

# SENATE BILL REPORT

## SB 5299

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As of January 30, 2017

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

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

**Sponsors:** Senators Keiser, Darneille, Chase, Hasegawa and Conway.

**Brief History:**

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

**Brief Summary of Bill**

- Requires employers to provide reasonable accommodation in employment for pregnancy unless the accommodation would impose an undue hardship on the employer's business.
- Requires certain health care 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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### 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.

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

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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 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 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.

Apple Health for Kids. Apple Health for Kids provides health care coverage for children under the age of 19 whose family income is less than 250 percent of the federal poverty level. Under current law, the Health Care Authority (HCA), the Department of Health (DOH), the Department of Social and Health Services (DSHS), and other health care-related entities, are required to establish a set of performance measures that indicate whether children enrolled in Apple Health for Kids are receiving health care through established and effective medical homes, and whether the overall health of children is improving. DOH submits a report biennially on the performance measures.

**Summary of Bill:** Reasonable Accommodation for Pregnancy. It is an unfair practice for any employer to:

- fail or refuse to make reasonable accommodation for an employee for pregnancy, unless the employer can demonstrate that doing so would impose an undue hardship;
- 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 requesting reasonable accommodation for pregnancy to accept an accommodation that the employee chooses not to accept.

Reasonable accommodation means measures 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 the job requires standing;
- providing a temporary transfer to a less strenuous or hazardous position;
- providing assistance with manual labor; and

- modifying work schedules.

Employer has the same meaning as it does under the WLAD, which includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organizations that are not organized for private profit.

The Attorney General investigates complaints and enforces the reasonable accommodation requirements. In addition, a civil cause of action is created to enjoin further violations, recover actual damages, and recover reasonable attorneys' fees.

Health Care Authority. HCA must require health care facilities that provide newborn delivery services to medical assistance clients to establish policies and procedures to provide:

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

Managed care organizations must report to HCA on the frequency with which each facility they contract with is able to adhere to these policies and procedures. HCA and DOH must include this information in their biennial performance measures report to the Legislature.

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 is comprised of 20 members from DOH and the health industry, including medical experts, hospitals that provide birthing services, health care providers involved in the care of pregnant women, and representatives of low-income women, women of color, and immigrant communities. The members are appointed by the Secretary of Health.

The Committee must consider best practices that agencies may integrate into their programs to improve birth outcomes, reduce maternal mortality and morbidity, and reduce infant mortality. The Committee must submit its strategy to the Legislature and the Governor's Council for the Healthiest Next Generation by October 15, 2018.

**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 unprotected by current law unless they have a disability and state law does not currently protect breastfeeding. This leads to many pregnant workers being forced out of the workforce. The bill would improve the health and wellness of mothers and babies and improve health outcomes statewide. Skin-to-skin contact and room-in policies will improve health outcomes

since many hospitals do not have them. A flexible definition of what counts toward reasonable accommodation is best.

CON: The bill places additional mandates on employers and would increase costs for businesses. The language of the bill has too much gray area. The inclusion of breastfeeding extends the reasonable accommodation beyond the pregnancy itself, creating problems for employers.

OTHER: There is evidence that accommodation would reduce health outcome disparities and improve maternal and child health outcomes in the state. The bill includes all pregnancies, even though every pregnancy is different and some do not necessitate accommodation. The bill needs more specificity.

**Persons Testifying:** PRO: Senator Karen Keiser, Prime Sponsor; Leslie Emerick, ARNPs United of WA; Mary Drew, citizen; Tara Lawal, citizen; Dr. Kate McLean, citizen; Camie Goldhammer, Mom's Rising; Katie Chamberlain, Washington Employment Lawyers Association; Tinneca Fortin, Midwives Association of WA.

CON: Carolyn Logue, Washington Food Industry Association; Bob Battles, AWB; Gary Smith, Independent Business Association.

OTHER: Christy Hoff, State Board of Health; Patrick Connor, NFIB/Washington.

**Persons Signed In To Testify But Not Testifying:** No one.