

HOUSE BILL REPORT

ESSB 5793

As Passed House:
February 27, 2024

Title: An act relating to paid sick leave.

Brief Description: Concerning paid sick leave.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Saldaña, Keiser, Kuderer, Lovelett, Nobles, Stanford, Valdez and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/16/24, 2/20/24 [DP].

Floor Activity:

Passed House: 2/27/24, 76-19.

Brief Summary of Engrossed Substitute Bill

- Allows an employee or transportation network company driver to use paid sick leave or sick time when their child's school or place of care has been closed after the federal, state, or local government has declared a public emergency.
- Allows an employee or transportation network company driver to use paid sick leave or sick time when necessary to care for an individual who depends on the employee or driver for care or who regularly resides in the employee's or driver's home, so long as the relationship creates an expectation of care.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Schmidt, Ranking Minority Member; Bronoske, Doglio, Ormsby, Ortiz-Self,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Rude and Ybarra.

Staff: Kelly Leonard (786-7147).

Background:

Washington's Paid Sick Leave Law, enacted by Initiative No. 1433 in 2016, requires employers to provide paid sick leave to employees. Employees accrue at least one hour of paid sick leave for every 40 hours worked. Paid sick leave must be paid at the employee's normal hourly rate of compensation. An employee is entitled to use accrued paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment. If an employee does not use all of his or her available paid sick leave by the end of the accrual year, the employer must carry over balances of 40 hours or less to the next year. Employers may also opt to provide more generous paid leave policies and permit use of paid sick leave for additional purposes.

An employee may use paid sick leave for the following reasons:

- for the employee's mental or physical illness, injury, or health condition or for the employee to seek medical diagnosis, treatment, or preventive care;
- for the employee to provide care for a family member with a mental or physical illness, injury, or health condition, or to assist with the care of a family member needing medical diagnosis, treatment, or preventive care;
- 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; or
- the employee is absent for reasons qualifying the employee for leave under the Domestic Violence Leave Act.

For the purposes of paid sick leave taken to provide care for family members, as described above, the term "family member" includes an employee's:

- child (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);
- parent (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);
- spouse;
- registered domestic partner;
- grandparent;
- grandchild; or
- sibling.

An employer may require employees to give reasonable notices of absences. 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.

State law requires transportation network companies (TNCs) to provide drivers paid sick time at a comparable rate and for comparable reasons to what is required for employees. This includes paid sick leave of one hour for every 40 hours of passenger platform time worked. Drivers are eligible to: (1) accrue paid sick time upon recording 90 hours of passenger platform time on the TNC's platform; (2) carry over up to 40 hours of unused paid sick time to the next year; and (3) use sick time in increments of four hours or more.

Summary of Bill:

An employee may also use paid sick leave when his or her child's school or place of care has been closed after the federal, state, or local government has declared a public emergency.

The circumstances for which a person may use sick leave for caring for or assisting a family member with a physical or mental illness or in need of medical diagnosis, treatment, or preventative care are expanded by modifying the definition of "family member," and adding definitions for certain types of familial relationships, effectively allowing use of sick leave to care for the following additional persons:

- any individual who regularly resides in the employee's home and who has an expectation that the employee will care for him or her;
- any individual who depends on the employee for care and who has an expectation that the employee will care for him or her; and
- a child's spouse.

Definitions are added for grandchild (a child of the employee's child, based on the definition of child in underlying law), and grandparent (a parent of the employee's parent, based on the definition of parent in underlying law). Other nonsubstantive changes are made to definitions, including shifting certain relationships into different categories to the same legal effect.

Comparable changes are made to the paid sick time laws for TNC drivers, allowing those drivers to use paid sick time under the same circumstances.

The Department of Labor and Industries must develop materials and conduct outreach to inform individuals and businesses of the expansion of sick leave and sick time in the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony:

(In support) The purpose of the bill is to align the definition of "family member" in the Paid Sick Leave Law with the Paid Family and Medical Leave Act (PFMLA). The change is simple and small but has a significant impact on nontraditional families and chosen families. It allows a person to use paid sick leave to care for persons who depend on them. There have not been issues with this practice under the PFMLA, and it will work for the purposes of paid sick leave as well. There is a shared communal interest in making sure that workers can use their sick leave to care for others. This helps people keep their jobs while supporting their families and communities.

(Opposed) The concept and purpose of the bill is acceptable. Employers also want employees to care for others. However, there could be implementation issues with the bill as it is currently written. The PFMLA is administered by the Employment Security Department (ESD), and there is a process by which the ESD can determine whether a relationship meets criteria. Employers are not in a good position to do this for paid sick leave. There could be 100 different employers with 100 different interpretations and applications of the law. Too many questions are left unanswered. The bill should be refined to address this concern.

(Other) Private and public employers need more guidance for interpreting the bill in order for there to be consistent and fair implementation. For the "family member" definition, there needs to be clarification on what "expectation of care" actually means and how an employer should determine whether a relationship satisfies this standard. This can be done through rulemaking. For the school closures in case of a public emergency, there may be serious issues with first responders and other emergency personnel. These employees need to go to work even during public emergencies. The bill should be amended to account for these particular employees.

Persons Testifying: (In support) Senator Rebecca Saldaña, prime sponsor; Daniel Goodman, Washington State Association for Justice; and Kimberly McFerron, MomsRising.

(Opposed) Robert Battles, Association of Washington Business.

(Other) Candice Bock, Association of Washington Cities; and Mike Hoover, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.