
Labor & Workplace Standards Committee

HB 1448

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

Sponsors: Representatives Caldier, Graves, Stambaugh, Griffey, Kraft, Stokesbary, Muri, Manweller, Van Werven, McDonald and Hayes.

Brief Summary of Bill

- Requires an employer (that employs 15 or more employees) to provide reasonable accommodations to an employee for pregnancy-related or childbirth-related health conditions, if requested with written certification from a health care provider, unless the employer demonstrates undue hardship.
- Provides that certain accommodations are not undue hardships and do not require a health care provider's written certification.
- Requires the employee and employer to engage in an interactive process regarding a request.
- Requires the Attorney General to investigate complaints, and requires a person to file a complaint and exhaust the complaint process before filing a civil cause of action.
- Defines "reasonable accommodation" and "undue hardship."

Hearing Date: 2/6/17

Staff: Trudes Tango (786-7384).

Background:

Washington State Law Against Discrimination (WLAD).

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.

Under the WLAD, the right to be free from discrimination because of certain protected status (such as race, national origin, sex, veteran or military status, sexual orientation, and disability) is considered a civil right. 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. Provisions in the WLAD apply to employers who employ eight or more persons, and does not include any nonprofit religious or sectarian organization. The Human Rights Commission (HRC) enforces the WLAD. An aggrieved person has administrative remedies, by filing a complaint with the HRC, 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 based on disability might 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. 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 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.

The federal laws prohibiting an employer from discriminating based on disability also allow for an undue hardship exception. The federal laws apply to employers with 15 or more employees.

Regarding sex discrimination, an employer generally may not treat male employees differently than female employees. An employer may not demote, fire, or refuse to hire a woman, or impose different terms and conditions of employment on a woman because of pregnancy or childbirth. Depending on the circumstances, if an employer provides reasonable accommodations to a male employee who is impaired, the employer may have to provide reasonable accommodations to a female employee who is impaired due to pregnancy.

Other Laws Related to 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. Employers with fewer than 50 employees are not subject to these requirements if compliance would impose an undue hardship.

Summary of Bill:

An employer must provide reasonable accommodations to an employee for pregnancy-related or childbirth-related health condition if she requests, and provides written certification from her licensed health care provider, unless the employer demonstrates it would impose an undue hardship on the operation of the employer's business. The employee's written notice must state that a health condition related to pregnancy or childbirth requires accommodation. The provisions apply to employers who have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, except for employers that have 501(c) tax exempt status.

The employee is not required to obtain the advice of her licensed health care provider and an employer may not claim undue hardship for the following accommodations:

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

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, or appropriate adjustment or modifications of examinations;
- temporary transfer to a less strenuous or hazardous position; and
- limits on heavy lifting.

The employer and employee must engage in an interactive process with respect to an employee's request for a reasonable accommodation. To assist in the process, the Department of Labor and Industries (Department) must post printed information, such as a brochure, explaining the rights and responsibilities of employers and employees. The Department must also include information in the "Your Rights as a Worker" poster or similar workplace posters.

An employer may not:

- require the employee to accept an accommodation, if such 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 an otherwise qualified employee if the denial is based on the employer's need to make reasonable accommodation required by the act; or
- require an employee to take leave if another reasonable accommodation can be provided.

Undue hardship means an action requiring significant difficulty or expense, when considered in light of the following:

- the nature and cost of the accommodation needed;

- the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of employees, the effect on expenses and resources, or the impact of the accommodation on the employer;
- the overall financial resources of the employer, the overall size of the business, including the number of employees, and the number, type and location of its facilities; and
- the type of operation or operations of the employer, including the composition, structure, and functions of the employer's workforce, the geographic separateness, and administrative or fiscal relationship of the facility or facilities in question to the employer.

An employer is not required to create a new or additional position in order to accommodate the employee and is not required to discharge any employee, transfer any employee with greater seniority, or promote any employee.

The Attorney General (AG) must investigate complaints and determine if there has been compliance. If the investigation indicates there is evidence that a violation may have occurred, the AG must issue a written determination stating that a violation may have occurred. If there is insufficient evidence that a violation has occurred, the AG must issue a written determination stating that there is insufficient evidence to determine whether a violation has occurred. The AG's determination constitutes final administrative action and a party may seek judicial review of that determination. Prior to filing a civil cause of action, an employee must file a complaint with the AG and exhaust the administrative remedy provided under the act.

The bill does not preempt, limit, diminish or otherwise 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.

Appropriation: None.

Fiscal Note: Requested on February 1, 2017.

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