

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5111

Chapter 267, Laws of 2023

68th Legislature
2023 Regular Session

CONSTRUCTION WORKERS—PAYMENT FOR ACCRUED AND UNUSED SICK LEAVE

EFFECTIVE DATE: January 1, 2024

Passed by the Senate April 14, 2023
Yeas 46 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 5, 2023
Yeas 98 Nays 0

LURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 4, 2023 10:44 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5111** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 4, 2023

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5111

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Keiser, Conway, Kuderer, Randall, and Robinson)

READ FIRST TIME 02/15/23.

1 AN ACT Relating to requiring payment for accrued and unused sick
2 leave for certain construction workers; amending RCW 49.46.210 and
3 49.46.180; and providing an effective date.

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

5 **Sec. 1.** RCW 49.46.210 and 2022 c 281 s 6 are each amended to
6 read as follows:

7 (1) Beginning January 1, 2018, except as provided in RCW
8 49.46.180, every employer shall provide each of its employees paid
9 sick leave as follows:

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

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

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

1 (ii) To allow the employee to provide care for a family member
2 with a mental or physical illness, injury, or health condition; care
3 of a family member who needs medical diagnosis, care, or treatment of
4 a mental or physical illness, injury, or health condition; or care
5 for a family member who needs preventive medical care; and

6 (iii) When the employee's place of business has been closed by
7 order of a public official for any health-related reason, or when an
8 employee's child's school or place of care has been closed for such a
9 reason.

10 (c) An employee is authorized to use paid sick leave for absences
11 that qualify for leave under the domestic violence leave act, chapter
12 49.76 RCW.

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

16 (e) Employers are not prevented from providing more generous paid
17 sick leave policies or permitting use of paid sick leave for
18 additional purposes.

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

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

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

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

39 (j) (~~Unused~~) Except as provided in (l) of this subsection,
40 accrued and unused paid sick leave carries over to the following

1 year, (~~except that~~) but an employer is not required to allow an
2 employee to carry over paid sick leave in excess of (~~forty~~) 40
3 hours.

4 (~~This section does not require an employer~~) Except as
5 provided in (l) of this subsection, an employer is not required to
6 provide financial or other reimbursement for accrued and unused paid
7 sick leave to any employee upon the employee's termination,
8 resignation, retirement, or other separation from employment. When
9 there is a separation from employment and the employee is rehired
10 within (~~twelve~~) 12 months of separation by the same employer,
11 whether at the same or a different business location of the employer,
12 previously accrued unused paid sick leave shall be reinstated and the
13 previous period of employment shall be counted for purposes of
14 determining the employee's eligibility to use paid sick leave under
15 subsection (1)(d) of this section. For purposes of this subsection
16 (1)(k), "previously accrued and unused paid sick leave" does not
17 include sick leave paid out to a construction worker under (l) of
18 this subsection.

19 (l) For workers covered under the North American industry
20 classification system industry code 23, except for North American
21 industry classification system code 236100, residential building
22 construction, who have not met the 90th day eligibility under (d) of
23 this subsection at the time of separation, the employer must pay the
24 former worker the balance of their accrued and unused paid sick leave
25 at the end of the established pay period, pursuant to RCW
26 49.48.010(2), following the worker's separation.

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

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

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

37 (c) A spouse;

38 (d) A registered domestic partner;

39 (e) A grandparent;

40 (f) A grandchild; or

1 (g) A sibling.

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

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

8 (5)(a) The definitions in this subsection apply to this
9 subsection:

10 (i) "Average hourly compensation" means a driver's compensation
11 during passenger platform time from, or facilitated by, the
12 transportation network company, during the 365 days immediately prior
13 to the day that paid sick time is used, divided by the total hours of
14 passenger platform time worked by the driver on that transportation
15 network company's driver platform during that period. "Average hourly
16 compensation" does not include tips.

17 (ii) "Driver," "driver platform," "passenger platform time," and
18 "transportation network company" have the meanings provided in RCW
19 49.46.300.

