

SENATE BILL REPORT

SB 6149

As of February 2, 2016

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: 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: Commerce & Labor: 2/01/16.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Richard Rodger (786-7461)

Background: Washington State Law Against Discrimination (WLAD). Under the WLAD a person has the right to be free from discrimination related to a protected status, such as race, national origin, sex, veteran or military status, sexual orientation, and disability. This includes the right to be free from discrimination in employment. It is an unfair practice for an employer to refuse to hire or to fire a person, or discriminate against a person in pay or conditions of employment, because of the person's protected status.

The WLAD defines "employers" to include persons who employ eight or more persons. It does not include any religious or sectarian organization not organized for private profit. "Employees" do not include any person employed by his or her parents, spouse, or child, or in the domestic service of any person.

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.

Under Washington case law a pregnancy itself is not considered a disability; however, if a pregnancy-related medical condition results in the employee becoming

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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.

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.

Federal Acts. A number of federal acts provide a variety of protections or benefits relating to pregnant women. These acts include:

- Civil Rights Act - Female employees must be treated the same as other employees who have similar ability or inability to work. Covers employers with 15 or more employees.
- Family & Medical Leave Act - Eligible employees may take 12 weeks of unpaid leave. Covers employers with 50 or more employees, all public agencies, and all public or private elementary and secondary schools.
- Fair Labor Standards Act - Requires reasonable break time for nursing mothers. Generally covers all employers who engage in interstate commerce; hospitals; schools; and federal, state, and local government agencies. Exempts employers with fewer than 50 employees, if compliance imposes an undue hardship.
- Pregnancy Discrimination Act - Prohibits discrimination such that pregnant workers and job applicants must be treated like all other workers with similar temporary disabilities. Accommodations such as light duty, alternative assignments, disability leave, or unpaid leave to pregnant employees may be required, if it is offered to other temporarily disabled employees. Covers most employers with 15 or more employees.
- Americans with Disabilities Act - The ADA does not consider a normal pregnancy to be a disability; however, women with high-risk complications may qualify as disabled and be entitled to reasonable accommodations. Covers most employers with 15 or more employees, unless the accommodation would impose an undue hardship on the employer.

Summary of Bill: The WLAD is amended to make it an unfair practice for any covered employer to fail or refuse to make reasonable accommodation for an applicant or employee for pregnancy, childbirth, or a pregnancy-related health condition, including the need to express breast milk; unless doing so would impose an undue hardship on the employer.

It is also unlawful for an employer to: (1) take adverse action against an employee who requests or uses such accommodation; (2) deny employment opportunities to an otherwise qualified applicant or employee, if the denial is based on the employer's need to make reasonable accommodations; (3) require an employee to take leave if another reasonable accommodation can be provided; or (4) require an applicant or employee to accept an accommodation that the person chooses not to accept.

"Reasonable accommodations" include such items as: restroom breaks; modifying a no food or drink policy; allowing for time off to recover from childbirth; acquiring or modifying equipment or an employee's work station; providing seating or allowing the employee to sit more frequently if her job requires her to stand; providing for a temporary transfer to a less strenuous or less hazardous position; providing for light duty or job restructuring; 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.

A Health Impact Review of Senate Bill 6149 was requested and is available at the Washington State Board of Health's website: <http://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2016-04-SB6149.pdf>.

Appropriation: None.

Fiscal Note: Requested on January 28, 2016.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Many simple common-sense accommodations can be provided to pregnant employees without imposing a great burden on employers. These are generally minor, temporary accommodations such as bathroom breaks, need for water or food, and the ability to stand-up. Pregnant women need more protections from adverse employment actions related to their medical conditions. Federal and state laws prohibit discrimination, however, the worker must often show that non-pregnant disabled workers are treated differently. An undue hardship standard would provide a clear standard for both employees and employers. Five cities and fifteen other states have adopted these types accommodations. This bill allows women to take better care of their children and follow their doctors orders.

CON: We are not opposed to providing pregnancy accommodations. While this discussion has been focused around minor accommodations, the bill includes definitions that are hardly minor. This bill places the provisions in the discrimination statutes regarding civil rights and not in the worker's rights statutes. Not every pregnancy requires an accommodation, but the bill could require accommodations for every pregnancy. We believe the bill should be more narrowly focused and address specific accommodations that are more informed and targeted to the specific need for the specific worker.

OTHER: The State Board of Health conducted a Health Impact Review on this bill. The review shows findings including: there is a fair amount of evidence that employers would comply with reasonable pregnancy accommodations policies; there is very strong evidence that the pregnancy accommodations have potential to improve child and maternal health outcomes; and there is very strong evidence that the accommodations would decrease health disparities by race and ethnicity and income.

We don't discriminate against pregnant women, but these provisions shouldn't be put into black letter law. It would be tough on a employer if we had to bring in another employee to do their work.

Persons Testifying: PRO: Danielle Campoamor; Tara Mudaliar, Rainier Valley Community Clinic; Janet Chung, Legal Voice; Tatsuko Go Hollo, Children's Alliance; Maggie Humphries, Mom's Rising.

CON: Patrick Connor, NFIB/Washington.

OTHER: Sierra Rotakhina, WA State Board of Health; Larry Stevens, Mechanical Cont Assoc., Nat. Elect. Contractors Assn.

Persons Signed In To Testify But Not Testifying: No one.