

ESSB 6149 - H COMM AMD

By Committee on Labor & Workplace Standards

NOT ADOPTED 03/04/2016

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

20 (3) The employee and employer shall engage in an interactive
21 process with respect to an employee's request for a reasonable
22 accommodation.

23 (4) Notwithstanding any other provision of this section, an
24 employer shall not be required to create a new or additional position
25 in order to accommodate an employee pursuant to this section, and
26 shall not be required to discharge any employee, transfer any other
27 employee with greater seniority, or promote any employee.

28 (5) An employer shall not require an employee who has a
29 pregnancy-related or childbirth-related health condition to accept an
30 accommodation, if such accommodation is unnecessary to enable the
31 employee to perform the job.

32 (6) An employer shall not:

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

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

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

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

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

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

17 (b) "Employer" means a person acting in the interest of an
18 employer, directly or indirectly, who employs eight or more persons,
19 and does not include any religious or sectarian organization not
20 organized for private profit.

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

22 (i) Making existing facilities used by employees readily
23 accessible to and usable by employees who have a pregnancy-related or
24 childbirth-related condition;

25 (ii) Job restructuring, part-time or modified work schedules,
26 reassignment to a vacant position, acquisition or modification of
27 equipment or devices, or appropriate adjustment or modifications of
28 examinations;

29 (iii) Temporary transfer to a less strenuous or hazardous
30 position;

31 (iv) Limits on heavy lifting;

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

33 (d) "Undue hardship" means an action requiring significant
34 difficulty or expense.

35 (9) The attorney general shall investigate complaints and enforce
36 this section. The attorney general may issue civil investigative
37 demands for the inspection of documents, interrogatory responses, and
38 oral testimony in the enforcement of this section. The attorney
39 general may seek all appropriate relief in the superior courts for
40 violations of this section, including costs and a reasonable

1 attorneys' fee. In addition to the complaint process with the
2 attorney general, any aggrieved person injured by any act in
3 violation of this section has a civil cause of action in court to
4 enjoin further violations, or to recover the actual damages sustained
5 by the person, or both, together with the cost of suit including
6 reasonable attorneys' fees or any other appropriate remedy authorized
7 by state or federal law."

8 Correct the title.

EFFECT: Changes the definition of employer to employers with eight or more employees but not nonprofit religious or sectarian organizations.

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 pregnancy-related or childbirth-related "condition" rather than "disability"; and (3) add scheduling flexibility for postnatal visits, not just prenatal visits, to the list of what constitutes reasonable accommodation.

Removes the requirement for the Department of Labor and Industries to post information in a printable format and include information in required workplace posters regarding employer and employee rights and responsibilities.

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.

--- END ---