

# HOUSE BILL REPORT

## HB 1796

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### As Reported by House Committee On: Labor & Workplace Standards

**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:** Representatives Farrell, Kilduff, Doglio, Robinson, Stanford, Hudgins, McBride, Macri, Ormsby, Frame, Slatter, Jinkins and Pollet.

#### **Brief History:**

##### **Committee Activity:**

Labor & Workplace Standards: 2/6/17, 2/13/17 [DP].

#### **Brief Summary of Bill**

- Provides that it is an unfair practice for an employer (that employs eight or more employees) to refuse to make reasonable accommodations for an employee's pregnancy and pregnancy-related health conditions, including the need to express breast milk.
- Allows an employer to request a written certification from a health care professional regarding the need for reasonable accommodation.
- Requires the Attorney General to investigate complaints, and provides a civil cause of action.
- Defines "reasonable accommodation."

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; McCabe, Assistant Ranking Minority Member; Pike.

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*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.*

**Staff:** Trudes Tango (786-7384).

**Background:**

Washington State Law Against Discrimination (WLAD).

Under the WLAD, the right to be free from discrimination because of certain protected status (such as race, national origin, sex, veteran or military status, sexual orientation, and disability) is considered a civil right. This includes the right to be free from discrimination in employment. It is an unfair practice for an employer to refuse to hire or to fire a person, or discriminate against a person in pay or conditions of employment, because of the person's protected status. Provisions in the WLAD apply to employers who employ eight or more persons, and does not include any nonprofit religious or sectarian organization. The Human Rights Commission (HRC) enforces the WLAD. An aggrieved person has administrative remedies, by filing a complaint with the HRC, or may file a private cause of action in court.

Discrimination Based on Pregnancy.

Depending on the circumstances, an employee who believes she has been discriminated against because of her pregnancy may be able to establish a claim of disability discrimination or sex discrimination.

Based on a Washington Supreme Court case, pregnancy itself is not considered a disability. However, if a pregnancy-related medical condition results in the employee becoming temporarily disabled, the laws prohibiting discrimination based on disability might apply. Under the WLAD, an employer must provide reasonable accommodation to a disabled worker unless the employer can show that the accommodation would impose an undue hardship. Reasonable accommodation is defined by rules and means measures that:

- enable equal opportunity in the application process;
- enable the proper performance of the job held or desired; and
- enable the enjoyment of equal benefits, privileges, or terms and conditions of employment.

An accommodation will be considered an undue hardship if the cost or difficulty is unreasonable in view of:

- the size of and resources available to the employer;
- whether the cost can be included in planned remodeling or maintenance; and
- the requirements of other laws and contracts, and other appropriate considerations.

The federal laws prohibiting an employer from discriminating based on disability also allows for an undue hardship exception. The federal laws apply to employers with 15 or more employees.

Regarding sex discrimination, an employer generally may not treat male employees differently than female employees. An employer may not demote, fire, or refuse to hire a woman, or impose different terms and conditions of employment on a woman because of pregnancy or childbirth. Depending on the circumstances, if an employer provides

reasonable accommodations to a male employee who is impaired, the employer may have to provide reasonable accommodations to a female employee who is impaired due to pregnancy.

#### Other Laws Related to Pregnancy and Childbirth.

The federal laws prohibiting sex discrimination provides that female employees affected by pregnancy, childbirth, or related medical 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 her nursing child for one year after the child's birth. Employers must provide a place, other than a bathroom, that is protected from view and free from intrusion. Employers with fewer than 50 employees are not subject to these requirements if compliance would impose an undue hardship.

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#### **Summary of Bill:**

Provisions are added to the WLAD regarding reasonable accommodation for pregnancy. It is an unfair practice for an employer to:

- fail or refuse to make reasonable accommodation for an employee's pregnancy (that term includes pregnancy-related health conditions, including the need to express breast milk), unless it would impose an undue hardship on the employer's program, enterprise, or business;
- 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 to accept an accommodation that the employee chooses not to accept.

An employer may request that the employee provide written certification from her treating health care professional regarding the need for reasonable accommodation.

"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 her job requires her to stand;
- providing for a temporary transfer to a less strenuous or less hazardous position;
- providing assistance with manual labor; and
- modifying work schedules.

An employer is not required to:

- create additional employment that the employer would not otherwise have created, unless the employer would do so for other classes of employees who need accommodation; or
- discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified, unless the employer would do so to accommodate other classes of employees who need accommodation.

The Attorney General (AG) must investigate complaints and enforce the provisions. An employee may file a complaint with the AG or bring a civil cause of action in court to enjoin further violations and recover actual damages, costs, and reasonable attorneys' fees or any other appropriate remedy.

Other provisions of law or legal protections relating to sex discrimination or pregnancy are not preempted, diminished, limited, or otherwise affected.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Women should not have to make a choice between having a healthy pregnancy and continuing to work. There is some gray area in this field about what is required, and this bill will provide more certainty. Women who have normal pregnancies but have issues such as fatigue and back pain are not covered under current law. Also left out of current law are the new mothers who want to continue providing breastmilk to their newborns. It is predicted that 75 percent of women in the workforce will become pregnant and require some minor accommodations such as more breaks. These accommodations are not unreasonable. Employees are afraid to ask for reasonable accommodations, but not doing so impacts their health and outcomes for their newborns. The definition of reasonable accommodation needs to be flexible and open because every pregnancy is different. The more support a person has through pregnancy, the lower the health risk and the better the outcomes.

(Opposed) This bill has a vague definition of "reasonable accommodations" and uses words that can be misunderstood. It will create confusion between employers and employees and result in more litigation. These requirements should apply to employers with more employees. Small businesses already have to comply with many regulations and this bill will impact small businesses, increasing their costs to do business.

(Other) The health impact review of this bill shows that there is strong evidence that accommodations will improve outcomes for women's pregnancies. Low-income women and women of color are more likely to be in working conditions that have risks.

**Persons Testifying:** (In support) Representative Farrell, prime sponsor; Annie Iriye, American Congress of Obstetricians and Gynecologists; Katie Chamberlin, Washington Employment Lawyers Association; and Michelle Morse, Open Arms Perinatal Services.

(Opposed) Holli Johnson, Washington Food Industry Association; and Bob Battles, Association of Washington Business.

(Other) Christy Hoff, State Board of Health.

**Persons Signed In To Testify But Not Testifying:** None.