

SSB 6149 - S AMD 629

By Senators Baumgartner, Keiser

ADOPTED 02/16/2016

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. To assist in this process, the department shall post
23 information in a printable format, such as a brochure, explaining the
24 respective rights and responsibilities of the employer and the
25 employee who has a health condition related to pregnancy or
26 childbirth. Additionally, the department shall include information in
27 the "Your Rights as a Worker" poster, or similar required workplace
28 poster, regarding these respective rights and responsibilities.

29 (4) Notwithstanding any other provision of this section, an
30 employer shall not be required to create a new or additional position
31 in order to accommodate an employee pursuant to this section, and

1 shall not be required to discharge any employee, transfer any other
2 employee with greater seniority, or promote any employee.

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

7 (6) An employer shall not:

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

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

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

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

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

23 (a) "Department" means the department of labor and industries.

24 (b) "Director" means the director of labor and industries.

25 (c) "Employee" means an individual employed by an employer.

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

31 (e) "Reasonable accommodation" means:

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

35 (ii) Job restructuring, part-time or modified work schedules,
36 reassignment to a vacant position, acquisition or modification of
37 equipment or devices, or appropriate adjustment or modifications of
38 examinations;

39 (iii) Temporary transfer to a less strenuous or hazardous
40 position;

1 (iv) Limits on heavy lifting; and
2 (v) Scheduling flexibility for prenatal visits.
3 (f) "Undue hardship" means an action requiring significant
4 difficulty or expense.
5 (9) The attorney general shall investigate complaints and enforce
6 this section. In addition to the complaint process with the attorney
7 general, any aggrieved person injured by any act in violation of this
8 section has a civil cause of action in court to enjoin further
9 violations, or to recover the actual damages sustained by the person,
10 or both, together with the cost of suit including reasonable
11 attorneys' fees or any other appropriate remedy authorized by state
12 or federal law."

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13 On page 1, line 2 of the title, after "women;" strike the
14 remainder of the title and insert "and adding a new section to
15 chapter 43.10 RCW."

EFFECT: (1) Adds "scheduling flexibility for prenatal visits" to the definition of reasonable accommodations.

(2) Removes from the definition of "undue hardship" in the four subsections that identified factors to be considered in interpreting the phrase.

(3) Removes the provisions that required a person to exhaust their administrative remedies through an attorney general investigation prior to filing a civil cause of action.

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