

HOUSE BILL REPORT

ESHB 2307

As Passed House:
February 4, 2016

Title: An act relating to providing reasonable accommodations in the workplace for pregnant women.

Brief Description: Requiring reasonable accommodations in employment for pregnancy, childbirth, or pregnancy-related health conditions.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Farrell, Senn, Riccelli, Appleton, Wylie, Robinson, Tarleton, Goodman, Ormsby, Tharinger, Gregerson, Pollet, Sullivan, Stanford, Jinkins, Kuderer, Ortiz-Self, S. Hunt, Blake, Lytton, Kilduff, Fitzgibbon, Kagi, Sells, Reykdal, Walkinshaw, Rossetti, Sawyer, Orwall, Peterson, Van De Wege, McBride, Kirby, Fey, Santos, Cody, Hudgins, Bergquist, Moscoso and Frame).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/12/16, 1/19/16 [DPS].

Floor Activity:

Passed House: 2/4/16, 52-45.

Brief Summary of Engrossed Substitute Bill

- Requires employers to provide reasonable accommodation in employment for pregnancy, childbirth, or pregnancy-related health conditions, unless the accommodation would impose an undue hardship on the employer's business.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; McCabe and G. Hunt.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Trudes Tango (786-7384).

Background:

Washington State Law Against Discrimination.

Under the Washington State Law Against Discrimination (WLAD), an employer may not discriminate against a person because of the person's sex or disability.

The WLAD applies to employers that employ eight or more employees, but does not apply to religious or sectarian organizations not organized for private profit. An aggrieved person has administrative remedies, by filing a complaint with the Human Rights Commission, or may file a private cause of action in court.

Discrimination Based on Pregnancy.

Depending on the circumstances, an employee who believes she has been discriminated against because of her pregnancy may be able to establish a claim of disability discrimination or sex discrimination.

Based on a Washington Supreme Court case, pregnancy itself is not considered a disability. However, if a pregnancy-related medical condition results in the employee becoming temporarily disabled, the laws prohibiting discrimination because of disability could apply. Under the WLAD, an employer must provide reasonable accommodation to a disabled worker unless the employer can show that the accommodation would impose an undue hardship. Definitions and examples of "reasonable accommodations" and "undue hardships" are provided in rules.

Regarding sex discrimination, an employer generally may not treat male employees differently than female employees. An employer may not refuse to hire, demote, or fire a woman, or impose different terms and conditions of employment on a woman because of pregnancy or childbirth.

Generally, if an employer provides reasonable accommodations to a male employee who is impaired from doing his job, the employer may have to provide reasonable accommodations to a female employee who is impaired due to pregnancy.

Other Laws Regarding Pregnancy and Childbirth.

The federal laws prohibiting sex discrimination provide that female employees affected by pregnancy, childbirth, or related medical conditions must be treated the same as other employees who have similar ability or inability to work.

Federal law also requires employers to provide reasonable break time for an employee to express milk for her nursing child for one year after the child's birth. Employers must provide a place, other than a bathroom, that is protected from view and free from intrusion from others. Employers with fewer than 50 employees are not subject to these requirements if compliance would impose an undue hardship.

Attorney General's Office.

The State Attorney General's office provides legal services to the state agencies and, among other things, handles certain consumer protection complaints.

Summary of Engrossed Substitute Bill:

It is an unfair practice for an employer:

- to fail or refuse to make reasonable accommodation for an employee for pregnancy, childbirth, or a pregnancy-related health condition, including but not limited to, the need to express breast milk, unless the employer can demonstrate an undue hardship on the employer's program, enterprise, or business;
- to take adverse action against an employee who requests or uses an accommodation;
- to deny employment opportunities to an otherwise qualified employee if the denial is based on the employer's need to make reasonable accommodation;
- to require an employee to take leave if another reasonable accommodation can be provided, unless she declines to accept the accommodation offered in lieu of taking leave; or
- to require an employee to accept an accommodation that she chooses not to accept.

An employer may request that an employee provide written certification from her health care professional regarding the need for reasonable accommodations, if the need is not apparent to a reasonable person. However, written certification is not required, and an employer may not claim undue hardship, for the following accommodations: longer, more frequent, or flexible restroom, food, or water breaks; seating; limits on lifting over 20 pounds; and flexible scheduling to accommodate for prenatal and postnatal health care visits.

The Attorney General must investigate complaints and enforce the provision. In addition, an aggrieved person may bring a civil cause of action to enjoin further violations or to recover actual damages, costs, and reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law.

Reasonable accommodation means measures that enable the proper performance of the job held or desired and that enable the enjoyment of equal benefits, privileges, or terms and conditions of employment. Reasonable accommodation includes, but is not limited to:

- allowing for time off to recover from childbirth;
- acquiring or modifying equipment or an employee's work station;
- providing for a temporary transfer to a less strenuous or less hazardous position;
- providing assistance with manual labor; and
- modifying work schedules.

An employer is not required to create additional employment that the employer would not otherwise have created, or to discharge, transfer, or promote any employee, unless the employer would do so to accommodate other classes of employees who need accommodation.

The bill does not preempt or otherwise affect existing laws addressing discrimination or in any way diminish or limit the coverage for a condition related to pregnancy, childbirth, or a pregnancy-related health condition.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) In many work settings, it can be challenging for women to have a healthy pregnancy. This bill fills in gaps that exist in the law and provides clarity for both employers and employees. Many women are still forced to leave their jobs before they are ready because they cannot get minor accommodations. The laws against sex discrimination do not require accommodation and it is difficult to prove sex discrimination in these cases. The goal is not to create onerous rules that are hard for employers to follow. Other states have enacted similar laws. Most women do not have complicated pregnancies and can work well into the later term of their pregnancy without endangering their health. These accommodations can help ensure that their pregnancy continues to be healthy. Sometimes pregnant women just need adjustments like taking more breaks and staying hydrated. Nobody should have to chose between their job and following their doctor's advice. These are simple or low-cost adjustments. Providing accommodations will improve healthy outcomes and reduce turnover costs for businesses.

(Opposed) Reasonable accommodations are a good idea, but the bill's approach is not the way to address the issue. Pregnancy is a temporary status and accommodations for pregnancy should not be categorized as a civil right. There should be a focus on how to better communicate between the employer and employee about her needs. The list of accommodations in the bill may not fit all situations. Most employers provide reasonable accommodations already and opening communication between women and their employers can be empowering. The problem is not the lack of statutory authority but the lack of communication. Having the Department of Labor and Industries involved would be more effective since they are more capable of handling workplace disputes.

(Other) One subsection of the bill conflicts with another subsection. There is no opposition to reasonable accommodations, but the bill needs more clarity. Existing laws already address some of these issues.

Persons Testifying: (In support) Representative Farrell, prime sponsor; Danielle Campoamor; Ying Zhang, Physicians for Reproductive Health; Maggie Humphreys, Moms Rising; Janet Chung, Legal Voice; Tatsuko Go Hollo, Children's Alliance; and Lenny Young, Department of Natural Resources.

(Opposed) Patrick Connor, National Federation of Independent Business.

(Other) Genesee Adkins, University of Washington; Bob Battles, Association of Washington Business; and Tammie Hetrick, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: None.