

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 24, 2009

1:36 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Chair
Senator Joe Thomas, Vice Chair
Senator Bettye Davis
Senator Kevin Meyer
Senator Con Bunde

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 86

"An Act establishing requirements and limitations related to the payment of sick leave by certain employers; and providing for an effective date."

MOVED SB 86 OUT OF COMMITTEE

SENATE BILL NO. 14

"An Act expanding the motor fuel tax suspension period."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 60

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 86

SHORT TITLE: PAID SICK LEAVE

SPONSOR(S): SENATOR(S) ELLIS

01/26/09	(S)	READ THE FIRST TIME - REFERRALS
01/26/09	(S)	L&C, FIN
03/10/09	(S)	L&C AT 1:30 PM BELTZ 211
03/10/09	(S)	Heard & Held

03/10/09 (S) MINUTE(L&C)
03/24/09 (S) L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

NICK MOE
Staff to Senator Johnny Ellis
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Sponsor of SB 86.

PAT LUBY, Advocacy Director
AARP
POSITION STATEMENT: supported SB 86.

GABE ACEVES, Executive Director
Alaska Public Interest Research Group (AKPIRG)
POSITION STATEMENT: Supported SB 86.

AL TAMAGNI, Sr.
Pension Services International in Anchorage
National Federation of Independent Businesses (NFIB)
POSITION STATEMENT: Had serious concerns about SB 86.

STEPHANIE STERN, Working Families Policy Analyst
National Partnership for Women and Families
POSITION STATEMENT: Supported SB 86.

GRAY MITCHELL, Director
Division Labor Standards and Safety
Department of Labor and Workforce Development (DOLWD)
POSITION STATEMENT: Answered questions on SB 86.

ACTION NARRATIVE

[1:36:19 PM](#)

CHAIR JOE PASKVAN called the Senate Labor and Commerce Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Davis, Meyer, and Paskvan.

SB 86-PAID SICK LEAVE

CHAIR PASKVAN announced the consideration of SB 86.

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NICK MOE, aide to Senator Johnny Ellis, sponsor of SB 86, reminded the committee that this bill requires paid sick leave for private employees in the state of Alaska to accrue at a rate of 1 hour for every 40 hours an employee works. It is a very good minimum labor standard much like the federal standards for minimum wage and mandatory paid overtime.

With paid sick leave, he said, an employee can take the time off to get better if they do fall sick at the work place. This is good for everyone, because if an employee comes to work sick, they not only expose other employees to their illness, they also threaten the consumers of that business, especially if it's a food industry or child care business.

[1:39:36 PM](#)

SENATOR MEYER noted that overtime is a federal law, and asked if there is a federal standard for sick leave.

MR. MOE answered no, but under the Clinton administration unpaid leave was instituted for taking care of family members. It is through federal action that a lot of local governments are able to take this on.

SENATOR MEYER asked if it was his intent to allow people to cash in sick leave.

MR. MOE answered no.

SENATOR MEYER asked if the larger employers already have paid sick leave.

MR. MOE answered yes, but the sponsor's intent is to fill the gap between those who do and those who don't.

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SENATOR MEYER said he is looking at businesses with over 15 employees and large employers, and thought maybe they were getting into labor/management relations and the bargaining process. Some may get higher wages for not having paid sick leave and ultimately extra costs get passed on to the consumer.

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SENATOR BUNDE joined the committee.

SENATOR MEYER said he didn't support the government mandating how a business should be run. Most employers are smart enough to know that if someone comes to work sick, it would adversely

impact their business. He liked the idea of not calling it paid sick leave, but calling it a personal day, because a mother or father may not be sick, but they might have a sick child at home they need to spend time with.

MR. MOE said studies have shown that businesses actually benefit from paid sick leave for a number of reasons. Productivity is increased by not having sick workers coming in and trying to work and getting other employees sick as well. On the other hand, some employees feel like they either have to come to work sick or stay home and risk losing their job. But, there is a cost to the business if that employee is fired and a new person needs to be trained.

Testimony from Dr. Heidi Hartman, Institute of Women's Policy Research, before the Senate Committee on Health, Education and Labor, indicated that if workers were provided just seven paid sick days per year, our national economy would experience a net savings of over \$8.1 million. Forbes Magazine had an article that touched on the very large number of dollars that businesses could save by implementing these programs.

SENATOR MEYER said he has a personal bias against the government mandating how to operate with employee/employer relations where there are always gives and takes.

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SENATOR DAVIS said the state doesn't have sick leave, but it has combined all leaves into one account called personal leave. If you don't use it, it can be cashed out. She asked why they are interested in sick leave as opposed to personal.

MR. MOE answered that current language requires an employee or his family to be sick in order to take the paid leave. It also allows victims of domestic violence to take safe days. This bill specifically deals with the sick days as opposed to personal days, because they are more quantifiable. An employer can grant these personal days that will go towards the sick day requirement, but if an employee is sick and needs to leave work without the permission of his employer, he must be sick in order to qualify.

