

# SENATE BILL REPORT

## SB 5267

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As Reported by Senate Committee On:  
Labor & Commerce, February 14, 2023

**Title:** An act relating to safeguarding the public safety by protecting railroad workers.

**Brief Description:** Safeguarding the public safety by protecting railroad workers.

**Sponsors:** Senators Kuderer, Stanford, Conway, Frame, Hasegawa, Hunt, Keiser, Lovelett, Lovick, Nguyen, Nobles, Pedersen, Saldaña, Shewmake, Trudeau, Wellman and Wilson, C..

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/31/23, 2/14/23 [DPS, DNP, w/oRec].

**Brief Summary of First Substitute Bill**

- Establishes family, medical, and bereavement leave for railroad workers.
- Establishes civil penalties and damages for violations of requirements related to the leave provisions.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** That Substitute Senate Bill No. 5267 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Robinson and Stanford.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Member; Braun.

**Minority Report:** That it be referred without recommendation.

Signed by Senators MacEwen and Schoesler.

**Staff:** Jarrett Sacks (786-7448)

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*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.*

**Background:** Sick Leave. The state paid sick leave law applies to employees covered by the state's Minimum Wage Act (MWA). Carriers, such as railroad carriers, subject to certain regulations of the federal Interstate Commerce Act, are exempt from the MWA. Under the federal Railroad Unemployment Insurance Act (RUIA), qualified employees of railroad carriers are eligible for sickness benefits for a qualifying sickness after the fourth consecutive day. The RUIA preempts sickness benefits under a state sickness law.

Family and Medical Leave. The federal Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected unpaid leave in a 12-month period for the birth or placement of a child, or the serious health condition of the employee or the employee's family member. Generally, the FMLA applies to employees who work for a private employer with 50 or more employees, who have worked for at least 12 months for the employer, and for at 1250 hours during the previous 12 months. Upon return from leave, the employee is entitled to be returned to the same or an equivalent position. An employer may require certification of a serious health condition. An employer may request a second opinion and a third, binding opinion, under specified circumstances. An employer may require recertification on a reasonable basis.

The state Paid Family and Medical Leave Program (PFML) provides paid family and medical leave to qualifying employees after working 820 hours in a qualifying period. Paid family leave benefits are provided when an employee is bonding after the birth or placement of a child; because of a family member's serious health condition; or for a military exigency. Paid medical leave benefits are provided for an employee's own serious health condition.

Regulatory Oversight. The federal Department of Transportation's Surface Transportation Board (STB) is responsible for a variety of aspects of federal railroad regulatory oversight. The STB classifies types of railroads by annual carrier operating revenue:

- Class I—\$448 million or more;
- Class II—\$36 million or more; and
- Class III—less than \$36 million.

The state Utilities and Transportation Commission administers a railroad safety program and enforces certain laws relating to railroad employees, such as on crew size, shelters, apparel, and the cost of records or medical examinations.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (First Substitute):** Family and Medical Leave. An employee is entitled to a total of 12 workweeks of leave during any 12-month period including:

- for the birth of a child of the employee and to care for the child;
- because of the placement of the child with the employee for adoption or foster care;
- to care for a family member of the employee, if the family member has a serious health condition; or

- because of a serious health condition that makes the employee unable to perform the employee's job.

For spouses working for the same employer, the aggregate number of workweeks to which both may be entitled may be limited to 12 during any 12-month period, if such leave is taken for the birth or placement of a child, or for a family member's serious health condition.

A carrier may deduct only the actual amount of leave taken by an employee in increments no greater than 24 hours, and may not deduct more than one calendar day for each 24-hour period the employee specifically applied for leave.

Leave and job protection applies to railroad carrier employees who:

- worked for the employer from whom leave is requested for at least 6 months and worked for at least 504 hours during the previous 12-month period;
- worked on a guaranteed extra call board for at least the 12 months preceding leave, worked and was paid for not less than 60 percent of the applicable total monthly guarantee, or the equivalent, and not less than 504 hours, not counting vacation leave and other specified time, for or by that employer; or
- did not work on a guaranteed extra call board for the 12 months before the leave, worked not less than 504 hours, not counting vacation leave and other specified time, during the preceding 12 months that the employee was actively working for or by that employer.

An employer must allow their employees to take unpaid leave if:

- the employee has completed three consecutive months of continuous employment by the carrier prior to the absence;
- consecutive periods of leave do not exceed 15 days, and the total number of authorized absences are less than 91 days; and
- the absence is for an authorized purpose under the bill.

Absences for unpaid leave are authorized for:

- specified mental or physical illnesses, injuries, or health conditions of the employee;
- to allow the employee to provide care for a family member with a specified mental or physical illness, injury, or health condition; and
- when the employee or their spouse or registered domestic partner's place of business, or child's school or place of care has been closed due to an official public health order.

