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**SENATE BILL 5726**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator King

1       AN ACT Relating to the prevailing wages and sick leave benefits  
2 for construction workers; amending RCW 39.12.015, 39.12.030, and  
3 49.46.210; and providing an effective date.

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

5       **Sec. 1.** RCW 39.12.015 and 2019 c 29 s 2 are each amended to read  
6 as follows:

7       (1) All determinations of the prevailing rate of wage shall be  
8 made by the industrial statistician of the department of labor and  
9 industries.

10       (2) The time period for recovery of any wages owed to a worker  
11 affected by the determination is tolled until the prevailing wage  
12 determination is final.

13       (3)(a) Except as provided in RCW 39.12.017, and notwithstanding  
14 RCW 39.12.010(1), the industrial statistician shall establish the  
15 prevailing rate of wage by adopting the hourly wage, usual benefits,  
16 and overtime paid for the geographic jurisdiction established in  
17 collective bargaining agreements for those trades and occupations  
18 that have collective bargaining agreements. For trades and  
19 occupations with more than one collective bargaining agreement in the  
20 county, the ~~((higher rate will prevail.~~

1       ~~(b))~~ industrial statistician shall determine and prevail the  
2 majority rate from those agreements. When a majority rate is not  
3 present, the industrial statistician shall determine and prevail the  
4 rate representing the preponderance of hours.

5       (b) An interested party may contest a determination by the  
6 industrial statistician under this subsection. The interested party  
7 must allege and prove by competent evidence that the actual rate used  
8 in the determination is less than the rate representing the majority  
9 number or preponderance of hours worked. Until final determination  
10 thereof, the work in question shall proceed under the rate  
11 established by the appropriate fiscal officer.

12       (c) For trades and occupations in which there are no collective  
13 bargaining agreements in the county, the industrial statistician  
14 shall establish the prevailing rate of wage as defined in RCW  
15 39.12.010 by conducting wage and hour surveys. In instances when  
16 there are no applicable collective bargaining agreements and  
17 conducting wage and hour surveys is not feasible, the industrial  
18 statistician may employ other appropriate methods to establish the  
19 prevailing rate of wage.

20       **Sec. 2.** RCW 39.12.030 and 2009 c 62 s 1 are each amended to read  
21 as follows:

22       (1) The specifications for every contract for the construction,  
23 reconstruction, maintenance or repair of any public work to which the  
24 state or any county, municipality, or political subdivision created  
25 by its laws is a party, shall contain a provision stating the hourly  
26 minimum rate of wage, not less than the prevailing rate of wage,  
27 which may be paid to laborers, workers, or mechanics in each trade or  
28 occupation required for such public work employed in the performance  
29 of the contract either by the contractor, subcontractor or other  
30 person doing or contracting to do the whole or any part of the work  
31 contemplated by the contract, and the contract shall ~~((contain a~~  
32 ~~stipulation))~~ stipulate that such laborers, workers, or mechanics  
33 shall be paid not less than such specified hourly minimum rate of  
34 wage. The contract shall stipulate that the hourly minimum rate of  
35 wage for laborers, workers, or mechanics must be adjusted as  
36 necessary to provide that such wage is not less than the latest  
37 prevailing rate of wage in effect at the time the work is performed.  
38 Any cost increases associated by wage adjustments of the prevailing  
39 rate of wage under this chapter shall be a basis for equitable

1 adjustment for the contractor affected by said increase. If the  
2 awarding agency determines that the work contracted for meets the  
3 definition of residential construction, the contract must include  
4 that information.

5 (2) If the hourly minimum rate of wage stated in the contract  
6 specifies residential construction rates and it is later determined  
7 that the work performed is commercial and subject to commercial  
8 construction rates, the state, county, municipality, or political  
9 subdivision that entered into the contract must pay the difference  
10 between the residential rate stated and the actual commercial rate to  
11 the contractor, subcontractor, or other person doing or contracting  
12 to do the whole or any part of the work under the contract.

13 **Sec. 3.** RCW 49.46.210 and 2022 c 281 s 6 are each amended to  
14 read as follows:

15 (1) Beginning January 1, 2018, except as provided in RCW  
16 49.46.180, every employer shall provide each of its employees paid  
17 sick leave as follows:

18 (a) An employee shall accrue at least one hour of paid sick leave  
19 for every forty hours worked as an employee. An employer may provide  
20 paid sick leave in advance of accrual provided that such front-  
21 loading meets or exceeds the requirements of this section for  
22 accrual, use, and carryover of paid sick leave.

23 (b) An employee is authorized to use paid sick leave for the  
24 following reasons:

25 (i) 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 (ii) 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 (iii) When the employee's place of business has been closed by  
36 order of a public official for any health-related reason, or when an  
37 employee's child's school or place of care has been closed for such a  
38 reason.

1 (c) An employee is authorized to use paid sick leave for absences  
2 that qualify for leave under the domestic violence leave act, chapter  
3 49.76 RCW.

