

SHB 1796 - H AMD 79

By Representative Farrell

ADOPTED 03/01/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The legislature finds that the state has
4 an interest in assuring that children are given the opportunity to
5 have a healthy start in life. Because approximately half of all
6 births in Washington state are funded by state resources, the state is
7 in a unique position to make a difference in the health of children in
8 Washington. The legislature further finds that providing children
9 with a healthy start requires promoting healthy pregnancies. In one
10 national survey, pregnant workers said they needed more frequent
11 breaks while pregnant. Prenatal care is also critical for positive
12 birth outcomes, and pregnant women have cited the need for flexibility
13 in their work schedule for the purposes of attending doctor visits.
14 Reasonable accommodations for pregnant women in the workplace can go a
15 long way to promoting healthy pregnancies without producing an undue
16 hardship on employers.

17

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.10
19 RCW to read as follows:

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

22 (a) "Employer" has the same meaning as and shall be interpreted
23 consistent with how that term is defined in RCW 49.60.040, except
24 that for the purposes of this section only the threshold of
25 employees must be fifteen or more.

26 (b) "Pregnancy" includes the employee's pregnancy and pregnancy-
27 related health conditions.

1 (c) "Reasonable accommodation" means:

2 (i) Providing more frequent, longer, or flexible restroom
3 breaks;

4 (ii) Modifying a no food or drink policy;

5 (iii) Job restructuring, part-time or modified work schedules,
6 reassignment to a vacant position, or acquiring or modifying
7 equipment, devices, or an employee's work station;

8 (iv) Providing seating or allowing the employee to sit more
9 frequently if her job requires her to stand;

10 (v) Providing for a temporary transfer to a less strenuous or
11 less hazardous position;

12 (vi) Providing assistance with manual labor and limits on
13 lifting;

14 (vii) Scheduling flexibility for prenatal visits; and

15 (viii) Any further pregnancy accommodation an employee may
16 request, and to which an employer must give reasonable consideration
17 in consultation with information provided on pregnancy accommodation
18 by the department of labor and industries or the attending health
19 care provider of the employee.

20 (d) "Undue hardship" means an action requiring significant
21 difficulty or expense. An employer may not claim undue hardship for
22 the accommodations under (c)(i), (ii), and (iv) of this subsection,
23 or for limits on lifting over seventeen pounds.

24 (2) It is an unfair practice for any employer to:

25 (a) Fail or refuse to make reasonable accommodation for an
26 employee for pregnancy, unless the employer can demonstrate that
27 doing so would impose an undue hardship on the employer's program,
28 enterprise, or business;

29 (b) Take adverse action against an employee who requests,
30 declines, or uses an accommodation under this section that affects
31 the terms, conditions, or privileges of employment;

32 (c) Deny employment opportunities to an otherwise qualified
33 employee if such denial is based on the employer's need to make
34 reasonable accommodation required by this section;

1 (d) Require an employee to take leave if another reasonable
2 accommodation can be provided for the employee's pregnancy.

3 (3) An employer may request that the employee provide written
4 certification from her treating health care professional regarding
5 the need for reasonable accommodation, except for accommodations
6 listed in subsection (1)(d) of this section.

7 (4)(a) This section does not require an employer to create
8 additional employment that the employer would not otherwise have
9 created, unless the employer does so or would do so for other
10 classes of employees who need accommodation.

11 (b) This section does not require an employer to discharge any
12 employee, transfer any employee with more seniority, or promote any
13 employee who is not qualified to perform the job, unless the
14 employer does so or would do so to accommodate other classes of
15 employees who need accommodation.

16 (5) The department of labor and industries must provide online
17 education materials explaining the respective rights and
18 responsibilities of employers and employees who have a health
19 condition related to pregnancy or childbirth. The online education
20 materials must be prominently displayed on the department's web
21 site.

22 (6) The attorney general shall investigate complaints and
23 enforce this section, including by conference and conciliation. In
24 addition to the complaint process with the attorney general, any
25 person believed to be injured by a violation of this section has a
26 civil cause of action in court to enjoin further violations, or to
27 recover the actual damages sustained by the person, or both,
28 together with the cost of suit and reasonable attorneys' fees or any
29 other appropriate remedy authorized by state or federal law.