For employee absences exceeding five days, the carrier may, within ten days after the employee returns to work, require the employee to provide documentation from a health care provider that the employee was incapable of working due to illness or injury. The employer must make the request for documentation in writing and give the employee at least 30 days to provide the documentation. Employee absences are not subject to any type

of carrier availability or attendance policy and are stated to be separate from the PFML.

The family and medical leave granted by the bill may be unpaid. Unless expressly permitted by the employer, the leave must be taken concurrently with any leave taken under FMLA or PFML.

Bereavement Leave. Employees may take up to seven days for bereavement purposes including arranging or attending funeral services and other matters related to the decedent's estate. Employee absences for bereavement purposes may be unpaid. Absences for bereavement are not required to be taken over consecutive calendar days.

Prohibited Acts and Retaliation. Railroad carriers are prohibited from dismissing, suspending, laying off, demoting, engaging in any adverse action, or otherwise disciplining an employee for taking the unpaid leave authorized under the bill.

It is unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by the bill, or to discharge or otherwise discriminate against an individual for opposing any practice made unlawful by the bill. Additionally, it is unlawful for a person to discharge or discriminate against an individual because the individual has:

- filed any complaint or instituted an action under or related to the bill;
- given any information in connection with any inquiry or proceeding relating to any right granted by the bill; or
- testified in any inquiry or proceeding related to any right granted by the bill.

Enforcement and Penalties. The Department of Labor and Industries (L&I) must investigate employee complaints regarding noncompliance with the act, and either issue a citation and notice of assessment or a closure letter within 90 days after receiving the complaint. L&I may impose civil penalties as follows:

- for a Class I carrier, up to \$5,000 for the first infraction, up to \$25,000 for a second infraction within a three-year period, and up to \$100,000 for each subsequent infraction within a three-year period; or
- for a Class II or III carrier, up to \$1,000, \$5,000, and \$10,000 for first, second, or subsequent infractions within those periods.

L&I may also order back pay and reinstatement, and may increase the penalties by rule based on changing economic conditions. L&I may waive or reduce any civil penalty if the employer has taken corrective action to remedy the retaliatory action.

An employer who interferes with the exercise of rights of, or retaliates against, an employee is liable for specified damages. Liquidated damages up to \$5 million are permitted for certain violations. Equitable relief may also be granted. Employees have a private right of action to pursue this relief on behalf of themselves and other employees similarly situated. Provisions relating to appeal of L&I orders and collection procedures are specified.

**EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):**

Adds an emergency clause for certain sections of the bill, including the sections establishing unpaid sick leave and bereavement leave for railroad employees, having them take effect immediately.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: Railroad workers are the only category of worker who does not have access to sickness leave. This issue almost caused a railroad worker strike. The bill mirrors what was given to the airline employees at the federal level. Gaps in statutes leave workers unprotected. The bill does not require the leave to be paid. Railroad employees get zero rest days and the flexible days off provided are used for weekends. There are no designated days off for taking care of sick family members. Some of the leave currently provided cannot be used for sick days because of notice requirements in employer policies. Employees are disciplined for unpaid absences through strict employer attend. Employers do not have to compromise in collective bargaining because they know the federal government will step in and force railroad workers back to work. Compensated time off is usually pre-arranged and many times requests are rejected.

CON: The collective bargaining process is designed to promote compromise. Labor made many gains in the process, including wage increases, platinum level health care, better retirement benefits, and more predictable schedules. They also got additional paid time off. The RUIA provides railroad employees with sick leave and paid time off. These types of things should be negotiated in collective bargaining. Railroad workers are in the the top 10 percent of wage earners in the country. The bill and liquidated damages will increase costs of moving freight. The Legislature should give the new collective bargaining agreements and the Railway Labor Act a chance to work. Federal law preempts the field in which this bill occupies. Negotiations over these issues are still ongoing.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor; Kimberly Klontz; Bruce Smith, P.O. BOX 304; Jonathan Tisdale; April Sims, Washington State Labor Council, AFL-CIO; Luke Edington, General Chairman, SMART Transportation Division; Mike Elliott, Retired Railroad Workers, former State Leg. Chair - Locomotive Engineers; Dylan Ekins, Wash. State Legislative Board Chairperson - Brotherhood of Locomotive Engineers

& Trainmen; Herb Krohn, Wash. State Legislative Director - SMART Transp. Division/United Transportation Union.

CON: Mike Ennis, Association of Washington Business; Aaron Hunt, Union Pacific Railroad; Naomi Deines, Union Pacific Railroad; Johan Hellman, BNSF Railway; Sam Macedonio, BNSF Railway.

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