

SENATE BILL REPORT

HB 2661

As of February 19, 2018

Title: An act relating to protecting survivors of domestic violence, sexual assault, and stalking from employment discrimination.

Brief Description: Protecting survivors of domestic assault from employment discrimination.

Sponsors: Representatives Doglio, Appleton, Orwall, Gregerson, Frame, Sells, Jinkins, Wylie, Macri, Tarleton, Hudgins, McBride, Pollet, Goodman, Santos and Stanford.

Brief History: Passed House: 2/07/18, 98-0.

Committee Activity: Labor & Commerce: 2/19/18.

Brief Summary of Bill

- Makes it unlawful for an employer to discriminate against an applicant or employee because the individual is an actual or perceived victim of domestic violence, sexual assault, or stalking.
- Makes it unlawful for an employer to refuse to make a reasonable safety accommodation requested by a victim of domestic violence, sexual assault, or stalking unless the accommodation would impose an undue hardship.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Richard Rodger (786-7461)

Background: Under the Domestic Violence Leave Act (DV Leave Act), all employees in the state have the right to take reasonable leave from work, intermittent leave, or leave on a reduced leave schedule to obtain assistance with respect to domestic violence, sexual assault, or stalking. Leave may be taken to: address legal or law enforcement needs; seek treatment for physical or mental injuries; obtain mental health counseling; obtain services from a shelter, center or other social services program; or participate in safety planning, relocate, or take other actions to increase safety. Family members of a victim may also take reasonable leave.

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.

An employer may require verification that the employee or family member is a victim and that the leave was taken for a permitted purpose. A police report, a protection order, documentation from a victims' advocate or an employee's written statement satisfy the verification requirements. An aggrieved employee may file a complaint with the Department of Labor and Industries (L&I), who must investigate. The director of L&I may impose a fine of up to \$500 for the first infraction and up to \$1,000 for a subsequent infraction within three years of a previous infraction. An employee also has a civil cause of action to enjoin violations and to recover actual damages, costs, and reasonable attorneys' fees. Retaliation for exercising rights is also prohibited.

Leave under the DV Leave Act may be paid or unpaid. Under Initiative 1433, employees are entitled to paid sick leave of one hour for every 40 hours worked. This paid leave may be used for the purposes specified in the DV Leave Act.

"Domestic violence" means physical harm or fear of harm between family and household members. "Sexual assault" means rape and specified acts, and "stalking" means harassing or repeatedly following another person when the person being harassed or followed is placed in fear.

The Washington Law Against Discrimination (WLAD) prohibits employment discrimination based on sex, sexual orientation, and disability, among other prohibited discrimination. Some actions by an employer related to domestic violence, sexual assault, or stalking may constitute discrimination under the WLAD.

Summary of Bill: Legislative intent is stated that it is in the public interest to ensure that victims of domestic violence, sexual assault, or stalking (victims) are able to seek and maintain employment without fear of discrimination and to have reasonable safety accommodations in the workplace.

An employer may not:

- refuse to hire an otherwise qualified individual because the individual is an actual or perceived victim;
- discharge or in any manner discriminate or retaliate against an individual with respect to any terms, conditions, or privileges of employment because the individual is a victim or perceived victim; or
- refuse to make a reasonable safety accommodation requested by a victim, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's business operation.

An accommodation may include a transfer, reassignment, modified schedule, changed work telephone number or email address, changed work station, installed lock, implemented safety procedure, or any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault, or stalking. An "undue hardship" is an action requiring significant difficulty or expense.

An employer may require verification that a requested safety accommodation is for the purpose of protecting the employee from domestic violence, sexual assault, or stalking.

The administrative remedies for employees for DV Leave Act violations apply to the discrimination and safety accommodation provisions and an employee and an applicant have a private right of action. The prohibition against retaliation for exercising rights applies to the discrimination and safety accommodation provisions.

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: Washington State is a leader in providing survivors of domestic violence with tools to protect the survivors, including allowing leave and safe time off from work. However, there is a gap in the law that does not protect victims from being fired or discriminated against by their employers. This bill will correct that situation and will increase the employees' safety and help prevent economic abuse by their abusive partners. It is well documented that some abusive partners will try to sabotage a victim's employment situation in order to maintain economic control over them and thereby preventing the victim from leaving. Ironically a person who requests leave to deal with an abusive situation is protected from discrimination under current law, but an employee who stays at work does not have these protections. Six other states have enacted these protections, including the State of Oregon, ten years ago.

OTHER: We are concerned that the language in the bill would prevent an employer from taking actions to protect other employees and customers. While the bill requires an employer to make reasonable safety accommodations for a employee who is a victim, the employer's undue hardship exception contained in the bill does not seem to encompass the protection of others. We would be happy to work on language to clarify the language.

Persons Testifying: PRO: Representative Beth Doglio, Prime Sponsor; Tamaso Johnson, Washington State Coalition Against Domestic Violence; David Ward, Legal Voice.

OTHER: Tammie Hetrick, Washington Retail Association.

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