

ESSB 6149 - H AMD 913

By Representative Farrell

ADOPTED 03/04/2016

1 Strike everything after the enacting clause and insert the
2 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 pregnancy or a pregnancy-related or childbirth-related
8 health condition if so requested, with written certification from a
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 written certification must describe
12 the specific physical needs, limitations, or conditions that require
13 reasonable accommodation.

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

22 (3) The employee and employer shall engage in an interactive
23 process with respect to an employee's request for a reasonable
24 accommodation. To assist in this process, the department shall post
25 information in a printable format, such as a brochure, explaining
26 the respective rights and responsibilities of the employer and the
27 employee regarding reasonable accommodation for pregnancy or a

1 pregnancy-related or childbirth-related health condition. In
2 addition, the department shall, within existing resources, include
3 information in the "Your Rights as a Worker" poster, or similar
4 required workplace poster, regarding these respective rights and
5 responsibilities.

6 (4) Unless otherwise required under provisions of law related to
7 sex discrimination or disability discrimination, an employer shall
8 not be required to create a new or additional position in order to
9 accommodate an employee pursuant to this section, and shall not be
10 required to discharge any employee, transfer any other employee with
11 greater seniority, or promote any employee.

12 (5) An employer shall not require an employee who is requesting
13 reasonable accommodation for pregnancy or a pregnancy-related or
14 childbirth-related health condition to accept an accommodation, if
15 such accommodation is unnecessary to enable the employee to perform
16 the job.

17 (6) An employer shall not:

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

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

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

27 (7) The definitions in this subsection apply throughout this
28 section unless the context clearly requires otherwise.

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

30 (b) "Employer" has the same meaning as RCW 49.60.040(11).

31 (c) "Reasonable accommodation" includes, but is not limited to:

32 (i) Making existing facilities used by employees readily
33 accessible to and usable by an employee requesting accommodation for
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1 pregnancy or a pregnancy-related or childbirth-related health
2 condition;

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

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

9 (iv) Limits on heavy lifting;

10 (v) Scheduling flexibility for prenatal and postnatal visits.

11 (d) "Undue hardship" means that the cost or difficulty is
12 unreasonable in view of:

13 (i) The size of the employer and the financial and other
14 resources available to the employer;

15 (ii) Whether the cost can be included in planned remodeling or
16 maintenance; and

17 (iii) The requirements of other laws and contracts, and other
18 appropriate considerations.

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

24 (9) The attorney general shall investigate complaints and
25 enforce this section. The attorney general may issue civil
26 investigative demands for the inspection of documents, interrogatory
27 responses, and oral testimony in the enforcement of this section.
28 The attorney general may seek all appropriate relief in the superior
29 courts for violations of this section, including costs and a
30 reasonable attorneys' fee. In addition to the complaint process with
31 the attorney general, any aggrieved person injured by any act in
32 violation of this section has a civil cause of action in court to
33 enjoin further violations, or to recover the actual damages
34 sustained by the person, or both, together with the cost of suit

1 including reasonable attorneys' fees or any other appropriate remedy
2 authorized by state or federal law."

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EFFECT: Changes the definition of employer to reference the definition used under the Washington Law Against Discrimination (employers with eight or more employees but not nonprofit religious or sectarian organizations).

Requires an employer to provide reasonable accommodation for pregnancy (not just for a pregnancy-related or childbirth-related health condition).

Removes the requirement that the employee provide written notice stating that a health condition related to pregnancy or childbirth requires accommodation. Instead, the written certification from the employee's licensed health care provider must describe the specific physical needs, limitations, or conditions that require reasonable accommodation.

Specifies that an employer is not required to create new or additional positions or discharge, transfer, or promote an employee under the bill, unless otherwise required under provisions of law relating to sex discrimination or disability discrimination.

Specifies that the bill does not preempt, limit, diminish, or otherwise affect other provisions of law related to disability discrimination.

Changes the definition of "reasonable accommodation" to: (1) make it a nonexclusive list; (2) provide that making existing facilities accessible and usable is an accommodation for a "condition" rather than "disability"; and (3) add scheduling flexibility for postnatal visits, not just prenatal visits, to the list of what constitutes reasonable accommodation.

Changes the definition of "undue hardship" to mean that the cost or difficulty is unreasonable in view of: (1) the size of the employer and the financial and other resources available to the employer; (2) whether the cost can be included in planned remodeling or maintenance; and (3) the requirements of other laws and contracts, and other appropriate considerations.

Provides the Attorney General certain subpoena powers to enforce the provisions and allows the Attorney General to seek all appropriate relief in court, including costs and reasonable attorneys' fees.

Specifies that the Department of Labor and Industries' inclusion of information in the workplace posters must be within existing resources.

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