
**Labor & Workplace Standards
Committee**

HB 1796

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

Sponsors: Representatives Farrell, Kilduff, Doglio, Robinson, Stanford, Hudgins, McBride, Macri, Ormsby, Frame, Slatter, Jinkins and Pollet.

Brief Summary of Bill

- Provides that it is an unfair practice for an employer (that employs eight or more employees) to refuse to make reasonable accommodations for an employee's pregnancy and pregnancy-related health conditions, including the need to express breast milk.
- Allows an employer to request a written certification from a health care professional regarding the need for reasonable accommodation.
- Requires the Attorney General to investigate complaints, and provides a civil cause of action.
- Defines "reasonable accommodation."

Hearing Date: 2/6/17

Staff: Trudes Tango (786-7384).

Background:

Washington State Law Against Discrimination (WLAD).

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

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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 rules 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 allows 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:

Provisions are added to the WLAD regarding reasonable accommodation for pregnancy. It is an unfair practice for an employer to:

- fail or refuse to make reasonable accommodation for an employee's pregnancy (that term includes pregnancy-related health conditions, including the need to express breast milk), unless it would impose an undue hardship on the employer's program, enterprise, or business;
- 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;
- require an employee to take leave if another reasonable accommodation can be provided;
- or
- require an employee to accept an accommodation that the employee chooses not to accept.

An employer may request that the employee provide written certification from her treating health care professional regarding the need for reasonable accommodation.

"Reasonable accommodation" means measure that enable the proper performance of the particular job held or desired and enable the enjoyment of equal benefits, privileges, or terms and conditions of employment. It includes, but is not limited to:

- providing more frequent, longer, or flexible restroom breaks;
- modifying a no food or drink policy;
- 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 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, unless the employer would do so for other classes of employees who need accommodation; or
- discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified, unless the employer would do so to accommodate other classes of employees who need accommodation.

The Attorney General (AG) must investigate complaints and enforce the provisions. An employee may file a complaint with the AG or bring a civil cause of action in court to enjoin further violations and recover actual damages, costs, and reasonable attorneys' fees or any other appropriate remedy.

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 legal protection or coverage for pregnancy.

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.