
SUBSTITUTE SENATE BILL 5396

State of Washington

69th Legislature

2025 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Lias, Harris, Nobles, Chapman, Saldaña, Cleveland, Krishnadasan, Lovick, Warnick, and C. Wilson)

READ FIRST TIME 02/21/25.

1 AN ACT Relating to supporting the continued employment of
2 individuals applying for federal aviation administration medical
3 certificates; amending RCW 50A.05.010 and 50A.15.060; and adding a
4 new section to chapter 49.46 RCW.

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

6 **Sec. 1.** RCW 50A.05.010 and 2023 c 25 s 2 are each amended to
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this title.

10 (1) (a) "Casual labor" means work that:

11 (i) Is performed infrequently and irregularly; and

12 (ii) If performed for an employer, does not promote or advance
13 the employer's customary trade or business.

14 (b) For purposes of casual labor:

15 (i) "Infrequently" means work performed twelve or fewer times per
16 calendar quarter; and

17 (ii) "Irregularly" means work performed not on a consistent
18 cadence.

19 (2) "Child" includes a biological, adopted, or foster child, a
20 stepchild, a child's spouse, or a child to whom the employee stands

1 in loco parentis, is a legal guardian, or is a de facto parent,
2 regardless of age or dependency status.

3 (3) "Commissioner" means the commissioner of the department or
4 the commissioner's designee.

5 (4) "Department" means the employment security department.

6 (5) (a) "Employee" means an individual who is in the employment of
7 an employer.

8 (b) "Employee" does not include employees of the United States of
9 America.

10 (6) "Employee's average weekly wage" means the quotient derived
11 by dividing the employee's total wages during the two quarters of the
12 employee's qualifying period in which total wages were highest by
13 twenty-six. If the result is not a multiple of one dollar, the
14 department must round the result to the next lower multiple of one
15 dollar.

16 (7) (a) "Employer" means: (i) Any individual or type of
17 organization, including any partnership, association, trust, estate,
18 joint stock company, insurance company, limited liability company, or
19 corporation, whether domestic or foreign, or the receiver, trustee in
20 bankruptcy, trustee, or the legal representative of a deceased
21 person, having any person in employment or, having become an
22 employer, has not ceased to be an employer as provided in this title;
23 (ii) the state, state institutions, and state agencies; and (iii) any
24 unit of local government including, but not limited to, a county,
25 city, town, municipal corporation, quasi-municipal corporation, or
26 political subdivision.

27 (b) "Employer" does not include the United States of America.

28 (8) (a) "Employment" means personal service, of whatever nature,
29 unlimited by any employment relationship as known to the common law
30 or any other legal relationship performed for wages or under any
31 contract calling for the performance of personal services, written or
32 oral, express or implied. The term "employment" includes an
33 individual's entire service performed within or without or both
34 within and without this state, if:

35 (i) The service is localized in this state; or

36 (ii) The service is not localized in any state, but some of the
37 service is performed in this state; and

38 (A) The base of operations of the employee is in the state, or if
39 there is no base of operations, then the place from which such
40 service is directed or controlled is in this state; or

1 (B) The base of operations or place from which such service is
2 directed or controlled is not in any state in which some part of the
3 service is performed, but the individual's residence is in this
4 state.

5 (b) "Employment" does not include:

6 (i) Self-employed individuals;

7 (ii) Casual labor;

8 (iii) Services for remuneration when it is shown to the
9 satisfaction of the commissioner that:

10 (A) (I) Such individual has been and will continue to be free from
11 control or direction over the performance of such service, both under
12 his or her contract of service and in fact; and

13 (II) Such service is either outside the usual course of business
14 for which such service is performed, or that such service is
15 performed outside of all the places of business of the enterprises
16 for which such service is performed; and

17 (III) Such individual is customarily engaged in an independently
18 established trade, occupation, profession, or business, of the same
19 nature as that involved in the contract of service; or

20 (B) As a separate alternative:

21 (I) Such individual has been and will continue to be free from
22 control or direction over the performance of such service, both under
23 his or her contract of service and in fact; and

24 (II) Such service is either outside the usual course of business
25 for which such service is performed, or that such service is
26 performed outside of all the places of business of the enterprises
27 for which such service is performed, or the individual is
28 responsible, both under the contract and in fact, for the costs of
29 the principal place of business from which the service is performed;
30 and

