

HOUSE BILL REPORT

ESHB 1796

As Passed House:
March 1, 2017

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: House Committee on Appropriations (originally sponsored by Representatives Farrell, Kilduff, Doglio, Robinson, Stanford, Hudgins, McBride, Macri, Ormsby, Frame, Slatter, Jinkins and Pollet).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/6/17, 2/13/17 [DP];
Appropriations: 2/22/17 [DPS].

Floor Activity:

Passed House: 3/1/17, 98-0.

Brief Summary of Engrossed Substitute Bill

- Provides that it is an unfair practice for an employer (that employs 15 or more employees) to refuse to make reasonable accommodations for an employee's pregnancy and pregnancy-related health conditions.
- Requires the Attorney General to investigate complaints, and provides a civil cause of action.
- Creates the Healthy Pregnancy Advisory Committee to develop a strategy to improve health outcomes for mother and infants.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; McCabe, Assistant Ranking Minority Member; Pike.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Haler, Harris, Nealey, Schmick, Taylor, Vick, Volz and Wilcox.

Minority Report: Without recommendation. Signed by 1 member: Representative Manweller.

Staff: Meghan Morris (786-7119).

Background:

Washington State Law Against Discrimination.

Under the Washington State Law Against Discrimination (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.

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. 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.

Maternal Mortality Review Panel.

The Maternal Mortality Review Panel (Panel) was created in 2016 to conduct comprehensive, multidisciplinary reviews of maternal death in Washington. The Panel identifies factors associated with maternal deaths and makes recommendations for changes to improve health care services for women. The Department of Health (DOH) appoints members to the Panel.

Summary of Engrossed Substitute Bill:

Reasonable accommodations for pregnancy and pregnancy-related health conditions.

Provisions are added to the chapter governing the Attorney General's Office (AG). 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), unless it would impose an undue hardship on the employer's program, enterprise, or business;
- take adverse action against an employee who requests, declines, 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.

"Reasonable accommodation" means:

- providing more frequent, longer, or flexible restroom breaks;
- modifying a no food or drink policy;
- providing job restructuring, part-time or modified work schedules, reassignment, or 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 limits on lifting;
- scheduling flexibility for prenatal visits; and
- any further accommodation an employee may request, and to which an employer must give reasonable consideration in consultation with information provided by the Department of Labor and Industries (Department) or the employee's health care provider.

An employer may request that the employee provide written certification from her treating health care professional regarding the need for reasonable accommodation. However, written certification is not required, and an employer may not claim undue hardship, for the following accommodations: providing more frequent, longer, or flexible restroom breaks; modifying food or drink policies; providing seating; and limiting lifting over 17 pounds. "Undue hardship" means an action requiring significant difficulty or expense.

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 AG must investigate complaints and enforce the provisions, including by conference and conciliation. 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. In addition, the Department must provide online education materials explaining the rights and responsibilities of employers and employees who have a health condition related to pregnancy or childbirth. Other provisions of law or legal protections relating to sex discrimination, disability discrimination, or pregnancy are not preempted, diminished, limited, or otherwise affected.

Healthy Pregnancy Advisory Committee.

The Healthy Pregnancy Advisory Committee (Committee) is established to develop a strategy for improving maternal and infant health outcomes. The Committee must conduct its activities in consultation with the Panel and an initiative related to improving maternal and infant outcomes that is established by the largest association representing Washington hospitals. The DOH must administer the Committee within existing resources. The Secretary of the DOH must appoint up to 20 members to the Committee from various organizations, including pediatric primary care providers, public health experts, and representatives of low-income women, women of color, and immigrant communities. The Secretary must also designate a representative from the DOH and invite participation from the Health Care Authority, the Department of Social and Health Services, and the Department of Early Learning. The Committee must meet quarterly and the strategy the Committee develops must include elements to promote breastfeeding, incentivize the adoption of baby-friendly designation by hospitals, and reduce barriers to accessing prenatal care. The Committee must consider where there may be gaps in the availability of services that may benefit pregnant women and infants. The Committee must submit the strategy to the Legislature and the Governor's Council for the Healthiest Next Generation by October 15, 2018.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) Women should not have to make a choice between having a healthy pregnancy and continuing to work. There is some gray area in this field about what is required, and this bill will provide more certainty. Women who have normal pregnancies but have issues such as fatigue and back pain are not covered under current law. Also left out of current law are the new mothers who want to continue providing breastmilk to their newborns. It is predicted that 75 percent of women in the workforce will become pregnant and require some minor accommodations such as more breaks. These accommodations are not unreasonable. Employees are afraid to ask for reasonable accommodations, but not doing so impacts their health and outcomes for their newborns. The definition of reasonable accommodation needs to be flexible and open because every pregnancy is different. The more support a person has through pregnancy, the lower the health risk and the better the outcomes.

(Opposed) This bill has a vague definition of "reasonable accommodations" and uses words that can be misunderstood. It will create confusion between employers and employees and result in more litigation. These requirements should apply to employers with more employees. Small businesses already have to comply with many regulations and this bill will impact small businesses, increasing their costs to do business.

(Other) The health impact review of this bill shows that there is strong evidence that accommodations will improve outcomes for women's pregnancies. Low-income women and women of color are more likely to be in working conditions that have risks.

Staff Summary of Public Testimony (Appropriations):

(In support) Nearly 10 percent of children are born premature and underweight in Washington, which is almost 10,000 children per year. These children can have life-long health consequences. House Bill 1796 is important because it allows pregnant women to take better care of themselves at work. The bill allows for more restroom breaks, which decreases infection; more food and water breaks, so women gain the appropriate weight for pregnancy; and any other accommodations medically necessary for pregnancy. The bill addresses public health and is an investment in children. The investment allows pregnant women to continue working and be healthy during pregnancy and ensures a healthy next generation.

(Opposed) None.

Persons Testifying (Labor & Workplace Standards): (In support) Representative Farrell, prime sponsor; Annie Iriye, American Congress of Obstetricians and Gynecologists; Katie Chamberlin, Washington Employment Lawyers Association; and Michelle Morse, Open Arms Perinatal Services.

(Opposed) Holli Johnson, Washington Food Industry Association; and Bob Battles, Association of Washington Business.

(Other) Christy Hoff, State Board of Health.

Persons Testifying (Appropriations): Melanie Smith, National Abortion and Reproductive Rights Action League Pro-Choice Washington.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.