

SENATE BILL REPORT

SB 5531

As of January 30, 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: Senators Baumgartner, Wilson, Rossi, Braun and Angel.

Brief History:

Committee Activity: Commerce, Labor & Sports: 1/30/17.

Brief Summary of Bill

- Requires employers to provide reasonable accommodation in employment for pregnancy-related or childbirth-related health conditions, unless the accommodation would impose an undue hardship on the employer's business.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Jarrett Sacks (786-7448)

Background: Washington State Law Against Discrimination (WLAD). Under the WLAD, a person has the right to be free from discrimination related to a protected status such as race, national origin, sex, veteran or military status, sexual orientation, and disability. An employer may not discriminate against a person because of one's protected status. The WLAD applies to employers that employ eight or more employees, but does not apply to any religious or sectarian organization not organized for private profit. WLAD is enforced by the Washington State Human Rights Commission.

Discrimination Based on Pregnancy. Under Washington law, pregnancy itself is not considered a disability. However, if a pregnancy-related medical condition results in an employee becoming temporarily disabled, the laws prohibiting discrimination because of a disability apply. Under the WLAD, an employer must provide reasonable accommodation to

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.

a disabled worker unless the employer can demonstrate that the accommodation would impose an undue hardship.

As it applies to sex discrimination, an employer may not refuse to hire, demote, or impose different conditions of employment on a person because they are pregnant. In general, if an employer provides reasonable accommodations to other employees that are impaired from doing their jobs, the employer would have to provide reasonable accommodation to a pregnant employee.

Other Laws Regarding Pregnancy and Childbirth. There are federal laws that prohibit sex discrimination and require that employees affected by pregnancy or pregnancy-related conditions 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 nursing for one year after the child's birth. Employers must provide a place, other than a bathroom, for this purpose. Employers with fewer than 50 employees are not subject to these requirements if compliance imposes an undue hardship.

Summary of Bill: Employers are required to provide reasonable accommodation to an employee for pregnancy-related or childbirth-related health conditions if requested with written certification from a licensed health care provider, unless the employer demonstrates the accommodation would impose an undue hardship on the employer's business. Employees are required to provide written notice to the employer that a health condition related to pregnancy or childbirth requires accommodation.

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 modification of examinations;
- temporary transfer to a less strenuous or hazardous position;
- limits on heavy lifting; and
- scheduling flexibility for prenatal visits.

An employer cannot require an employee to accept an accommodation, if the accommodation is unnecessary for the employee to perform the job.

In addition to providing reasonable accommodation for pregnant employees, employers are prohibited from:

- taking adverse action against an employee who requests or uses an accommodation;
- denying employment opportunities to an otherwise qualified employee if the denial is based on the employer's need to make reasonable accommodation; or
- requiring an employee to take leave if another reasonable accommodation can be provided.

An employer is a person engaged in an industry who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

The term employer does not include entities considered tax-exempt, non-profit organizations under federal law.

An employer does not have to provide reasonable accommodation for a pregnant employee if it can demonstrate the accommodation would impose an undue hardship on the employer's business. Undue hardship means an action requiring significant difficulty or expense.

An employer cannot claim undue hardship, or require an employee receive medical advice from a health care provider for the following accommodations:

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

The employer and employee must engage in an interactive process with respect to an employee's request for reasonable accommodation. The Department of Labor and Industries (L&I) must post information in a printable format explaining the rights and responsibilities of employers and employees with respect to pregnancy and reasonable child-birth accommodations.

The Attorney General is designated to investigate complaints and enforce the provisions. A person injured by any act in violation of these provisions has a civil cause of action to prevent further violations and to recover damages. Damages may include actual damages, costs of suit, reasonable attorneys' fees, and any other appropriate remedy authorized by state or federal law.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Pregnant workers are currently not protected by law unless they have a disability. This bill was the result of compromise last year and avoids many gray areas for businesses. This specificity of the bill provides proper limits for employers.

CON: The bill limits what counts as reasonable accommodation to an exclusive, non-flexible list. This is less beneficial to pregnant workers.

OTHER: This bill has costs for small businesses, but it is preferred to alternative bills.

Persons Testifying: PRO: Carolyn Logue, Washington Food Industry Association; Bob Battles, AWB.

CON: Katie Chamberlain, Washington Employment Lawyers Association.

OTHER: Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: PRO: Lenny Young, Department of Natural Resources.