31 (III) Such individual is customarily engaged in an independently
32 established trade, occupation, profession, or business, of the same
33 nature as that involved in the contract of service, or such
34 individual has a principal place of business for the work the
35 individual is conducting that is eligible for a business deduction
36 for federal income tax purposes; and

37 (IV) On the effective date of the contract of service, such
38 individual is responsible for filing at the next applicable filing
39 period, both under the contract of service and in fact, a schedule of

1 expenses with the internal revenue service for the type of business
2 the individual is conducting; and

3 (V) On the effective date of the contract of service, or within a
4 reasonable period after the effective date of the contract, such
5 individual has established an account with the department of revenue,
6 and other state agencies as required by the particular case, for the
7 business the individual is conducting for the payment of all state
8 taxes normally paid by employers and businesses and has registered
9 for and received a unified business identifier number from the state
10 of Washington; and

11 (VI) On the effective date of the contract of service, such
12 individual is maintaining a separate set of books or records that
13 reflect all items of income and expenses of the business which the
14 individual is conducting; or

15 (iv) Services that require registration under chapter 18.27 RCW
16 or licensing under chapter 19.28 RCW rendered by an individual when:

17 (A) The individual has been and will continue to be free from
18 control or direction over the performance of the service, both under
19 the contract of service and in fact;

20 (B) The service is either outside the usual course of business
21 for which the service is performed, or the service is performed
22 outside of all the places of business of the enterprise for which the
23 service is performed, or the individual is responsible, both under
24 the contract and in fact, for the costs of the principal place of
25 business from which the service is performed;

26 (C) The individual is customarily engaged in an independently
27 established trade, occupation, profession, or business, of the same
28 nature as that involved in the contract of service, or the individual
29 has a principal place of business for the business the individual is
30 conducting that is eligible for a business deduction for federal
31 income tax purposes, other than that furnished by the employer for
32 which the business has contracted to furnish services;

33 (D) On the effective date of the contract of service, the
34 individual is responsible for filing at the next applicable filing
35 period, both under the contract of service and in fact, a schedule of
36 expenses with the internal revenue service for the type of business
37 the individual is conducting;

38 (E) On the effective date of the contract of service, or within a
39 reasonable period after the effective date of the contract, the
40 individual has an active and valid certificate of registration with

1 the department of revenue, and an active and valid account with any
2 other state agencies as required by the particular case, for the
3 business the individual is conducting for the payment of all state
4 taxes normally paid by employers and businesses and has registered
5 for and received a unified business identifier number from the state
6 of Washington;

7 (F) On the effective date of the contract of service, the
8 individual is maintaining a separate set of books or records that
9 reflect all items of income and expenses of the business that the
10 individual is conducting; and

11 (G) On the effective date of the contract of service, the
12 individual has a valid contractor registration pursuant to chapter
13 18.27 RCW or an electrical contractor license pursuant to chapter
14 19.28 RCW.

15 (9) "Employment benefits" means all benefits provided or made
16 available to employees by an employer, including group life
17 insurance, health insurance, disability insurance, sick leave, annual
18 leave, educational benefits, and pensions.

19 (10) "Family leave" means any leave taken by an employee from
20 work:

21 (a) To participate in providing care, including physical or
22 psychological care, for a family member of the employee made
23 necessary by a serious health condition of the family member;

24 (b) To bond with the employee's child during the first twelve
25 months after the child's birth, or the first twelve months after the
26 placement of a child under the age of eighteen with the employee;

27 (c) Because of any qualifying exigency as permitted under the
28 federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E)
29 and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on
30 October 19, 2017, for family members as defined in subsection (11) of
31 this section; or

32 (d) During the seven calendar days following the death of the
33 family member for whom the employee:

34 (i) Would have qualified for medical leave under subsection (15)
35 of this section for the birth of their child; or

36 (ii) Would have qualified for family leave under (b) of this
37 subsection.

38 (11) "Family member" means a child, grandchild, grandparent,
39 parent, sibling, or spouse of an employee, and also includes any
40 individual who regularly resides in the employee's home or where the

1 relationship creates an expectation that the employee care for the
2 person, and that individual depends on the employee for care. "Family
3 member" includes any individual who regularly resides in the
4 employee's home, except that it does not include an individual who
5 simply resides in the same home with no expectation that the employee
6 care for the individual.

