
ENGROSSED SUBSTITUTE HOUSE BILL 1796

State of Washington

65th Legislature

2017 Regular Session

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

READ FIRST TIME 02/24/17.

1 AN ACT Relating to providing reasonable accommodations in the
2 workplace for pregnant women; adding a new section to chapter 43.10
3 RCW; adding a new section to chapter 43.70 RCW; creating new
4 sections; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the state has
7 an interest in assuring that children are given the opportunity to
8 have a healthy start in life. Because approximately half of all
9 births in Washington state are funded by state resources, the state
10 is in a unique position to make a difference in the health of
11 children in Washington. The legislature further finds that providing
12 children with a healthy start requires promoting healthy pregnancies.
13 In one national survey, pregnant workers said they needed more
14 frequent breaks while pregnant. Prenatal care is also critical for
15 positive birth outcomes, and pregnant women have cited the need for
16 flexibility in their work schedule for the purposes of attending
17 doctor visits. Reasonable accommodations for pregnant women in the
18 workplace can go a long way to promoting healthy pregnancies without
19 producing an undue hardship on employers.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.10
2 RCW to read as follows:

3 (1) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Employer" has the same meaning as and shall be interpreted
6 consistent with how that term is defined in RCW 49.60.040, except
7 that for the purposes of this section only the threshold of employees
8 must be fifteen or more.

9 (b) "Pregnancy" includes the employee's pregnancy and
10 pregnancyrelated health conditions.

11 (c) "Reasonable accommodation" means:

12 (i) Providing more frequent, longer, or flexible restroom breaks;

13 (ii) Modifying a no food or drink policy;

14 (iii) Job restructuring, part-time or modified work schedules,
15 reassignment to a vacant position, or acquiring or modifying
16 equipment, devices, or an employee's work station;

17 (iv) Providing seating or allowing the employee to sit more
18 frequently if her job requires her to stand;

19 (v) Providing for a temporary transfer to a less strenuous or
20 less hazardous position;

21 (vi) Providing assistance with manual labor and limits on
22 lifting;

23 (vii) Scheduling flexibility for prenatal visits; and

24 (viii) Any further pregnancy accommodation an employee may
25 request, and to which an employer must give reasonable consideration
26 in consultation with information provided on pregnancy accommodation
27 by the department of labor and industries or the attending health
28 care provider of the employee.

29 (d) "Undue hardship" means an action requiring significant
30 difficulty or expense. An employer may not claim undue hardship for
31 the accommodations under (c)(i), (ii), and (iv) of this subsection,
32 or for limits on lifting over seventeen pounds.

33 (2) It is an unfair practice for any employer to:

34 (a) Fail or refuse to make reasonable accommodation for an
35 employee for pregnancy, unless the employer can demonstrate that
36 doing so would impose an undue hardship on the employer's program,
37 enterprise, or business;

38 (b) Take adverse action against an employee who requests,
39 declines, or uses an accommodation under this section that affects
40 the terms, conditions, or privileges of employment;

1 (c) Deny employment opportunities to an otherwise qualified
2 employee if such denial is based on the employer's need to make
3 reasonable accommodation required by this section;

4 (d) Require an employee to take leave if another reasonable
5 accommodation can be provided for the employee's pregnancy.

6 (3) An employer may request that the employee provide written
7 certification from her treating health care professional regarding
8 the need for reasonable accommodation, except for accommodations
9 listed in subsection (1)(d) of this section.

10 (4)(a) This section does not require an employer to create
11 additional employment that the employer would not otherwise have
12 created, unless the employer does so or would do so for other classes
13 of employees who need accommodation.

14 (b) This section does not require an employer to discharge any
15 employee, transfer any employee with more seniority, or promote any
16 employee who is not qualified to perform the job, unless the employer
17 does so or would do so to accommodate other classes of employees who
18 need accommodation.

19 (5) The department of labor and industries must provide online
20 education materials explaining the respective rights and
21 responsibilities of employers and employees who have a health
22 condition related to pregnancy or childbirth. The online education
23 materials must be prominently displayed on the department's website.

24 (6) The attorney general shall investigate complaints and enforce
25 this section, including by conference and conciliation. In addition
26 to the complaint process with the attorney general, any person
27 believed to be injured by a violation of this section has a civil
28 cause of action in court to enjoin further violations, or to recover
29 the actual damages sustained by the person, or both, together with
30 the cost of suit and reasonable attorneys' fees or any other
31 appropriate remedy authorized by state or federal law.

32 (7) This section does not preempt, limit, diminish, or otherwise
33 affect any other provision of law relating to disability
34 discrimination, sex discrimination, or pregnancy, or in any way
35 diminish or limit legal protections or coverage for pregnancy,
36 childbirth, or a pregnancy-related health condition.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70
38 RCW to read as follows:

1 (1) The healthy pregnancy advisory committee is established to
2 develop a strategy for improving maternal and infant health outcomes.
3 The advisory committee shall conduct its activities in consultation
4 with the maternal mortality review panel established in RCW 70.54.450
5 and an initiative related to improving maternal and infant outcomes
6 that is established by the largest association representing hospitals
7 in Washington. Administration of the advisory committee by the
8 department must be done within existing resources.

9 (2) The secretary shall appoint up to twenty members to the
10 advisory committee including experts in maternal and child health,
11 pediatric primary care providers, public health experts, hospitals
12 that provide birthing services, health care providers involved in the
13 care of pregnant women and infants, and representatives of low-income
14 women, women of color, and immigrant communities. In addition, the
15 secretary shall designate a representative from the department of
16 health and invite participation from the health care authority, the
17 department of social and health services, and the department of early
18 learning. The secretary's designee shall serve as the chair of the
19 advisory committee and shall convene the work group.

20 (3) The advisory committee shall meet quarterly and develop a
21 strategy to promote maternal and child health outcomes. The strategy
22 shall consider best practices that agencies may integrate into their
23 programs to improve birth outcomes, reduce maternal mortality and
24 morbidity, and reduce infant mortality. The strategy shall include
25 elements to promote breastfeeding, incentivize the adoption of the
26 baby-friendly designation by hospitals, and reduce barriers to
27 accessing prenatal care. The advisory committee shall consider where
28 there may be gaps in the availability of services that may benefit
29 pregnant women and infants, such as coverage for lactation
30 consulting, the availability of smoking cessation programs for
31 persons who are codomiciled with the pregnant woman or infant, access
32 to fresh fruits and vegetables, and improved access to dental care
33 for pregnant women.

34 (4) The advisory committee shall submit the strategy to the
35 legislature and the governor's council for the healthiest next
36 generation by October 15, 2018.

37 (5) This section expires July 1, 2019.

38 NEW SECTION. **Sec. 4.** If specific funding for the purposes of
39 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 2017, in the omnibus appropriations act, this
2 act is null and void.

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