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**HOUSE BILL 2404**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Kochmar, Stambaugh, Short, Caldier, Walsh, Van Werven, Pike, Wilson, Magendanz, Muri, Haler, and Moscoso

AN ACT Relating to providing reasonable accommodations in the workplace for pregnant women; and adding a new section to chapter 49.44 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 49.44 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 she so requests, with written certification from her 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 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 her 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 her 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) Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this section and the rules adopted under this section. If the investigation indicates that a violation may have occurred, a hearing must be held in accordance with chapter 34.05 RCW. The director must issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

(8) 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.

(9) 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 U.S.C. Title 26, section 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, appropriate adjustment or modifications of examinations;

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

(iv) Limits on heavy lifting.

(f) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:

(i) The nature and cost of the accommodation needed;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed by the employer; the effect on expenses and resources; or the impact otherwise of such accommodation upon the employer;

(iii) The overall financial resources of the employer; the overall size of the business, including the number of employees; and the number, type, and location of its facilities; and

(iv) The type of operation or operations of the employer, including the composition, structure, and functions of the workforce of such employer, the geographic separateness, and administrative or fiscal relationship of the facility or facilities in question to the employer.

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