6149-S.E AMH SHOR TANG 136

**ESSB 6149** - H AMD TO H AMD (6149-S.E. AMH FARR TANG 135) **929**

By Representative Short

**NOT ADOPTED 03/04/2016**

On page 1 of the striking amendment, strike all material after line 2 and insert the following:

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

(1) An employer must provide reasonable accommodations to an employee for a pregnancy-related or childbirth-related health condition if so requested, with written certification from a licensed health care provider, unless the employer demonstrates that the accommodation would impose an undue hardship on the operation of the employer's business. The employee must provide written notice to the employer stating that a health condition related to pregnancy or related to childbirth requires accommodation.

(2) Notwithstanding subsection (1) of this section, an employee who is pregnant or has a health condition related to pregnancy or childbirth shall not be required to obtain the advice of a licensed health care provider, nor may an employer claim undue hardship, for the following accommodations: (a) More frequent, longer, or flexible restroom, food, and water breaks; (b) seating; and (c) limits on lifting over twenty pounds.

(3) The employee and employer shall engage in an interactive process with respect to an employee's request for a reasonable accommodation. To assist in this process, the department shall post information in a printable format, such as a brochure, explaining the respective rights and responsibilities of the employer and the employee who has a health condition related to pregnancy or childbirth. Additionally, the department shall include information in the "Your Rights as a Worker" poster, or similar required workplace poster, regarding these respective rights and responsibilities.

(4) Notwithstanding any other provision of this section, an employer shall not be required to create a new or additional position in order to accommodate an employee pursuant to this section, and shall not be required to discharge any employee, transfer any other employee with greater seniority, or promote any employee.

(5) An employer shall not require an employee who has a pregnancy-related or childbirth-related health condition to accept an accommodation, if such accommodation is unnecessary to enable the employee to perform the job.

(6) An employer shall not:

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

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

(c) Require an employee to take leave if another reasonable accommodation can be provided for the employee's pregnancy-related or childbirth-related health condition.

(7) This section does not preempt, limit, diminish, or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way diminish or limit the coverage for pregnancy, childbirth, or a pregnancy-related health condition.

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

(a) "Department" means the department of labor and industries.

(b) "Director" means the director of labor and industries.

(c) "Employee" means an individual employed by an employer.

(d) "Employer" means a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, except that this section does not apply to an entity that is exempt from federal taxation under 26 U.S.C., Sec. 501(c).

(e) "Reasonable accommodation" means:

(i) Making existing facilities used by employees readily accessible to and usable by employees who have a pregnancy-related or childbirth-related disability;

(ii) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, or appropriate adjustment or modifications of examinations;

(iii) Temporary transfer to a less strenuous or hazardous position;

(iv) Limits on heavy lifting; and

(v) Scheduling flexibility for prenatal visits.

(f) "Undue hardship" means an action requiring significant difficulty or expense.

(9) The attorney general shall investigate complaints and enforce this section. In addition to the complaint process with the attorney general, any aggrieved person injured by any act in violation of this section has a civil cause of action in court to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law."

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|  | EFFECT:  Strikes the provisions of the striking amendment and replaces it with the provisions of the bill as it passed the Senate (restores the definitions of "employer," "reasonable accommodation," and "undue hardship"; uses the terms "pregnancy-related" and "child-birth related" health conditions, but not "pregnancy"; removes the requirement that the written certification describe the employee's specific needs, limitations, or conditions; removes language regarding subpoena power of the Attorney General; removes the language regarding laws on disability discrimination; and removes language regarding "within existing resources" in the provision requiring the Department of Labor and Industries to include information in workplace posters. |

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