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SENATOR THOMAS joined the committee.

SENATOR DAVIS asked if a person can stay home to take care of a sick child under this bill.

MR. MOE answered yes; the bill covers immediate family members as well as personal health.

SENATOR THOMAS said one concern he has is the use of the term "sick". It sounds good until trying to determine the degree of sickness a person needs to be in order to qualify; invariably people are seen operating in a capacity that isn't consistent with them being sick, and everyone wants to use whatever leave is available.

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MR. MOE said the hope is to provide the bare minimum standard for sick leave, and the hope is also that the system doesn't get abused.

SENATOR THOMAS asked if this leave can be rolled forward.

MR. MOE answered yes; it can be carried over year to year, but it can't be cashed out.

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PAT LUBY, Advocacy Director, AARP, supported SB 86. He said half of his members are in the work force. The economy requires some older workers to stay in the work force longer and others are returning to it. The older workers, especially those who return to the work force on a part time basis to make ends meet, receive lower pay without many benefits, if any. At the same time, these older workers are more likely to have an illness and need to take time off.

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GABE ACEVES, Executive Director, Alaska Public Interest Research Group (AKPIRG), supported SB 86. He said he had worked with the sponsor and other interested groups in the state and across the nation towards promoting sick day leave policies. He said about 122,000 full-time workers in Alaska do not receive sick pay, and they are usually in the lower paying jobs. They handle our food every day as restaurant workers, hotel employees and retail personnel. They work in daycare and senior centers, but if they get sick, they are forced to choose between taking a day off and the possibility of being reprimanded or losing their job if they decide not to show up for work. The loss of a job represents losing a place to live and not being able to make ends meet. He was sensitive to small business owners' needs and agreed that businesses will actually end up saving money this way by keeping

workers and not having to train new ones. This concept also protects the public's health.

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CHAIR PASKVAN asked if he worried that employers may use this to negotiate away paid vacation days.

MR. ACEVES answered that AKPIRG has asked that the bill's language establish a very minimum standard to earn this paid leave. There is a 90-day waiting period, for instance, from the time you are hired, and on top of that you only earn one hour of leave for every 40 hours of work. So, a full time employee is looking at about 800 hours of work before getting a day of sick leave. The fact that employees have to earn this leave will probably stop them from abusing it.

CHAIR PASKVAN clarified that his question was focused more on employers who already provide a month of paid leave saying they can use one week out of that for sick leave.

MR. ACEVES responded if an employer already provides his employees with a paid leave policy, this bill won't affect them.

MR. MOE said that was his understanding as well.

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SENATOR BUNDE commented that it's his experience, especially in the fast food industry, that they are so desperate for employees that they seldom fire anyone.

SENATOR THOMAS said he couldn't find anything in the bill that says this seven days would be offset by some other form of leave that may exist.

MR. ACEVES said language on page 2, line 22, says an employer is not subject to this section if the employer already had a plan in place that accrues at this rate or greater.

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CHAIR PASKVAN seeing no questions or comments, closed public testimony.

SENATOR MEYER remarked that the fishing industry brings up a whole lot of people who are not residents to work in the summer, and asked if that employer has to give them sick leave.

MR. MOE pointed out the 90-day requirement before sick leave starts to accrue; so they wouldn't be able to accrue much before the end of the season. If they are not Alaskan residents, they wouldn't qualify either under the current language.

SENATOR BUNDE noted there are lots of definitions of residents. How is it defined in this legislation?

MR. MOE directed him to page 2, line 21, that says the person has to live in the state.

SENATOR BUNDE said military people often take other jobs, and they aren't residents, for instance.

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CHAIR PASKVAN observed that the bill applies to employers, not employees.

MR. MOE said he thought the language meant "living or staying within Alaska while you are working."

[2:08:10 PM](#)

AL TAMAGNI, Sr., representing himself and as a member of the NFIB, said he owns Pension Services International in Anchorage. He has some serious questions and concerns about SB 86. Some of the facts he has heard today can't be substantiated, he said - like the fact that someone said Alaska has 122,000 full time workers who don't get sick leave. In administering pensions he has found the term "sick leave" is not used in most cases and "personal leave" is, and that can be taken as sick and/or vacation leave. It's up to the individual. However, the employer can budget accordingly.

Another downside to this bill, Mr. Tamagni said, is that it allows sick leave to be carried over from year to year, and the question is how does an employer budget for that every year. Also a lot of employers already provide 2-3 weeks of personal leave, which wouldn't qualify as sick leave under this bill. So the employers will probably change their policy by reducing the personal leave. This would create more of a problem than it would help, and he hasn't seen much evidence that this is even a big problem in Alaska.

