

# HOUSE BILL REPORT

## SSB 5835

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### As Reported by House Committee On: Labor & Workplace Standards

**Title:** An act relating to promoting healthy outcomes for pregnant women and infants.

**Brief Description:** Promoting healthy outcomes for pregnant women and infants.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Baumgartner, Fain, Conway, Cleveland, Rivers, Kuderer, Braun, Rossi, Hasegawa, Hunt and Saldaña).

#### **Brief History:**

##### **Committee Activity:**

Labor & Workplace Standards: 3/14/17, 3/28/17 [DP].

#### **Brief Summary of 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.
- Requires certain health facilities to establish skin-to-skin contact and room-in policies for newborn infants.
- Creates the Healthy Pregnancy Advisory Committee to develop a strategy to improve health outcomes for mothers and infants.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 7 members: Representatives Sells, Chair; Gregerson, Vice Chair; Manweller, Ranking Minority Member; McCabe, Assistant Ranking Minority Member; Doglio, Frame and Pike.

**Staff:** Trudes Tango (786-7384).

#### **Background:**

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*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.*

## 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. The WLAD applies to employers who employ eight or more persons, and does not include any nonprofit religious or sectarian organization.

Based on court cases, pregnancy itself is not a disability. However, if a pregnancy-related medical condition results in the employee becoming temporarily disabled, the laws prohibiting disability discrimination 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 disability discrimination in employment apply to employers with 15 or more employees.

## State Medical Assistance Program.

The Health Care Authority (HCA) administers the Medicaid program, which is a state-federal program that provides health care for low-income state residents who meet certain eligibility criteria. "Apple Health" is the state's Medicaid program, and the HCA primarily administers the program through contracts with managed care organizations. Apple Health for Kids provides eligible children with health care that includes regularly scheduled health screenings to evaluate a child's growth, development, and general physical and mental health. The HCA, in collaboration with the Department of Health (DOH), the Department of Social and Health Services, local public health jurisdictions, children's health care providers, and a variety of other stakeholders must establish performance measures to track whether the overall health of enrolled children is improving. The DOH provides performance measure reports to the Governor and the Legislature every two years.

## Maternal Mortality Review Panel.

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

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## **Summary of Bill:**

### Reasonable Accommodations for Pregnancy and Pregnancy-Related Health Conditions.

Provisions are added to the chapter governing the Office of the Attorney General (AG). It is an unfair practice for an employer to:

- fail or refuse to make reasonable accommodation for an employee's pregnancy (which 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 (L&I) 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 L&I 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.

### State Medical Assistance Program.

Advanced registered nurse practitioners and certified nurse midwives are added to the list of providers the HCA must collaborate with to establish performance measures on children's health under the state Medicaid program.

Effective January 1, 2018, the HCA must require all health care facilities where newborn delivery services are provided to medical assistance clients to establish policies and procedures for:

- skin-to-skin placement of the newborn on the mother's chest immediately following birth; and
- room-in practices where a newborn and mother share the same room for the duration of their post-delivery stay.

The HCA must provide guidelines for hospitals to use when establishing their policies and procedures. The HCA must require managed care organizations to report on the frequency of adhering to their policies and the most common reasons for nonadherence. A summary of the information must be included in the biennial reports on performance measures.

### 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 Review 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 (Secretary) 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 HCA, the Department of Social and Health Services, and the Department of Early Learning. The Committee must meet quarterly and develop a strategy that includes promoting breastfeeding, incentivizing the adoption of "baby-friendly" designation by hospitals, and reducing barriers to accessing prenatal care.

The Committee must submit the strategy to the Legislature and the Governor's Council for the Healthiest Next Generation by October 15, 2018.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The bill contains both labor and health care perspectives and provides more flexibility in the workplace with a focus on healthy outcomes. Common sense accommodations in the workplace will go a long way towards improving the health of women and their babies. The bill will improve economic security of families. It places priority on the relationship between mother and child especially with skin-to-skin contact and shared room requirements.

(Opposed) None.

(Other) The construction industry is different from other employment and union signatories should be exempt.

**Persons Testifying:** (In support) Senator Keiser, prime sponsor; Pam Crone, Legal Voice; Amber Ulvenes, Midwives Association of Washington State; and Ryan Day, March of Dimes.

(Other) Larry Stevens, Mechanical Association Contractors of Western Washington and National Electrical Contractors Association.

**Persons Signed In To Testify But Not Testifying:** None.