7 (12) "Grandchild" means a child of the employee's child.

8 (13) "Grandparent" means a parent of the employee's parent.

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

15 (15) "Medical leave" means any leave taken by an employee from
16 work made necessary by the employee's own serious health condition.

17 (16) "Paid time off" includes vacation leave, personal leave,
18 medical leave, sick leave, compensatory leave, or any other paid
19 leave offered by an employer under the employer's established policy.

20 (17) "Parent" means the biological, adoptive, de facto, or foster
21 parent, stepparent, or legal guardian of an employee or the
22 employee's spouse, or an individual who stood in loco parentis to an
23 employee when the employee was a child.

24 (18) "Period of incapacity" means an inability to work, attend
25 school, or perform other regular daily activities because of a
26 serious health condition, treatment of that condition or recovery
27 from it, or subsequent treatment in connection with such inpatient
28 care.

29 (19) "Postnatal" means the first six weeks after birth.

30 (20) "Premium" or "premiums" means the payments required by RCW
31 50A.10.030 and paid to the department for deposit in the family and
32 medical leave insurance account under RCW 50A.05.070.

33 (21) "Qualifying period" means the first four of the last five
34 completed calendar quarters or, if eligibility is not established,
35 the last four completed calendar quarters immediately preceding the
36 application for leave.

37 (22) (a) "Remuneration" means all compensation paid for personal
38 services including commissions and bonuses and the cash value of all
39 compensation paid in any medium other than cash.

1 (b) Previously accrued compensation, other than severance pay or
2 payments received pursuant to plant closure agreements, when assigned
3 to a specific period of time by virtue of a collective bargaining
4 agreement, individual employment contract, customary trade practice,
5 or request of the individual compensated, is considered remuneration
6 for the period to which it is assigned. Assignment clearly occurs
7 when the compensation serves to make the individual eligible for all
8 regular fringe benefits for the period to which the compensation is
9 assigned.

10 (c) Remuneration also includes settlements or other proceeds
11 received by an individual as a result of a negotiated settlement for
12 termination of an individual written employment contract prior to its
13 expiration date. The proceeds are deemed assigned in the same
14 intervals and in the same amount for each interval as compensation
15 was allocated under the contract.

16 (d) Remuneration does not include:

17 (i) The payment of tips;

18 (ii) Supplemental benefit payments made by an employer to an
19 employee in addition to any paid family or medical leave benefits
20 received by the employee; or

21 (iii) Payments to members of the armed forces of the United
22 States, including the organized militia of the state of Washington,
23 for the performance of duty for periods not exceeding seventy-two
24 hours at a time.

25 (23)(a) "Serious health condition" means an illness, injury,
26 impairment, or physical or mental condition that involves:

27 (i) Inpatient care in a hospital, hospice, or residential medical
28 care facility, including any period of incapacity; ((~~or~~))

29 (ii) Continuing treatment by a health care provider. A serious
30 health condition involving continuing treatment by a health care
31 provider includes any one or more of the following:

32 (A) A period of incapacity of more than three consecutive, full
33 calendar days, and any subsequent treatment or period of incapacity
34 relating to the same condition, that also involves:

35 (I) Treatment two or more times, within thirty days of the first
36 day of incapacity, unless extenuating circumstances exist, by a
37 health care provider, by a nurse or physician's assistant under
38 direct supervision of a health care provider, or by a provider of
39 health care services, such as a physical therapist, under orders of,
40 or on referral by, a health care provider; or

1 (II) Treatment by a health care provider on at least one occasion
2 which results in a regimen of continuing treatment under the
3 supervision of the health care provider;

4 (B) Any period of incapacity due to pregnancy, or for prenatal
5 care;

6 (C) Any period of incapacity or treatment for such incapacity due
7 to a chronic serious health condition. A chronic serious health
8 condition is one which:

9 (I) Requires periodic visits, defined as at least twice a year,
10 for treatment by a health care provider, or by a nurse under direct
11 supervision of a health care provider;

12 (II) Continues over an extended period of time, including
13 recurring episodes of a single underlying condition; and

14 (III) May cause episodic rather than a continuing period of
15 incapacity, including asthma, diabetes, and epilepsy;

