
**Labor & Workplace Standards
Committee**

HB 2404

Brief Description: Requiring reasonable accommodations in the workplace for pregnant women.

Sponsors: Representatives Kochmar, Stambaugh, Short, Caldier, Walsh, Van Werven, Pike, Wilson, Magendanz, Muri, Haler and Moscoso.

Brief Summary of Bill

- Requires employers to provide reasonable accommodation to employees with pregnancy-related or childbirth-related health conditions, with written certification from the employee's health care provider, unless the accommodation would impose an undue hardship on the employer's business.
- Provides that an employer may not claim undue hardship for certain accommodations.
- Requires the employer and employee to engage in an interactive process when the employee requests an accommodation and requires the Department of Labor and Industries to investigate complaints.

Hearing Date: 1/19/16

Staff: Trudes Tango (786-7384).

Background:

Discrimination Based on Pregnancy

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

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.

Based on a Washington Supreme Court case, pregnancy itself is not considered a disability. However, if a pregnancy-related medical condition results in the employer becoming temporarily disabled, the laws prohibiting discrimination because of disability could apply. Under the Washington law against discrimination, an employer must provide reasonable accommodation to a disabled worker. Reasonable accommodation is defined by rule and means measures that:

- enable equal opportunity in the application process;
- enable the proper performance of the job held or desired; and
- enable the enjoyment of equal benefits, privileges, or terms and conditions of employment.

An employer must provide reasonable accommodation unless it can show that the accommodation would impose an undue hardship. An accommodation will be considered an undue hardship if the cost or difficulty is unreasonable in view of:

- the size of and resources available to the employer;
- whether the cost can be included in planned remodeling or maintenance; and
- the requirements of other laws and contracts, and other appropriate considerations.

Examples of reasonable accommodations include: making adjustments in job duties, work schedules, or scope of work; changes in the job setting or conditions; and informing the employee of vacant positions and considering the employee for those positions if the employee is qualified.

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 provides 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 coworkers and the public. Employers with fewer than 50 employees are not subject to these requirements if the employer can show that compliance would impose an undue hardship.

Summary of Bill:

Reasonable Accommodation and Prohibited Acts

An employer must 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 on the operation of the employer's business. The employee must provide written

notice to the employer that a health condition related to pregnancy or childbirth requires accommodation.

However, an employee who is pregnant or has a health condition related to pregnancy or childbirth is not required to obtain the advice of her health care provider and an employer may not claim undue hardship for the following accommodations:

- more frequent, longer, or flexible restroom, food, or water breaks;
- seating; and
- limits on lifting over 20 pounds.

An employer may not:

- require an employee with a pregnancy-related or childbirth-related health condition to accept an accommodation, if the accommodation is unnecessary to enable the employee to perform her job;
- take adverse action against an employee who requests or uses an accommodation;
- deny employment opportunities to a qualified employee if the denial is based on the need to make reasonable accommodation; or
- require an employee to take leave if another reasonable accommodation can be provided.

An employer is not required to:

- create a new or additional position to accommodate the employee; or
- discharge any employee, transfer any employee with greater seniority, or promote any employee.

"Employer" means a person engaged in an industry who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

"Employer" does not include tax-exempt nonprofit entities.

"Reasonable accommodation" means:

- making existing facilities used by employees readily accessible to and usable by employees who have a pregnancy-related or childbirth-related disability;
- job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations;
- temporary transfer to a less strenuous or hazardous position; and
- limits on heavy lifting.

"Undue hardship" means an action requiring significant difficult or expense in light of certain enumerated factors (such as overall financial resources of the facility involved, overall financial resources of the employer, the type of operation of the employer, and the effect on expenses and resources).

Enforcement

The employer and employee must engage in an interactive process regarding the request for reasonable accommodation.

The Department of Labor and Industries (Department) must investigate complaints to determine compliance. If the investigation indicates that a violation may have occurred, an administrative

hearing must be held. The Department's determination may be appealed to court and the prevailing party is entitled to reasonable costs and attorneys' fees.

The Department must post information in printed format explaining an employers' and employees' rights and responsibilities. In addition, the Department must include information in required workplace posters.

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.