MR. TAMAGNI also stated that small employers in Alaska should not be painted as utilizing their people in a very inhumane way; most employers here treat their people pretty well, because they spend a lot of money in training them in the first place.

Another problem is how to address sick leave for businesses with a probation period of over 120 days if the person doesn't keep his job and the employer owes him sick leave. He thought the Department of Labor should do a study to find out if there is really a problem in Alaska with using personal for both.

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STEPHANIE STERN, Working Families Policy Analyst, National Partnership for Women and Families, supported SB 86. She said she was available to answer questions and recapped that her office is a non-partisan, non-profit advocacy group in Washington, D.C., that works to pass policies to help people realize dual responsibility of work and family. She had outlined in previous testimony the congressional movement and action in 15 states this year to meet the minimum labor standard of paid sick days.

[2:16:31 PM](#)

SENATOR THOMAS asked if she had statistics that show how many employers with 15 or more employees have no form of leave.

MS. STERN replied that she didn't have a break down of employer by employer size; but they know that across the board 48 percent of the employees in the private sector don't have any paid sick days.

SENATOR THOMAS said he wanted to know how many had no paid leave at all.

MS. STERN said she could get those statistics for him, but it's usually the lower paid employees.

[2:18:26 PM](#)

CHAIR PASKVAN closed public comment again.

GRAY MITCHELL, Director, Division Labor Standards and Safety, Department of Labor and Workforce Development (DOLWD), was available to answer questions on SB 86.

SENATOR MEYER asked him where those low-paid employees who don't have paid sick leave work.

MR. MITCHELL replied that he suspected service industry jobs and entry level and retail workers.

SENATOR MEYER asked if a lot of these employees would be in the fishing industry.

MR. MITCHELL replied that seafood processing employers, especially the small ones, typically don't have sick or annual leave as part of their benefit package.

SENATOR MEYER said this bill wouldn't help them at all, because a lot of these people are not Alaskan residents, and that concerns him.

MR. MITCHELL said language on page 2, line 21, defined those employers that are not subject to the paid leave requirement. So he didn't understand the issue of whether or not a resident would be provided the benefit of paid sick leave, because this section seems to be defining the exception.

SENATOR MEYER said perhaps he was reading it wrong, but line 14 says "employers shall provide at least 1 hour of paid sick leave for every 40 hours work to each employee who resides in the state."

MR. MITCHELL said he thought that language was trying to limit this law to Alaskan employees, not ones who are out of state. One question he had is how the bill defines someone who resides in Alaska, and he suggested that Title 1 defines a state resident as someone who has been in the state for 30 or so days with the intent to remain - a fairly short period of time.

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SENATOR MEYER said that seafood processors probably have the highest number of non-state employees than any other industry, and he didn't want to make it more attractive for employers to hire non-Alaskans.

SENATOR BUNDE remarked that slime line jobs last less than 90 days; so those people wouldn't qualify for this bill. But if he were a small employer not offering sick leave at this point because he can't afford it, would anything in state law keep him from firing someone every 90 days and then rehiring him or a new person. Wien Airlines did this in the past with employees who worked more than 90 days and therefore qualified to be part of the union.

MR. MITCHELL replied that there wasn't a provision like that in the bill.

CHAIR PASKVAN said the way he understands the 90 days is that an employer can restrict when the hours may be cashed in, but not that the hours haven't accrued.

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MR. MITCHELL replied that sick leave legally doesn't have a cash value unless an employer specifies that it does. Sick leave is designed to give an employee time to be sick.

CHAIR PASKVAN said if an employee worked for 75 days, he would have accrued so many hours of sick leave.

MR. MITCHELL replied that was correct; and after 90 days the bill said the employee can start to use that sick leave.

CHAIR PASKVAN said he didn't see anything about forfeiture in the bill. The more important issue is what a "resident of the state" means. He wondered if an employee who comes up here for 60 days can accrue sick leave irrespective of when he may return to some other jurisdiction.

SENATOR THOMAS suggested on page 2, lines 16 and 22, changing "resides" to "works in the state".

CHAIR PASKVAN reiterated his question - "What happens to accrued time?"

SENATOR BUNDE remarked if you were going to quit at 60 days and you have accrued 10 hours, you had better be sick for 10 hours to get the benefit.

CHAIR PASKVAN asked if the employer has an obligation to make a check out for accrued wages under this statute.

MR. MITCHELL replied no; unless the employer puts it in the contract.

[2:32:33 PM](#)

SENATOR MEYER said a lot of seasonal employees will come back the next summer; but once they terminate, he asked if their sick time accrues next year.

MR. MITCHELL replied that would depend; some fish processors continue providing benefits through to the next season.

[2:34:20 PM](#)

SENATOR BUNDE moved to adopt Amendment 1.