30 (7) This section does not preempt, limit, diminish, or otherwise
31 affect any other provision of law relating to disability
32 discrimination, sex discrimination, or pregnancy, or in any way
33 diminish or limit legal protections or coverage for pregnancy,
34 childbirth, or a pregnancy-related health condition.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70
2 RCW to read as follows:

3 (1) The healthy pregnancy advisory committee is established to
4 develop a strategy for improving maternal and infant health
5 outcomes. The advisory committee shall conduct its activities in
6 consultation with the maternal mortality review panel established in
7 RCW 70.54.450 and an initiative related to improving maternal and
8 infant outcomes that is established by the largest association
9 representing hospitals in Washington. Administration of the advisory
10 committee by the department must be done within existing resources.

11 (2) The secretary shall appoint up to twenty members to the
12 advisory committee including experts in maternal and child health,
13 pediatric primary care providers, public health experts, hospitals
14 that provide birthing services, health care providers involved in
15 the care of pregnant women and infants, and representatives of low-
16 income women, women of color, and immigrant communities. In
17 addition, the secretary shall designate a representative from the
18 department of health and invite participation from the health care
19 authority, the department of social and health services, and the
20 department of early learning. The secretary's designee shall serve
21 as the chair of the advisory committee and shall convene the work
22 group.

23 (3) The advisory committee shall meet quarterly and develop a
24 strategy to promote maternal and child health outcomes. The strategy
25 shall consider best practices that agencies may integrate into their
26 programs to improve birth outcomes, reduce maternal mortality and
27 morbidity, and reduce infant mortality. The strategy shall include
28 elements to promote breastfeeding, incentivize the adoption of the
29 baby-friendly designation by hospitals, and reduce barriers to
30 accessing prenatal care. The advisory committee shall consider where
31 there may be gaps in the availability of services that may benefit
32 pregnant women and infants, such as coverage for lactation
33 consulting, the availability of smoking cessation programs for
34 persons who are codomiciled with the pregnant woman or infant,

1 access to fresh fruits and vegetables, and improved access to dental
2 care for pregnant women.

3 (4) The advisory committee shall submit the strategy to the
4 legislature and the governor's council for the healthiest next
5 generation by October 15, 2018.

6 (5) This section expires July 1, 2019.

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8 NEW SECTION. **Sec. 4.** If specific funding for the purposes of this
9 act, referencing this act by bill or chapter number, is not provided
10 by June 30, 2017, in the omnibus appropriations act, this act is null
11 and void."

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13 Correct the title.

14

EFFECT:

- Adds an intent section.
- Codifies the reasonable accommodation provision in the chapter governing the Attorney General's Office (AG), rather than the Washington Law Against Discrimination;
- Applies the provisions to employers with 15 or more employees (rather than 8 or more);
- Removes from the definition of "pregnancy" the need to express breastmilk;
- Changes the definition of "reasonable accommodation" by removing the phrase "including but not limited to" and adding: (1) scheduling flexibility for prenatal visits; (2) limits on lifting; and (3) providing any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the Department of Labor and Industries (L&I) or the employee's health care provider.
- Provides that an employer may not ask for written certification from the employee's health care provider and may not claim undue hardship for: providing flexible restroom breaks; modifying food/drink policies; providing seating; and providing limits on lifting over 17 pounds.
- Removes the provision making it an unfair practice for an employer to require an employee to accept an accommodation that the employee chooses not to accept.
- Defines "undue hardship" to mean an action requiring significant difficulty or expense (underlying bill did not define).
- Requires L&I to provide online educational materials.

- Specifies that the AG's enforcement process must include conference and conciliation.
- Specifies that the bill does not preempt, limit, diminish or affect laws related to disability discrimination.
- Creates the Healthy Pregnancy Advisory Committee to develop a strategy for improving maternal and infant health outcomes. Requires the Secretary of the Department of Health (DOH) to: appoint up to 20 members from various organizations and communities; designate a representative from the DOH; and invite representatives from other state agencies. Requires the committee to meet quarterly and develop a strategy for best practices that include, among other things, promoting breastfeeding, incentivizing baby-friendly designations by hospitals, and reducing barriers to accessing prenatal care. Requires the committee to submit a strategy to the Legislature and the Governor's Council for the Healthiest Next Generation by October 15, 2018.

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