

# HOUSE BILL REPORT

## ESSB 6149

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### As Reported by House Committee On: Labor & Workplace Standards

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

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

**Sponsors:** Senate Committee on Commerce & Labor (originally sponsored by Senators Keiser, Conway, Jayapal, Cleveland, Rolfes, Fraser, Litzow, Fain, Nelson, Habib, Chase, Mullet, Lias, Pedersen, Takko, Hasegawa, Ranker, Frockt, Hill, Benton and Billig).

#### **Brief History:**

##### **Committee Activity:**

Labor & Workplace Standards: 2/23/16, 2/25/16 [DPA].

#### **Brief Summary of Engrossed Substitute Bill (As Amended by Committee)**

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

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass as amended. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Manweller, Ranking Minority Member; McCabe.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Smith.

**Staff:** Trudes Tango (786-7384).

#### **Background:**

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*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.*

### 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.

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### **Summary of Amended Bill:**

An employer must provide reasonable accommodations to an employee for a pregnancy-related or childbirth-related health condition if requested, with written certification from a licensed health care provider, unless the employer demonstrates that the accommodation would impose an undue hardship on the operation of the employer's business.

The employee and employer must engage in an interactive process with respect to an employee's request for reasonable accommodation. The employee must give written notice stating that a health condition related to pregnancy or childbirth requires accommodation. However, no written notice is required, and an employer may not claim undue hardship for the following accommodations: (1) more frequent, longer, or flexible restroom, food, or water breaks; (2) seating; and (3) limits on lifting over 20 pounds.

An employer is not required to create new or additional positions to accommodate an employee, or discharge any employee, transfer any employee with greater seniority, or promote any employee. An employer may not:

- require an employee to accept an accommodation, if the accommodation is unnecessary to enable the employee to perform the job;
- take adverse action against an employee who requests or uses an accommodation;
- deny employment opportunities to an otherwise qualified employee if the denial is based on the employer's need to make reasonable accommodation; or
- require an employee to take leave if another reasonable accommodation can be provided.

The provisions apply to employers who employ eight or more employees and does not include any religious or sectarian organization not organized for private profit.

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

"Reasonable accommodation" includes, but is not limited to:

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

"Undue hardship" means an action requiring significant difficulty or expense.

The provisions of the bill do not preempt, limit, diminish, or affect any other provision of law relating to sex discrimination or pregnancy, or in any way diminish or limit the coverage for pregnancy, childbirth, or a pregnancy-related health condition.

#### **Amended Bill Compared to Engrossed Substitute Bill:**

The amended bill does the following: (1) changes the definition of employer to employers with eight or more employees but not nonprofit religious or sectarian organizations; (2) changes the definition of "reasonable accommodation" to make it a nonexclusive list, adds postnatal visits, and refers to a pregnancy-related "condition" rather than "disability"; (3) removes the requirement for the Department of Labor and Industries to post information in a printable format and include information in required workplace posters; and (4) 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.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill will improve the lives of pregnant women and result in healthy outcomes for babies. The workplace has changed, with many women working through pregnancy and sometimes in workplaces without easy restroom access. Pregnant workers will get minor temporary accommodations without fear of retribution. Instead of employers guessing at what is needed, employers and workers will use an interactive process to find the specific accommodation that is right for the workers. The bill should be amended to give the Attorney General's Office civil investigative demand authority to request documents confidentially before taking enforcement action.

(Opposed) None.

(Other) A more flexible definition of "reasonable accommodation" is needed. The term "reasonable accommodation" has been used for 25 years and there is no need to restrict it. All women should have access to reasonable accommodations. Nonprofits, where a majority of the workers are women, employ about 9.5 percent of the workforce. The 15 employee threshold in the bill is not in Washington law. The bill also fails to address breastfeeding. At six months after birth, only 20 percent of women are still breastfeeding their babies. Workplace restrictions are one of the main reasons women stop breastfeeding their babies.

**Persons Testifying:** (In support) Senator Keiser, prime sponsor; Patrick Connor, National Federation of Independent Business; and Colleen Melody, Office of the Attorney General.

(Other) Eric Gonzalez, Washington State Labor Council; Janet Chung, Legal Voice; and Maggie Humphreys, MomsRising.

**Persons Signed In To Testify But Not Testifying:** None.