4 (d) An employee is entitled to use accrued paid sick leave  
5 beginning on the ninetieth calendar day after the commencement of his  
6 or her employment.

7 (e) Employers are not prevented from providing more generous paid  
8 sick leave policies or permitting use of paid sick leave for  
9 additional purposes.

10 (f) An employer may require employees to give reasonable notice  
11 of an absence from work, so long as such notice does not interfere  
12 with an employee's lawful use of paid sick leave.

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

21 (h) An employer may not require, as a condition of an employee  
22 taking paid sick leave, that the employee search for or find a  
23 replacement worker to cover the hours during which the employee is on  
24 paid sick leave.

25 (i) For each hour of paid sick leave used, an employee shall be  
26 paid the greater of the minimum hourly wage rate established in this  
27 chapter or his or her normal hourly compensation. The employer is  
28 responsible for providing regular notification to employees about the  
29 amount of paid sick leave available to the employee.

30 (j) (~~Unused~~) Except as provided in (l) of this subsection,  
31 accrued and unused paid sick leave carries over to the following  
32 year, (~~except that~~) but an employer is not required to allow an  
33 employee to carry over paid sick leave in excess of (~~forty~~) 40  
34 hours.

35 (~~This section does not require an employer~~) Except as  
36 provided in (l) of this subsection, an employer is not required to  
37 provide financial or other reimbursement for accrued and unused paid  
38 sick leave to any employee upon the employee's termination,  
39 resignation, retirement, or other separation from employment. When  
40 there is a separation from employment and the employee is rehired

1 within (~~twelve~~) 12 months of separation by the same employer,  
2 whether at the same or a different business location of the employer,  
3 previously accrued unused paid sick leave shall be reinstated and the  
4 previous period of employment shall be counted for purposes of  
5 determining the employee's eligibility to use paid sick leave under  
6 subsection (1)(d) of this section. For purposes of this subsection  
7 (1)(k), "previously accrued and unused paid sick leave" does not  
8 include sick leave paid out to a construction worker under (1) of  
9 this subsection.

10 (1) For construction workers covered under an approved referral  
11 union program authorized under RCW 50.20.010 and in compliance with  
12 WAC 192-210-110, who have not met the ninetieth day eligibility under  
13 (d) of this subsection at the time of separation, the employer must  
14 pay the former worker the balance of their accrued and unused paid  
15 sick leave upon separation.

16 (2) For purposes of this section, "family member" means any of  
17 the following:

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

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

26 (c) A spouse;

27 (d) A registered domestic partner;

28 (e) A grandparent;

29 (f) A grandchild; or

30 (g) A sibling.

31 (3) An employer may not adopt or enforce any policy that counts  
32 the use of paid sick leave time as an absence that may lead to or  
33 result in discipline against the employee.

34 (4) An employer may not discriminate or retaliate against an  
35 employee for his or her exercise of any rights under this chapter  
36 including the use of paid sick leave.

37 (5)(a) The definitions in this subsection apply to this  
38 subsection:

39 (i) "Average hourly compensation" means a driver's compensation  
40 during passenger platform time from, or facilitated by, the

1 transportation network company, during the 365 days immediately prior  
2 to the day that paid sick time is used, divided by the total hours of  
3 passenger platform time worked by the driver on that transportation  
4 network company's driver platform during that period. "Average hourly  
5 compensation" does not include tips.

6 (ii) "Driver," "driver platform," "passenger platform time," and  
7 "transportation network company" have the meanings provided in RCW  
8 49.46.300.

9 (iii) "Earned paid sick time" is the time provided by a  
10 transportation network company to a driver as calculated under this  
11 subsection. For each hour of earned paid sick time used by a driver,  
12 the transportation network company shall compensate the driver at a  
13 rate equal to the driver's average hourly compensation.

14 (iv) For purposes of drivers, "family member" means any of the  
15 following:

16 (A) A child, including a biological, adopted, or foster child,  
17 stepchild, or a child to whom the driver stands in loco parentis, is  
18 a legal guardian, or is a de facto parent, regardless of age or  
19 dependency status;

20 (B) A biological, adoptive, de facto, or foster parent,  
21 stepparent, or legal guardian of a driver or the driver's spouse or  
22 registered domestic partner, or a person who stood in loco parentis  
23 when the driver was a minor child;

24 (C) A spouse;

25 (D) A registered domestic partner;

26 (E) A grandparent;

27 (F) A grandchild; or

28 (G) A sibling.

29 (b) Beginning January 1, 2023, a transportation network company  
30 must provide to each driver operating on its driver platform  
31 compensation for earned paid sick time as required by this subsection  
32 and subject to the provisions of this subsection. A driver shall  
33 accrue one hour of earned paid sick time for every 40 hours of  
34 passenger platform time worked.