16 (D) A period of incapacity which is permanent or long term due to
17 a condition for which treatment may not be effective. The employee or
18 family member must be under the continuing supervision of, but need
19 not be receiving active treatment by, a health care provider,
20 including Alzheimer's, a severe stroke, or the terminal stages of a
21 disease; or

22 (E) Any period of absence to receive multiple treatments,
23 including any period of recovery from the treatments, by a health
24 care provider or by a provider of health care services under orders
25 of, or on referral by, a health care provider, either for: (I)
26 Restorative surgery after an accident or other injury; or (II) a
27 condition that would likely result in a period of incapacity of more
28 than three consecutive, full calendar days in the absence of medical
29 intervention or treatment, such as cancer, severe arthritis, or
30 kidney disease; or

31 (iii) Leave taken from work by an employee made necessary during:

32 (A) The application process for the issuance or reconsideration
33 of a medical certificate related to mental and neurologic standards
34 under 14 C.F.R., Chapter 1, Subchapter D, Part 67, and provided the
35 employee applies for reconsideration of the denial under the same
36 section;

37 (B) The period of administrative review conducted during the
38 application or reconsideration of the issuance or denial of a federal
39 aviation administration medical certificate related to mental and

1 neurologic standards under 14 C.F.R., Chapter 1, Subchapter D, Part
2 67; or

3 (C) The period during which the federal aviation administrator
4 requests and reviews additional medical records related to mental and
5 neurological health conditions under 14 C.F.R., Chapter 1, Subchapter
6 D, Part 67.

7 (b) The requirement in (a)(i) and (ii) of this subsection for
8 treatment by a health care provider means an in-person visit to a
9 health care provider. The first, or only, in-person treatment visit
10 must take place within seven days of the first day of incapacity.

11 (c) Whether additional treatment visits or a regimen of
12 continuing treatment is necessary within the thirty-day period shall
13 be determined by the health care provider.

14 (d) The term extenuating circumstances in (a)(ii)(A)(I) of this
15 subsection means circumstances beyond the employee's control that
16 prevent the follow-up visit from occurring as planned by the health
17 care provider. Whether a given set of circumstances are extenuating
18 depends on the facts. For example, extenuating circumstances exist if
19 a health care provider determines that a second in-person visit is
20 needed within the thirty-day period, but the health care provider
21 does not have any available appointments during that time period.

22 (e) Treatment for purposes of (a) of this subsection includes,
23 but is not limited to, examinations to determine if a serious health
24 condition exists and evaluations of the condition. Treatment does not
25 include routine physical examinations, eye examinations, or dental
26 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
27 continuing treatment includes, but is not limited to, a course of
28 prescription medication, such as an antibiotic, or therapy requiring
29 special equipment to resolve or alleviate the health condition, such
30 as oxygen. A regimen of continuing treatment that includes taking
31 over-the-counter medications, such as aspirin, antihistamines, or
32 salves, or bed rest, drinking fluids, exercise, and other similar
33 activities that can be initiated without a visit to a health care
34 provider, is not, by itself, sufficient to constitute a regimen of
35 continuing treatment for purposes of this title.

36 (f) Conditions for which cosmetic treatments are administered,
37 such as most treatments for acne or plastic surgery, are not serious
38 health conditions unless inpatient hospital care is required or
39 unless complications develop. Ordinarily, unless complications arise,
40 the common cold, the flu, ear aches, upset stomach, minor ulcers,

1 headaches other than migraines, routine dental or orthodontia
2 problems, and periodontal disease are examples of conditions that are
3 not serious health conditions and do not qualify for leave under this
4 title. Restorative dental or plastic surgery after an injury or
5 removal of cancerous growths are serious health conditions provided
6 all the other conditions of this section are met. Mental illness
7 resulting from stress or allergies may be serious health conditions,
8 but only if all the conditions of this section are met.

9 (g) (i) Substance abuse may be a serious health condition if the
10 conditions of this section are met. However, leave may only be taken
11 for treatment for substance abuse by a health care provider or by a
12 licensed substance abuse treatment provider. Absence because of the
13 employee's use of the substance, rather than for treatment, does not
14 qualify for leave under this title and for leave under (a) (iii) of
15 this subsection.