AMENDMENT 1

OFFERED IN THE SENATE

BY SENATOR BUNDE

Page 1, line 1:

Delete "**sick**"

Insert "**personal**"

Page 2, line 1:

Delete "**sick**"

Insert "**personal**"

Page 2, line 14:

Delete "**sick**"

Insert "**personal**"

Page 2, line 15:

Delete "sick"

Insert "personal"

Page 2, line 18:

Delete "sick"

Insert "personal"

Page 2, line 20:

Delete "may carry over unused paid sick leave"

Insert "may not carry over unused paid personal
leave"

Page 2, line 24, following "worked;":

Insert "and"

Page 2, line 25:

Delete all material.

Reorder the following paragraph accordingly.

Page 2, line 30, through page 3, line 6:

Delete all material.

Reletter the following subsections accordingly.

Page 3, lines 25 - 31:

Delete all material.

Renumber the following paragraphs accordingly.

Page 4, line 5:

Delete "sick"

Insert "personal"

SENATOR DAVIS objected.

SENATOR BUNDE explained that he believes sick leave encourages people to become creative in how they define being sick. Changing "sick" to "personal" reflects reality. It would also clarify language on page 2, line 20, by inserting "may not carry over unused paid personal leave."

[2:37:04 PM](#)

SENATOR DAVIS said she didn't have a problem with using "personal" leave, but the sponsor prefers using "sick" leave. However, there is more to the amendment that basically guts the bill.

[2:37:40 PM](#)

MR. MOE commented that the sponsor didn't have a problem with changing the title from "sick" to "personal" leave, but he agreed that page 2 of the amendment deleted a large portion of the bill - specifically page 2, line 10 of the amendment deletes all of the language on page 2, line 30 through page 3, line 6, which describe very specifically what the paid leave can be used for - to take care of a family member or for domestic violence or sexual assault. The goal of paid sick leave is a health issue. The term "personal leave" is pretty broad. The sponsor would prefer to keep "paid sick leave" language.

SENATOR BUNDE said he has no intention of gutting the bill, but if someone has personal leave, he doesn't have to tell the employer he needs a safe day, for instance. This is leaving the reason up to the person to decide. It demeans a worker and invades privacy to have to explain why.

SENATOR MEYER agreed. Personal leave gives an employee more flexibility to use a day to take his dog to the vet if the dog is sick, for instance.

[2:42:10 PM](#)

SENATOR DAVIS said the intent of the bill is to help people in certain situations who need time off, not to give people more days for vacation.

SENATOR BUNDE said people who have "sick leave" have more undefined pain.

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CHAIR PASKVAN said this act would not apply to an employer who would already have a policy in place.

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SENATOR BUNDE responded that this is putting the small employers who don't have sick leave into a different category than someone else who provides personal or annual leave already. The much larger group already provides personal leave; so why would lawmakers discriminate against mostly low-wage earners by making them qualify under something called sick leave. Calling it "personal leave" would allow them to take the time off without having to explain anything.

[2:49:08 PM](#)

SENATOR DAVIS reiterated that the amendment does much more than change "sick" to "personal"; and the sponsor wants "sick" in the bill.

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CHAIR PASKVAN commented that domestic situations where a person was arrested or formally charged would be a matter of public record already. So their privacy wouldn't be invaded further. He pointed out that this applies only to employers who do not have any formal leave or personal time that exceeds 6.5 days per year for full time work.

SENATOR BUNDE reiterated that he didn't understand why they would say people have more rights who work for a company that is able to give personal leave different than those who work for a company that doesn't have personal leave - and they will only get sick leave. So, they get a lesser benefit than the people who work for a company that provides personal leave.

CHAIR PASKVAN responded that essentially it is a minimum labor standard issue.

[2:54:08 PM](#)

A roll call vote was taken. Senators Meyer and Bunde voted yea; Senators Davis, Thomas and Paskvan voted nay; therefore, Amendment 1 failed.

[2:54:18 PM](#)

SENATOR MEYER said minimum wage and mandatory overtime laws are already in place; but they are both federal laws, and he believed it was better to keep it at the federal level. He moved to report SB 86 from committee with individual recommendations and attached fiscal note(s).

SENATOR BUNDE objected, and said this fails miserably on the federal level.

SENATOR DAVIS said she thought some employers would be pleasantly surprised to have this on the books.

SENATOR MEYER said he hoped the Finance Committee would look at why it costs so much to implement.

CHAIR PASKVAN remarked that SB 86 applies only to employers of at least 15 workers; additionally it only applies to employers who do not have a leave plan of some sort for more than 6.5 hours.

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A roll call vote was taken. Senators Davis, Meyer, Thomas and Paskvan voted yea; Senator Bunde voted nay; therefore, SB 86 moved from committee.

[2:59:40 PM](#)

CHAIR PASKVAN adjourned the meeting at 2:59 p.m.