days exclusive of the day of service, under oath and in writing, and  
20 shall make true answers to the matters inquired of in the notice and  
21 order. Upon service of the notice and order, if the party served  
22 possesses any property that may be subject to the claim of the  
23 department, the party shall promptly deliver the property to the  
24 director. The director shall hold the property in trust for  
25 application on the employer's indebtedness to the department, or for  
26 return without interest, in accordance with a final determination of  
27 a petition for review. In the alternative, the party shall furnish a  
28 good and sufficient surety bond satisfactory to the director  
29 conditioned upon final determination of liability. If a party served  
30 and named in the notice fails to answer the notice within the time  
31 prescribed in this section, the court may render judgment by default  
32 against the party for the full amount claimed by the director in the  
33 notice, together with costs. If a notice is served upon an employer  
34 and the property subject to the notice is wages, the employer may  
35 assert in the answer all exemptions provided for by chapter 6.27 RCW  
36 to which the wage earner is entitled.

37 (c) As an alternative to the methods of service described in this  
38 section, the department may electronically serve a financial  
39 institution with a notice and order to withhold and deliver by  
40 providing a list of its outstanding warrants, except those for which



1 a payment agreement is in good standing, to the department of  
2 revenue. The department of revenue may include the warrants provided  
3 by the department in a notice and order to withhold and deliver  
4 served under RCW 82.32.235(3). A financial institution that is served  
5 with a notice and order to withhold and deliver under this subsection  
6 (2)(c) must answer the notice within the time period applicable to  
7 service under RCW 82.32.235(3). The department and the department of  
8 revenue may adopt rules to implement this subsection (2)(c).

9 (3) In addition to the procedure for collection of amounts owed,  
10 including interest, and civil penalties as set forth in this section,  
11 the department may recover amounts owed, including interest, and  
12 civil penalties assessed under this chapter, and any rules under this  
13 chapter, in a civil action brought in a court of competent  
14 jurisdiction of the county where the violation is alleged to have  
15 occurred.

16 (4) Whenever any employer quits business, sells out, exchanges,  
17 or otherwise disposes of the employer's business or stock of goods,  
18 any person who becomes a successor to the business becomes liable for  
19 the full amount of any outstanding citation and notice of assessment  
20 or penalty against the employer's business under this chapter if, at  
21 the time of the conveyance of the business, the successor has: (a)  
22 Actual knowledge of the fact and amount of the outstanding citation  
23 and notice of assessment; or (b) a prompt, reasonable, and effective  
24 means of accessing and verifying the fact and amount of the  
25 outstanding citation and notice of assessment from the department. If  
26 the citation and notice of assessment or penalty is not paid in full  
27 by the employer within 10 days of the date of the sale, exchange, or  
28 disposal, the successor is liable for the payment of the full amount  
29 of the citation and notice of assessment or penalty, and payment  
30 thereof by the successor must, to the extent thereof, be deemed a  
31 payment upon the purchase price. If the payment is greater in amount  
32 than the purchase price, the amount of the difference becomes a debt  
33 due to the successor from the employer.

34 (5) This section does not affect other collection remedies that  
35 are otherwise provided by law.

36 NEW SECTION. **Sec. 19.** (1) Except as provided in subsection (2)  
37 of this section, any employer who violates section 14 of this act is  
38 liable:

39 (a) For damages equal to:

1 (i) The amount of:  
2 (A) Any wages, salary, employment benefits, or other compensation  
3 denied or lost to such employee by reason of the violation;  
4 (B) In a case in which wages, salary, employment benefits, or  
5 other compensation have not been denied or lost to the employee, any  
6 actual monetary losses sustained by the employee as a direct result  
7 of the violation, such as the cost of providing care, up to a sum  
8 equal to 12 weeks of wages or salary for the employee;  
9 (ii) The interest on the amount described in (a)(i) of this  
10 subsection calculated at the prevailing rate of inflation plus 10  
11 percent; and  
12 (iii) An additional amount as liquidated damages equal to the sum  
13 of the amount described in (a)(i) of this subsection and the interest  
14 described in (a)(ii) of this subsection, except that if an employer  
15 who has violated section 14 of this act proves to the satisfaction of  
16 the court that the act or omission that violated section 14 of this  
17 act was in good faith and that the employer had reasonable grounds  
18 for believing that the act or omission was not a violation of section  
19 14 of this act, the court may, in the discretion of the court, reduce  
20 the amount of the liability to the amount and interest determined  
21 under (a)(i) and (ii) of this subsection, respectively; and  
22 (b) For such equitable relief as may be appropriate, including  
23 employment, reinstatement, and promotion.  
24 (2) For a violation of section 14(2) of this act by any carrier  
25 because the employee complained, opposed, gave information or was  
26 about to give information, or testified or was about to testify,  
27 regarding a railroad safety matter, the additional amount as  
28 liquidated damages shall be up to \$5,000,000.  
29 (3) An action to recover the damages or equitable relief  
30 prescribed in subsection (1) of this section may be maintained  
31 against any employer in any court of competent jurisdiction by any  
32 one or more employees for and on behalf of:  
33 (a) The employees; or  
34 (b) The employees and other employees similarly situated.  
35 (4) The court in such an action shall, in addition to any  
36 judgment awarded to the plaintiff, allow reasonable attorneys' fees,  
37 reasonable expert witness fees, and an additional amount to  
38 compensate for any taxes owed on a lump sum damage award payment, and  
39 any other costs of the action to be paid by the defendant.

1        NEW SECTION.    **Sec. 20.**    Each employer shall post and keep posted,  
2    in conspicuous places on the premises of the employer where notices  
3    to employees and applicants for employment are customarily posted, a  
4    notice, to be prepared or approved by the director, setting forth  
5    excerpts from, or summaries of, the pertinent provisions of this  
6    chapter and information pertaining to the filing of a charge. Any  
7    employer that willfully violates this section may be subject to a  
8    civil penalty of not more than \$1,000 for each separate offense. Any  
9    penalties collected by the department under this section shall be  
10   deposited into the supplemental pension fund established under RCW  
11   51.44.033.

12       NEW SECTION.    **Sec. 21.**    Nothing in this chapter shall be  
13   construed:

14       (1) To modify or affect any state or local law prohibiting  
15   discrimination on the basis of race, religion, color, national  
16   origin, sex, sexual orientation, gender identity, age, or disability;  
17   or

18       (2) To supersede any provision of any local law that provides  
19   greater family or medical leave rights than the rights established  
20   under this chapter.

21       NEW SECTION.    **Sec. 22.**    Nothing in this chapter diminishes the  
22   obligation of an employer to comply with any collective bargaining  
23   agreement or any employment benefit program or plan that provides  
24   greater family or medical leave rights to employees than the rights  
25   established under this chapter. The rights established for employees  
26   under this chapter may not be diminished by any collective bargaining  
27   agreement or any employment benefit program or plan.

28       NEW SECTION.    **Sec. 23.**    Nothing in this chapter shall be  
29   construed to discourage employers from adopting or retaining leave  
30   policies more generous than any policies that comply with the  
31   requirements under this chapter.

32       NEW SECTION.    **Sec. 24.**    The director may adopt rules as necessary  
33   to implement this chapter.

34       NEW SECTION.    **Sec. 25.**    If any provision of this act or its  
35   application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 26.** Sections 1 through 24 and 27 of this act  
4 constitute a new chapter in Title 49 RCW.

5 NEW SECTION. **Sec. 27.** This act takes effect January 1, 2022.

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