

SHB 2307 - H AMD TO H AMD 603 (2307-S AMH FARR TANG 079) 607

By Representative Manweller

WITHDRAWN 02/04/2016

1 On page 1 of the striking amendment, strike all material after
2 line 2 and insert the following:

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4 "NEW SECTION. Sec. 1. A new section is added to chapter 43.10
5 RCW to read as follows:

6 (1) An employer must provide reasonable accommodations to an
7 employee for a pregnancy-related or childbirth-related health
8 condition if she so requests, with written certification from her
9 licensed health care provider, unless the employer demonstrates that
10 the accommodation would impose an undue hardship on the operation of
11 the employer's business. The employee must provide written notice to
12 the employer stating that a health condition related to pregnancy or
13 childbirth requires accommodation.

14 (2) Notwithstanding subsection (1) of this section, an employee
15 who is pregnant or has a health condition related to pregnancy or
16 childbirth shall not be required to obtain the advice of her
17 licensed health care provider, nor may an employer claim undue
18 hardship, for the following accommodations: (a) More frequent,
19 longer, or flexible restroom, food, and water breaks; (b) seating;
20 and (c) limits on lifting over twenty pounds.

21 (3) The employee and employer shall engage in an interactive
22 process with respect to an employee's request for a reasonable
23 accommodation. The department of labor and industries shall include
24 information in the "Your Rights as a Worker" poster, or similar
25 required workplace poster, regarding these respective rights and
26 responsibilities.

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1 (4) Notwithstanding any other provision of this section, an
2 employer shall not be required to create a new or additional
3 position in order to accommodate an employee pursuant to this
4 section, and shall not be required to discharge any employee,
5 transfer any other employee with greater seniority, or promote any
6 employee.

7 (5) An employer shall not require an employee who has a
8 pregnancy-related or childbirth-related health condition to accept
9 an accommodation, if such accommodation is unnecessary to enable the
10 employee to perform her job.

11 (6) An employer shall not:

12 (a) Take adverse action against an employee who requests or uses
13 an accommodation under this section that affects the terms,
14 conditions, or privileges of employment;

15 (b) Deny employment opportunities to an otherwise qualified
16 employee if such denial is based on the employer's need to make
17 reasonable accommodation required by this section; or

18 (c) Require an employee to take leave if another reasonable
19 accommodation can be provided for the employee's pregnancy-related
20 or childbirth-related health condition.

21 (7) This section does not preempt, limit, diminish, or otherwise
22 affect any other provision of law relating to sex discrimination or
23 pregnancy, or in any way diminish or limit the coverage for
24 pregnancy, childbirth, or a pregnancy-related health condition.

25 (8) The definitions in this subsection apply throughout this
26 section unless the context clearly requires otherwise.

27 (a) "Employee" means an individual employed by an employer.

28 (b) "Employer" means a person engaged in an industry who has
29 fifteen or more employees for each working day in each of twenty or
30 more calendar weeks in the current or preceding calendar year,
31 except that this section does not apply to an entity that is exempt
32 from federal taxation under U.S.C. Title 26, section 501(c).

33 (c) "Reasonable accommodation" means:
34

1 (i) Making existing facilities used by employees readily
2 accessible to and usable by employees who have a pregnancy-related
3 or childbirth-related disability;

4 (ii) Job restructuring, part-time or modified work schedules,
5 reassignment to a vacant position, acquisition or modification of
6 equipment or devices, appropriate adjustment or modifications of
7 examinations;

8 (iii) Temporary transfer to a less strenuous or hazardous
9 position; and

10 (iv) Limits on heavy lifting.

11 (d) "Undue hardship" means an action requiring significant
12 difficulty or expense, when considered in light of the following
13 factors:

14 (i) The nature and cost of the accommodation needed;

15 (ii) The overall financial resources of the facility or
16 facilities involved in the provision of the reasonable
17 accommodation; the number of persons employed by the employer; the
18 effect on expenses and resources; or the impact otherwise of such
19 accommodation upon the employer;

20 (iii) The overall financial resources of the employer; the
21 overall size of the business, including the number of employees; and
22 the number, type, and location of its facilities; and

23 (iv) The type of operation or operations of the employer,
24 including the composition, structure, and functions of the workforce
25 of such employer, the geographic separateness, and administrative or
26 fiscal relationship of the facility or facilities in question to the
27 employer.

28 (9) The attorney general shall investigate complaints and
29 enforce this section. Prior to filing a civil cause of action, a
30 person aggrieved by a violation of this section must file a
31 complaint with the attorney general. The attorney general shall
32 investigate to determine if there has been compliance with this
33 section. If the investigation indicates there is evidence that a
34 violation may have occurred, the attorney general shall issue a

1 written determination stating that a violation may have occurred.
2 If the investigation indicates that there is insufficient evidence
3 that a violation has occurred, the attorney general shall issue a
4 written determination stating that there is insufficient evidence to
5 determine whether a violation has occurred. The attorney general's
6 determination constitutes the final administrative action, but a
7 person may seek judicial review of the determination. A person
8 aggrieved by a violation of this section may pursue a civil cause of
9 action in court only after exhausting the administrative remedy
10 provided under this subsection.

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12 Correct the title."

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EFFECT: Strikes the provisions of the striking amendment (that place reasonable accommodation requirements under the Human Rights Commission) and replaces them with reasonable accommodation requirements with enforcement authority under the Attorney General's Office. In particular, the new striking amendment:

- (1) Requires the AG to investigate complaints and issue determinations, which are appealable in court, and provides for a civil cause of action once administrative remedies are exhausted;
- (2) Requires an employer to provide reasonable accommodations to an employee for pregnancy-related or childbirth-related health conditions, if the employee requests and has written certification from her health care provider, unless the employer shows that the accommodation would impose an undue hardship;
- (3) Provides that written certification from a health care provider is not required and the employer may not claim undue hardship for accommodations on: restroom, food, or water breaks; seating; and limits on lifting over 20 pounds;
- (4) Requires the employer and employee to engage in an interactive process regarding the request for reasonable accommodation;
- (5) Applies to employers who have 15 or more employees and exempts tax-exempt nonprofit entities;
- (6) Defines "reasonable accommodation" and "undue hardship" and other terms; and
- (7) Prohibits an employer from engaging in certain acts (such as requiring an employee to accept an accommodation, taking adverse action against an employee, and requiring the employee to take leave if a reasonable accommodation can be provided).

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