16 (ii) Treatment for substance abuse does not prevent an employer
17 from taking employment action against an employee. The employer may
18 not take action against the employee because the employee has
19 exercised his or her right to take medical leave for treatment.
20 However, if the employer has an established policy, applied in a
21 nondiscriminatory manner that has been communicated to all employees,
22 that provides under certain circumstances an employee may be
23 terminated for substance abuse, pursuant to that policy the employee
24 may be terminated whether or not the employee is presently taking
25 medical leave. An employee may also take family leave to care for a
26 covered family member who is receiving treatment for substance abuse.
27 The employer may not take action against an employee who is providing
28 care for a covered family member receiving treatment for substance
29 abuse.

30 (h) Absences attributable to incapacity under (a) (ii) (B) or (C)
31 of this subsection qualify for leave under this title even though the
32 employee or the family member does not receive treatment from a
33 health care provider during the absence, and even if the absence does
34 not last more than three consecutive, full calendar days. For
35 example, an employee with asthma may be unable to report for work due
36 to the onset of an asthma attack or because the employee's health
37 care provider has advised the employee to stay home when the pollen
38 count exceeds a certain level. An employee who is pregnant may be
39 unable to report to work because of severe morning sickness.

1 (24) "Service is localized in this state" has the same meaning as
2 described in RCW 50.04.120.

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

5 (26) "State average weekly wage" means the most recent average
6 weekly wage calculated under RCW 50.04.355 and available on January
7 1st of each year.

8 (27) "Supplemental benefit payments" means payments made by an
9 employer to an employee as salary continuation or as paid time off.
10 Such payments must be in addition to any paid family or medical leave
11 benefits the employee is receiving.

12 (28) "Typical workweek hours" means:

13 (a) For an hourly employee, the average number of hours worked
14 per week by an employee within the qualifying period; and

15 (b) Forty hours for a salaried employee, regardless of the number
16 of hours the salaried employee typically works.

17 (29) "Wage" or "wages" means:

18 (a) For the purpose of premium assessment, the remuneration paid
19 by an employer to an employee. The maximum wages subject to a premium
20 assessment are those wages as set by the commissioner under RCW
21 50A.10.030;

22 (b) For the purpose of payment of benefits, the remuneration paid
23 by one or more employers to an employee for employment during the
24 employee's qualifying period. At the request of an employee, wages
25 may be calculated on the basis of remuneration payable. The
26 department shall notify each employee that wages are calculated on
27 the basis of remuneration paid, but at the employee's request a
28 redetermination may be performed and based on remuneration payable;
29 and

30 (c) For the purpose of a self-employed person electing coverage
31 under RCW 50A.10.010, the meaning is defined by rule.

32 **Sec. 2.** RCW 50A.15.060 and 2020 c 125 s 5 are each amended to
33 read as follows:

34 (1) An employee is not entitled to paid family or medical leave
35 benefits under this title:

36 (a) For any absence occasioned by the willful intention of the
37 employee to bring about injury to or the sickness of the employee or
38 another, or resulting from any injury or sickness sustained in the
39 perpetration by the employee of an illegal act;

1 (b) For any family or medical leave commencing before the
2 employee becomes qualified for benefits under this title;

3 (c) For an employee who is on suspension from (~~his or her~~) the
4 employee's employment, except for employees suspended from employment
5 due to requirements during:

6 (i) The application process for the issuance or reconsideration
7 of a medical certificate related to mental and neurologic standards
8 under 14 C.F.R., Chapter 1, Subchapter D, Part 67, and provided the
9 employee applies for reconsideration of the denial under the same
10 section;

11 (ii) The period of administrative review conducted during the
12 application or reconsideration of the issuance or denial of a federal
13 aviation administration medical certificate related to mental and
14 neurologic standards under 14 C.F.R., Chapter 1, Subchapter D, Part
15 67; or

16 (iii) The period during which the federal aviation administrator
17 requests and reviews additional medical records related to mental and
18 neurological health conditions under 14 C.F.R., Chapter 1, Subchapter
19 D, Part 67; or

20 (d) For any period of time during which an employee works for
21 remuneration or profit.

22 (2) An employer may offer supplemental benefit payments to an
23 employee on family or medical leave in addition to any paid family or
24 medical leave benefits the employee is receiving.

25 (a) Supplemental benefit payments are not considered remuneration
26 under RCW 50A.05.010(~~(+21)~~) and the department will not prorate or
27 reduce an employee's weekly benefit amount due to the receipt of
28 supplemental benefit payments.

