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**SENATE BILL 5396**

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**State of Washington**

**69th Legislature**

**2025 Regular Session**

**By** Senators Lias, Harris, Nobles, Chapman, Saldaña, Cleveland, Krishnadasan, Lovick, Warnick, and C. Wilson

Read first time 01/21/25. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to supporting the continued employment of pilots  
2 applying for federal aviation administration medical certificates;  
3 amending RCW 50A.05.010 and 50A.15.060; and adding a new section to  
4 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) (a) "Medical leave" means any leave taken by an employee from  
16 work made necessary by the employee's own serious health condition.

17 (b) "Medical leave" also means any leave taken by a pilot from  
18 work made necessary during the application process for the issuance  
19 of a federal aviation administration medical certificate related to  
20 mental and neurologic standards, including any period of  
21 reconsideration of the denial of a medical certificate, pursuant to  
22 14 C.F.R., Chapter 1, Subchapter D, Part 67.

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

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

30 (18) "Period of incapacity" means an inability to work, attend  
31 school, or perform other regular daily activities because of a  
32 serious health condition, treatment of that condition or recovery  
33 from it, or subsequent treatment in connection with such inpatient  
34 care.

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

36 (20) "Premium" or "premiums" means the payments required by RCW  
37 50A.10.030 and paid to the department for deposit in the family and  
38 medical leave insurance account under RCW 50A.05.070.

39 (21) "Qualifying period" means the first four of the last five  
40 completed calendar quarters or, if eligibility is not established,

1 the last four completed calendar quarters immediately preceding the  
2 application for leave.

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

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

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

21 (d) Remuneration does not include:

22 (i) The payment of tips;

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

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

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

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

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

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

1 (I) Treatment two or more times, within thirty days of the first  
2 day of incapacity, unless extenuating circumstances exist, by a  
3 health care provider, by a nurse or physician's assistant under  
4 direct supervision of a health care provider, or by a provider of  
5 health care services, such as a physical therapist, under orders of,  
6 or on referral by, a health care provider; or

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

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

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

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

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

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

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

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

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



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

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

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

26 (f) Conditions for which cosmetic treatments are administered,  
27 such as most treatments for acne or plastic surgery, are not serious  
28 health conditions unless inpatient hospital care is required or  
29 unless complications develop. Ordinarily, unless complications arise,  
30 the common cold, the flu, ear aches, upset stomach, minor ulcers,  
31 headaches other than migraines, routine dental or orthodontia  
32 problems, and periodontal disease are examples of conditions that are  
33 not serious health conditions and do not qualify for leave under this  
34 title. Restorative dental or plastic surgery after an injury or  
35 removal of cancerous growths are serious health conditions provided  
36 all the other conditions of this section are met. Mental illness  
37 resulting from stress or allergies may be serious health conditions,  
38 but only if all the conditions of this section are met.

39 (g)(i) Substance abuse may be a serious health condition if the  
40 conditions of this section are met. However, leave may only be taken

1 for treatment for substance abuse by a health care provider or by a  
2 licensed substance abuse treatment provider. Absence because of the  
3 employee's use of the substance, rather than for treatment, does not  
4 qualify for leave under this title.

5 (ii) Treatment for substance abuse does not prevent an employer  
6 from taking employment action against an employee. The employer may  
7 not take action against the employee because the employee has  
8 exercised his or her right to take medical leave for treatment.  
9 However, if the employer has an established policy, applied in a  
10 nondiscriminatory manner that has been communicated to all employees,  
11 that provides under certain circumstances an employee may be  
12 terminated for substance abuse, pursuant to that policy the employee  
13 may be terminated whether or not the employee is presently taking  
14 medical leave. An employee may also take family leave to care for a  
15 covered family member who is receiving treatment for substance abuse.  
16 The employer may not take action against an employee who is providing  
17 care for a covered family member receiving treatment for substance  
18 abuse.

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

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

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

33 (26) "State average weekly wage" means the most recent average  
34 weekly wage calculated under RCW 50.04.355 and available on January  
35 1st of each year.

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

40 (28) "Typical workweek hours" means:

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

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

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

6 (a) For the purpose of premium assessment, the remuneration paid  
7 by an employer to an employee. The maximum wages subject to a premium  
8 assessment are those wages as set by the commissioner under RCW  
9 50A.10.030;

10 (b) For the purpose of payment of benefits, the remuneration paid  
11 by one or more employers to an employee for employment during the  
12 employee's qualifying period. At the request of an employee, wages  
13 may be calculated on the basis of remuneration payable. The  
14 department shall notify each employee that wages are calculated on  
15 the basis of remuneration paid, but at the employee's request a  
16 redetermination may be performed and based on remuneration payable;  
17 and

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

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

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

24 (a) For any absence occasioned by the willful intention of the  
25 employee to bring about injury to or the sickness of the employee or  
26 another, or resulting from any injury or sickness sustained in the  
27 perpetration by the employee of an illegal act;

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

30 (c) For an employee who is on suspension from (~~his or her~~) the  
31 employee's employment, except for pilots suspended from flying due to  
32 requirements during the application process for the issuance of a  
33 federal aviation administration medical certificate related to mental  
34 and neurologic standards, including any period of reconsideration of  
35 the denial of a medical certificate, pursuant to 14 C.F.R., Chapter  
36 1, Subchapter D, Part 67; or

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

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

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

8 (b) The choice to receive supplemental benefit payments lies with  
9 the employee. Nothing in this section shall be construed as requiring  
10 an employee to receive or an employer to provide supplemental benefit  
11 payments.

12 (3) An individual is disqualified for benefits for any week he or  
13 she has knowingly and willfully made a false statement or  
14 representation involving a material fact or knowingly and willfully  
15 failed to report a material fact and, as a result, has obtained or  
16 attempted to obtain any benefits under the provisions of this title.  
17 An individual disqualified for benefits under this subsection (3) for  
18 the:

19 (a) First time is disqualified for an additional twenty-six weeks  
20 beginning with the Sunday of the week in which the determination is  
21 mailed or delivered, and is subject to an additional penalty of  
22 fifteen percent of the amount of benefits overpaid or deemed  
23 overpaid;

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

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

34 (4) All penalties collected under this section must be deposited  
35 in the family and medical leave enforcement account created under RCW  
36 50A.05.080.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.46  
38 RCW to read as follows:

1           (1) Once a pilot has exhausted all available paid family and  
2 medical leave under Title 50A RCW during the application process for  
3 the issuance of a federal aviation administration medical certificate  
4 related to mental and neurologic standards, including any period of  
5 reconsideration of the denial of a medical certificate, pursuant to  
6 14 C.F.R., Chapter 1, Subchapter D, Part 67, the employer must pay  
7 the pilot the normal hourly compensation for all hours the pilot  
8 would have been regularly scheduled to work during the application  
9 process. This requirement will cease if the certificate has received  
10 a final denial without the ability to be reconsidered by the federal  
11 aviation administration.

12           (2) This requirement is a wage payment requirement under RCW  
13 49.48.082.

14           (3) Nothing in this section may be construed to prevent the  
15 termination of the employment of any pilot who is physically unable  
16 to perform their duties outside of whatever mental or neurological  
17 conditions necessitated application of a medical certificate by the  
18 federal aviation administration.

19           (4) Nothing in this section may be construed as limiting any  
20 statutory or common law rights of any pilot illegally denied  
21 continued employment under this section for purposes of any civil  
22 action or injunctive relief.

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

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