35 (c) A driver is entitled to use accrued earned paid sick time  
36 upon recording 90 hours of passenger platform time on the  
37 transportation network company's driver platform.

38 (d) For each hour of earned paid sick time used, a driver shall  
39 be paid the driver's average hourly compensation.

1 (e) A transportation network company shall establish an  
2 accessible system for drivers to request and use earned paid sick  
3 time. The system must be available to drivers via smartphone  
4 application and online web portal.

5 (f) A driver may carry over up to 40 hours of unused earned paid  
6 sick time to the next calendar year. If a driver carries over unused  
7 earned paid sick time to the following year, accrual of earned paid  
8 sick time in the subsequent year must be in addition to the hours  
9 accrued in the previous year and carried over.

10 (g) A driver is entitled to use accrued earned paid sick time if  
11 the driver has used the transportation network company's platform as  
12 a driver within 90 calendar days preceding the driver's request to  
13 use earned paid sick time.

14 (h) A driver is entitled to use earned paid sick time for the  
15 following reasons:

16 (i) An absence resulting from the driver's mental or physical  
17 illness, injury, or health condition; to accommodate the driver's  
18 need for medical diagnosis, care, or treatment of a mental or  
19 physical illness, injury, or health condition; or an employee's need  
20 for preventive medical care;

21 (ii) To allow the driver to provide care for a family member with  
22 a mental or physical illness, injury, or health condition; care of a  
23 family member who needs medical diagnosis, care, or treatment of a  
24 mental or physical illness, injury, or health condition; or care for  
25 a family member who needs preventive medical care;

26 (iii) When the driver's child's school or place of care has been  
27 closed by order of a public official for any health-related reason;

28 (iv) For absences for which an employee would be entitled for  
29 leave under RCW 49.76.030; and

30 (v) During a deactivation or other status that prevents the  
31 driver from performing network services on the transportation network  
32 company's platform, unless the deactivation or status is due to a  
33 verified allegation of sexual assault or physical assault perpetrated  
34 by the driver.

35 (i) If a driver does not record any passenger platform time in a  
36 transportation network company's driver platform for 365 or more  
37 consecutive days, any unused earned paid sick time accrued up to that  
38 point with that transportation network company is no longer valid or  
39 recognized.

1 (j) Drivers may use accrued days of earned paid sick time in  
2 increments of a minimum of four or more hours. Drivers are entitled  
3 to request four or more hours of earned paid sick time for immediate  
4 use, including consecutive days of use. Drivers are not entitled to  
5 use more than eight hours of earned paid sick time within a single  
6 calendar day.

7 (k) A transportation network company shall compensate a driver  
8 for requested hours or days of earned paid sick time no later than 14  
9 calendar days or the next regularly scheduled date of compensation  
10 following the requested hours or days of earned paid sick time.

11 (l) A transportation network company shall not request or require  
12 reasonable verification of a driver's qualifying illness except as  
13 would be permitted to be requested of an employee under subsection  
14 (1)(g) of this section. If a transportation network company requires  
15 verification pursuant to this subsection, the transportation network  
16 company must compensate the driver for the requested hours or days of  
17 earned paid sick time no later than the driver's next regularly  
18 scheduled date of compensation after satisfactory verification is  
19 provided.

20 (m) If a driver accepts an offer of prearranged services for  
21 compensation from a transportation network company during the four-  
22 hour period or periods for which the driver requested earned paid  
23 sick time, a transportation network company may determine that the  
24 driver did not use earned paid sick time for an authorized purpose.

25 (n) A transportation network company shall provide each driver  
26 with:

27 (i) Written notification of the current rate of average hourly  
28 compensation while a passenger is in the vehicle during the most  
29 recent calendar month for use of earned paid sick time;

30 (ii) An updated amount of accrued earned paid sick time since the  
31 last notification;

32 (iii) Reduced earned paid sick time since the last notification;

33 (iv) Any unused earned paid sick time available for use; and

34 (v) Any amount that the transportation network company may  
35 subtract from the driver's compensation for earned paid sick time.

36 The transportation network company shall provide this information to  
37 the driver no less than monthly. The transportation network company  
38 may choose a reasonable system for providing this notification,  
39 including but not limited to: A pay stub; a weekly summary of  
40 compensation information; or an online system where drivers can



1 access their own earned paid sick time information. A transportation  
2 network company is not required to provide this information to a  
3 driver if the driver has not worked any days since the last  
4 notification.

5 (o) A transportation network company may not adopt or enforce any  
6 policy that counts the use of earned paid sick time as an absence  
7 that may lead to or result in any action that adversely affects the  
8 driver's use of the transportation network.

9 (p) A transportation network company may not take any action  
10 against a driver that adversely affects the driver's use of the  
11 transportation network due to his or her exercise of any rights under  
12 this subsection including the use of earned paid sick time.

13 (q) The department may adopt rules to implement this subsection.

14 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect July 1,  
15 2024.

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