29 (b) The choice to receive supplemental benefit payments lies with
30 the employee. Nothing in this section shall be construed as requiring
31 an employee to receive or an employer to provide supplemental benefit
32 payments.

33 (3) An individual is disqualified for benefits for any week he or
34 she has knowingly and willfully made a false statement or
35 representation involving a material fact or knowingly and willfully
36 failed to report a material fact and, as a result, has obtained or
37 attempted to obtain any benefits under the provisions of this title.
38 An individual disqualified for benefits under this subsection (3) for
39 the:

1 (a) First time is disqualified for an additional twenty-six weeks
2 beginning with the Sunday of the week in which the determination is
3 mailed or delivered, and is subject to an additional penalty of
4 fifteen percent of the amount of benefits overpaid or deemed
5 overpaid;

6 (b) Second time is also disqualified for an additional fifty-two
7 weeks beginning with the Sunday of the week in which the
8 determination is mailed or delivered, and is subject to an additional
9 penalty of twenty-five percent of the amount of benefits overpaid or
10 deemed overpaid;

11 (c) Third time and any time thereafter is also disqualified for
12 an additional one hundred four weeks beginning with the Sunday of the
13 week in which the determination is mailed or delivered, and is
14 subject to an additional penalty of fifty percent of the amount of
15 benefits overpaid or deemed overpaid.

16 (4) All penalties collected under this section must be deposited
17 in the family and medical leave enforcement account created under RCW
18 50A.05.080.

19 (5) An absence under subsection (1)(a) of this section
20 disqualifies an individual from the exception in subsection (1)(c)(i)
21 through (iii) of this section.

22 NEW SECTION. Sec. 3. A new section is added to chapter 49.46
23 RCW to read as follows:

24 (1)(a) Once an employee has exhausted all available paid family
25 and medical leave under Title 50A RCW, the employer must pay
26 employees at least 50 percent of the normal hourly compensation for
27 all hours the employee would have been regularly scheduled to work
28 during the following application or reconsideration processes:

29 (i) The application process related to the issuance or
30 reconsideration of a medical certificate related to mental and
31 neurologic standards under 14 C.F.R., Chapter 1, Subchapter D, Part
32 67, and provided the employee applies for reconsideration of the
33 denial under the same section;

34 (ii) The period of administrative review conducted during the
35 application or reconsideration of the issuance or denial of a federal
36 aviation administration medical certificate related to mental and
37 neurologic standards under 14 C.F.R., Chapter 1, Subchapter D, Part
38 67; or

1 (iii) The period during which the federal aviation administrator
2 requests and reviews additional medical records related to mental and
3 neurological health conditions under 14 C.F.R., Chapter 1, Subchapter
4 D, Part 67.

5 (b) This requirement ceases if:

6 (i) The certificate has received a final denial without the
7 ability to be reconsidered by the federal aviation administration;

8 (ii) The employee willfully fails to fully cooperate with the
9 federal aviation administrator's requests and the requirements of the
10 review process; or

11 (iii) The employee's absence is occasioned by:

12 (A) The willful intention of the employee to bring about injury
13 to or the sickness of the employee or another, or any injury or
14 sickness sustained in the perpetration by the employee of an illegal
15 act; or

16 (B) The employee's substance abuse, rather than for substance
17 abuse treatment.

18 (c) The employer is exempt from the requirements of this section
19 if the employer, or the employee's bargaining representative if the
20 employee is covered by a collective bargaining agreement, offers a
21 short or long-term disability plan with a monthly benefit that pays
22 at least 50 percent of the employee's wages, or at least \$6,000, for
23 a period of at least 24 months.

24 (d) This section does not apply once an individual otherwise
25 eligible under this section reaches the age of 65.

26 (2) This requirement is a wage payment requirement under RCW
27 49.48.082.

28 (3) Nothing in this section may be construed to prevent the
29 termination of the employment of any employee who is physically
30 unable to perform their duties outside of whatever mental or
31 neurological conditions necessitated application of a medical
32 certificate by the federal aviation administration.

33 (4) Nothing in this section may be construed as limiting any
34 statutory or common law rights of any employee illegally denied
35 continued employment under this section for purposes of any civil
36 action or injunctive relief.

37 (5) The department of labor and industries may adopt rules to
38 implement this section.

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