
**Labor & Workforce Development
Committee**

HB 2508

Brief Description: Establishing minimum standards for sick and safe leave from employment.

Sponsors: Representatives Dickerson, Reykdal, Miloscia, Lias, Green, Hudgins, Sells, Hunt, Kenney, Ormsby and Appleton.

Brief Summary of Bill

- Requires employers with more than four full-time equivalent employees to provide paid leave to employees for: 1) specified medical reasons relating to the employee's or a family member's health; 2) reasons permitted under existing law for domestic violence, sexual assault, and stalking; or 3) closure of the employee's place of business, or child's school or place of care, because of specified public health emergencies.

Hearing Date: 1/25/12

Staff: Joan Elgee (786-7106).

Background:

State and federal laws address leave from employment. These laws include:

- Federal Family and Medical Leave Act (FMLA). Eligible employees are entitled to take up to 12 weeks of unpaid leave in a 12-month period for specified reasons. Enforcement of the similar state Family Leave Act is suspended in large part.
- State Family Care Law. If, under state law, collective bargaining agreements, or employer policies, employees are entitled to sick leave or other paid time off, employers must allow employees to use their choice of leave to care for children with health

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conditions that require treatment or supervision; or spouses, parents, parents-in-law, or grandparents who have serious health conditions or emergency conditions.

- Domestic Violence Leave Law. Victims of domestic violence, sexual assault, or stalking may take reasonable leave from work for specified legal, law enforcement, medical, and safety reasons. Family members may also take reasonable leave. The leave is with or without pay.

Leave may be taken to:

- seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family member;
- seek treatment by a health care provider for physical or mental injuries or to attend treatment for a family member;
- obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program;
- obtain, or assist a family member in obtaining, mental health counseling related to an incident in which the employee or the employee's family member was a victim; or
- participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or family member.

Verification may be satisfied by providing:

- a police report indicating that the employee or family member was a victim;
- a court order protecting or separating the employee or family member from the perpetrator, or other evidence from the court or prosecuting attorney that the employee or family member appeared or is scheduled to appear in court in connection with an incident;
- documentation from an advocate for victims, an attorney, a clergy member, or a medical or other professional from whom the employee or family member sought assistance; or
- an employee's written statement that the employee or the family member is a victim and that the leave was taken for a permitted purpose.

A "family member" is a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship. A "dating relationship" is a social relationship of a romantic nature.

In 2011, the city of Seattle adopted an ordinance requiring employers to provide paid sick and safe leave.

Summary of Bill:

Intent.

The Legislature finds that paid sick and safe leave is critical to the economic well-being of the state and workers and to public health and safety. A finding is also made that paid sick and safe leave helps workers maintain their own health and the health of others and helps victims of domestic violence, sexual assault, and stalking. Further, paid sick and safe leave helps employers retain trained workers and operate competitively as well as ensures economic security for workers and their families.

Coverage.

Minimum standards for paid sick and safe leave are established. Employees accrue and are entitled to use leave based on employer size. "Tier 1" employers have 5 to 49 full-time equivalents (FTEs). "Tier 2" employers have 50 to 249 FTEs and "tier 3" employers have 250 or more FTEs. Employers with fewer than 5 FTEs are exempt. The tier for a calendar year is determined by the average number of FTEs paid per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. If an employer did not have employees during the previous calendar year, the tier is determined by the average number of FTEs paid per calendar week during the first 90 days the employer was in business. All compensated hours are counted, including part-time and temporary employment, and employment through a staffing agency or similar entity.

All workers accrue and may use leave, including temporary and part-time workers, except a person working less than 240 hours in the state in a calendar year is an employee only for purposes of determining the employer tier. The requirements do not apply to any employees covered by a bona fide collective bargaining agreement to the extent the requirements are expressly waived in clear and unambiguous terms.

Accrual of leave.

Employees accrue leave beginning January 1, 2013. Employers are not required to allow employees use hours in a calendar year in excess of a cap or to carry over leave in excess of the cap. Employees accrue leave as follows:

- Tier 1: One hour for every 40 hours worked, up to a 40 hour cap.
- Tier 2: One hour for every 40 hours worked, up to a 56 hour cap.
- Tier 3: One hour for every 30 hours worked, up to a 72 hour cap.

If an employer has a combined or universal paid leave policy, the employer is not required to provide additional leave if the leave under the policy may be used for the same purposes and under the same conditions, and accrues and may be used and carried over at the same rate, as under the paid sick and safe leave requirements. However, for a tier 3 employer the cap must be no less than 108 hours.

Employees exempt from overtime payment are not entitled to accrue leave for hours worked in excess of 40 in a workweek.

For seasonal employees who are rehired by the same employer within seven months of separation, the employer must reinstate accrued and unused sick and safe leave.

Use of leave.

Sick leave may be used:

- For an absence resulting from, or for medical diagnosis, care or treatment of, the employee's mental or physical illness, injury, or health condition, and for preventative medical care.
- To care for specified family members with a mental or physical illness, injury, or health condition, or to care for a family member who needs medical diagnosis, care or treatment, or preventive medical care. Family members are a child, grandparent, parent, parent-in-law, or spouse.