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

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

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

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

35 (C) A spouse;

36 (D) A registered domestic partner;

37 (E) A grandparent;

38 (F) A grandchild; or

39 (G) A sibling.

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

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

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

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

16 (f) A driver may carry over up to 40 hours of unused earned paid
17 sick time to the next calendar year. If a driver carries over unused
18 earned paid sick time to the following year, accrual of earned paid
19 sick time in the subsequent year must be in addition to the hours
20 accrued in the previous year and carried over.

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

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

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

32 (ii) To allow the driver to provide care for a family member with
33 a mental or physical illness, injury, or health condition; care of a
34 family member who needs medical diagnosis, care, or treatment of a
35 mental or physical illness, injury, or health condition; or care for
36 a family member who needs preventive medical care;

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

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

1 (v) During a deactivation or other status that prevents the
2 driver from performing network services on the transportation network
3 company's platform, unless the deactivation or status is due to a
4 verified allegation of sexual assault or physical assault perpetrated
5 by the driver.

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

11 (j) Drivers may use accrued days of earned paid sick time in
12 increments of a minimum of four or more hours. Drivers are entitled
13 to request four or more hours of earned paid sick time for immediate
14 use, including consecutive days of use. Drivers are not entitled to
15 use more than eight hours of earned paid sick time within a single
16 calendar day.

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

21 (l) A transportation network company shall not request or require
22 reasonable verification of a driver's qualifying illness except as
23 would be permitted to be requested of an employee under subsection
24 (1)(g) of this section. If a transportation network company requires
25 verification pursuant to this subsection, the transportation network
26 company must compensate the driver for the requested hours or days of
27 earned paid sick time no later than the driver's next regularly
28 scheduled date of compensation after satisfactory verification is
29 provided.

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

35 (n) A transportation network company shall provide each driver
36 with:

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

1 (ii) An updated amount of accrued earned paid sick time since the
2 last notification;
3 (iii) Reduced earned paid sick time since the last notification;
4 (iv) Any unused earned paid sick time available for use; and
5 (v) Any amount that the transportation network company may
6 subtract from the driver's compensation for earned paid sick time.
7 The transportation network company shall provide this information to
8 the driver no less than monthly. The transportation network company
9 may choose a reasonable system for providing this notification,
10 including but not limited to: A pay stub; a weekly summary of
11 compensation information; or an online system where drivers can
12 access their own earned paid sick time information. A transportation
13 network company is not required to provide this information to a
14 driver if the driver has not worked any days since the last
15 notification.

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

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

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

25 **Sec. 2.** RCW 49.46.180 and 2019 c 236 s 4 are each amended to
26 read as follows:

27 (1) The sick leave provisions of RCW 49.46.200 through 49.46.830
28 shall not apply to construction workers covered by a collective
29 bargaining agreement, provided:

30 (a) The union signatory to the collective bargaining agreement is
31 an approved referral union program authorized under RCW 50.20.010 and
32 in compliance with WAC 192-210-110; and

33 (b) The collective bargaining agreement establishes equivalent
34 sick leave provisions, as provided in subsection (2) of this section;
35 and

36 (c) The requirements of RCW 49.46.200 through 49.46.830 are
37 expressly waived in the collective bargaining agreement in clear and
38 unambiguous terms or in an addendum to an existing agreement

1 including an agreement that is open for negotiation provided the sick
2 leave portions were previously ratified by the membership.

3 (2) Equivalent sick leave provisions provided by a collective
4 bargaining agreement must meet the requirements of RCW 49.46.200
5 through 49.46.830 and the rules adopted by the department of labor
6 and industries, except the payment of leave at the normal hourly
7 compensation may occur before usage and the payment of accrued and
8 unused sick leave may be made in accordance with RCW 49.46.210.

9 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2024.

Passed by the Senate April 14, 2023.

Passed by the House April 5, 2023.

Approved by the Governor May 4, 2023.

Filed in Office of Secretary of State May 4, 2023.

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