Safe leave may be used:

- For any of the purposes specified in the domestic violence leave law.
- When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material.
- To care for a child whose school or place of care has been closed by a public official for the same reasons as specified for the employee's place of business.

A 180 day waiting period after hire applies before an employee may use leave. For seasonal employees who separate and are rehired by the same employer within seven months, the previous period of employment counts for purposes of the 180 day requirement. With respect to new employers, an employee may not use leave until 24 months after the hire date of the employer's first employee.

An employer must compensate an employee who uses sick and safe leave at the same hourly rate and with the same benefits as the employee would have earned during the time leave is taken. No compensation is required for lost tips or commissions and compensation is only required for hours that the employee was scheduled to work.

With the employer's consent, an employee may work additional hours or swap shifts instead of using leave. Eating and drinking establishments may arrange shift trades and deduct sick and safe time with the employee's consent.

Leave requests and documentation.

Requests

An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, so long as they do not interfere with the purposes for which leave is requested. If the leave is foreseeable, the employee must make a reasonable effort to schedule the leave so as not to unduly disrupt the employer's operations, must make the request in writing, and must make the request at least 10 days before the leave, or as early as possible, unless the employer's usual and customary policy provides for shorter notice. For unforeseeable leave, the employee must give notice as soon as practicable and must comply with the usual and customary notice and procedural requirements so long as they do not interfere with the purposes for which leave is needed.

Documentation and verification

An employer may require reasonable documentation for use of more than three consecutive days of sick time. Documentation signed by a health care provider is reasonable. If the employer does not offer health insurance, the employer and employee split the cost of any out-of-pocket expense of obtaining the documentation. Out-of-pocket expenses are limited to health care provider services and testing, health care facility services, and transportation. An employer may require reasonable verification for use of more than three consecutive days of safe time. For safe leave for public health closures, notice of the closure order in whatever format the employee received the notice is sufficient. For safe leave because of domestic violence, sexual assault, or stalking, an employee may satisfy the verification requirement in the same manner as provided in the domestic violence leave law.

Records

When an employer pays an employee, the employer must provide information in writing stating an updated amount of sick and safe leave available. Employers may choose a reasonable system, including listing time on each pay stub or providing an on-line system. Employers must maintain records regarding leave for three years. If an employer does not have adequate records, or does not allow reasonable access, it is presumed that the employer violated the requirements. With some exceptions, an employer must maintain the confidentiality of information provided by the employee or others in support of a request for leave.

Notice.

Tier 1, 2, and 3 employers must notify employees about the requirements of the law, including that employees are entitled to sick and safe leave, that retaliation is prohibited, and other specified information. Employers may comply by providing the information in English and in any language that is the first language spoken by at least 5 percent of the employer's workforce either on a notice to each of the employees or on a poster displayed in a conspicuous and accessible place. The Department of Labor and Industries (Department) must create and make available posters.

Retaliation.

A tier 1, 2, or 3 employer may not discharge, demote, take other listed actions, or otherwise discriminate against an employee because the employee exercised rights, used sick and safe leave, filed a complaint or communicated an intent to file a complaint, or participated or assisted in another employee's attempt to exercise the employee's rights under the sick and safe leave law.

Enforcement.

Administrative and judicial remedies are provided. The Director (Director) of the Department may investigate violations and issue a written determination after a hearing. The Director may order appropriate relief, including damages (including back pay), payment of any sick or safe leave unlawfully withheld and liquidated damages of three times the dollar amount of the leave withheld or \$250, whichever is greater. If the violation resulted in other harm to the employee or other person, or otherwise violated the rights of employees or other persons, such as a failure to provide notice or retaliation, the Director may order liquidated damages of \$50 per day to each employee or person whose rights were violated. The Director may also order no more than \$50

for each day and for each person or employee whose rights were violated to compensate the Department for the costs of investigating or remedying the violation, attorney's fees and costs, and equitable relief, including reinstatement. For a willful violation of the notice requirements, the Director may impose a civil penalty not to exceed \$125 for the first violation and \$250 for subsequent violations.

The Department and any person aggrieved, any entity a member of which is aggrieved, or any other person or entity acting on behalf of the public health and welfare may bring a civil action against any person violating the sick and safe leave requirements. The court may order appropriate relief, including the relief the Director may order, except that any person or entity acting on behalf of the public health and welfare is not entitled to liquidated damages. The court must award reasonable attorneys' fees and costs to the party bringing the civil action if the party prevails.

Other.

The Department has rule-making authority.

The sick and safe leave requirements do not preempt any other laws or standards that provide for greater accrual or use by employees of sick or safe leave. The requirements are not intended to discourage employers from adopting or retaining more generous policies or to diminish the obligation of any employer to comply with any agreement providing more generous sick and safe leave.

Definitions are provided, including for "eating or drinking establishment," "full-time equivalent," and "health care provider."

Appropriation: None.

Fiscal Note: Requested on January 19, 2012.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.