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HOUSE BILL 2661

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State of Washington

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

Read first time 01/11/18. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to protecting survivors of domestic violence,  
2 sexual assault, and stalking from employment discrimination; amending  
3 RCW 49.76.010, 49.76.040, 49.76.060, 49.76.100, and 49.76.120; and  
4 adding a new section to chapter 49.76 RCW.

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

6 **Sec. 1.** RCW 49.76.010 and 2008 c 286 s 1 are each amended to  
7 read as follows:

8 (1) It is in the public interest to reduce domestic violence,  
9 sexual assault, and stalking by enabling victims to maintain the  
10 financial independence necessary to leave abusive situations, achieve  
11 safety, and minimize physical and emotional injuries, and to reduce  
12 the devastating economic consequences of domestic violence, sexual  
13 assault, and stalking to employers and employees. Victims of domestic  
14 violence, sexual assault, and stalking should be able to recover from  
15 and cope with the effects of such violence and participate in  
16 criminal and civil justice processes without fear of adverse economic  
17 consequences. Victims of domestic violence, sexual assault, or  
18 stalking should also be able to seek and maintain employment without  
19 fear that they will face discrimination.

20 (2) One of the best predictors of whether a victim of domestic  
21 violence, sexual assault, or stalking will be able to stay away from

1 an abuser is his or her degree of economic independence. However,  
2 domestic violence, sexual assault, and stalking often negatively  
3 impact victims' ability to maintain employment.

4 (3) An employee who is a victim of domestic violence, sexual  
5 assault, or stalking, or an employee whose family member is a victim,  
6 must often take leave from work due to injuries, court proceedings,  
7 or safety concerns requiring legal protection.

8 (4) Thus, it is in the public interest to provide reasonable  
9 leave from employment for employees who are victims of domestic  
10 violence, sexual assault, or stalking, or for employees whose family  
11 members are victims, to participate in legal proceedings, receive  
12 medical treatment, or obtain other necessary services.

13 (5) It is also in the public interest to ensure that victims of  
14 domestic violence, sexual assault, or stalking are able to seek and  
15 maintain employment without fear of discrimination and to have  
16 reasonable safety accommodations in the workplace.

17 NEW SECTION. Sec. 2. A new section is added to chapter 49.76  
18 RCW to read as follows:

19 An employer may not:

20 (1) Refuse to hire an otherwise qualified individual because the  
21 individual is an actual or perceived victim of domestic violence,  
22 sexual assault, or stalking;

23 (2) Discharge, threaten to discharge, demote, suspend or in any  
24 manner discriminate or retaliate against an individual with regard to  
25 promotion, compensation, or other terms, conditions, or privileges of  
26 employment because the individual is an actual or perceived victim of  
27 domestic violence, sexual assault, or stalking;

28 (3) Refuse to make a reasonable safety accommodation requested by  
29 an individual who is a victim of domestic violence, sexual assault,  
30 or stalking, unless the employer can demonstrate that the  
31 accommodation would impose an undue hardship on the operation of the  
32 business of the employer. For the purposes of this section, an "undue  
33 hardship" means an action requiring significant difficulty or  
34 expense. A reasonable safety accommodation may include, but is not  
35 limited to, a transfer, reassignment, modified schedule, changed work  
36 telephone number, changed work email address, changed workstation,  
37 installed lock, implemented safety procedure, or any other adjustment  
38 to a job structure, workplace facility, or work requirement in

1 response to actual or threatened domestic violence, sexual assault,  
2 or stalking.

3 **Sec. 3.** RCW 49.76.040 and 2008 c 286 s 4 are each amended to  
4 read as follows:

5 (1) As a condition of taking leave for any purpose described in  
6 RCW 49.76.030, an employee shall give an employer advance notice of  
7 the employee's intention to take leave. The timing of the notice  
8 shall be consistent with the employer's stated policy for requesting  
9 such leave, if the employer has such a policy. When advance notice  
10 cannot be given because of an emergency or unforeseen circumstances  
11 due to domestic violence, sexual assault, or stalking, the employee  
12 or his or her designee must give notice to the employer no later than  
13 the end of the first day that the employee takes such leave.

14 (2) When an employee requests leave under RCW 49.76.030 or  
15 requests a reasonable safety accommodation under section 2 of this  
16 act the employer may require that the request be supported by  
17 verification that:

18 (a) The employee or employee's family member is a victim of  
19 domestic violence, sexual assault, or stalking; and

20 (b) The leave taken was for one of the purposes described in RCW  
21 49.76.030 or that the safety accommodation requested under section 2  
22 of this act is for the purpose of protecting the employee from  
23 domestic violence, sexual assault, or stalking.

24 (3) If an employer requires verification, verification must be  
25 provided in a timely manner. In the event that advance notice of the  
26 leave cannot be given because of an emergency or unforeseen  
27 circumstances due to domestic violence, sexual assault, or stalking,  
28 and the employer requires verification, verification must be provided  
29 to the employer within a reasonable time period during or after the  
30 leave.

31 (4) An employee may satisfy the verification requirement of this  
32 section by providing the employer with one or more of the following:

33 (a) A police report indicating that the employee or employee's  
34 family member was a victim of domestic violence, sexual assault, or  
35 stalking;

36 (b) A court order protecting or separating the employee or  
37 employee's family member from the perpetrator of the act of domestic  
38 violence, sexual assault, or stalking, or other evidence from the  
39 court or the prosecuting attorney that the employee or employee's

1 family member appeared, or is scheduled to appear, in court in  
2 connection with an incident of domestic violence, sexual assault, or  
3 stalking;

4 (c) Documentation that the employee or the employee's family  
5 member is a victim of domestic violence, sexual assault, or stalking,  
6 from any of the following persons from whom the employee or  
7 employee's family member sought assistance in addressing the domestic  
8 violence, sexual assault, or stalking: An advocate for victims of  
9 domestic violence, sexual assault, or stalking; an attorney; a member  
10 of the clergy; or a medical or other professional. The provision of  
11 documentation under this section does not waive or diminish the  
12 confidential or privileged nature of communications between a victim  
13 of domestic violence, sexual assault, or stalking with one or more of  
14 the individuals named in this subsection (4)(c) pursuant to RCW  
15 5.60.060, 70.123.075, 70.123.076, or 70.125.065; or

16 (d) An employee's written statement that the employee or the  
17 employee's family member is a victim of domestic violence, sexual  
18 assault, or stalking and that the leave taken was for one of the  
19 purposes described in RCW 49.76.030 or the safety accommodation  
20 requested pursuant to section 2 of this act is to protect the  
21 employee from domestic violence, sexual assault, or stalking.

22 (5) If the victim of domestic violence, sexual assault, or  
23 stalking is the employee's family member, verification of the  
24 familial relationship between the employee and the victim may  
25 include, but is not limited to, a statement from the employee, a  
26 birth certificate, a court document, or other similar documentation.

27 (6) An employee who is absent from work pursuant to RCW 49.76.030  
28 may elect to use the employee's sick leave and other paid time off,  
29 compensatory time, or unpaid leave time.

30 (7) An employee is required to provide only the information  
31 enumerated in subsection (2) of this section to establish that the  
32 employee's leave is protected under this chapter or to establish that  
33 the employee's request for a safety accommodation is protected under  
34 this chapter. An employee is not required to produce or discuss any  
35 information with the employer that is beyond the scope of subsection  
36 (2) of this section, or that would compromise the employee's safety  
37 or the safety of the employee's family member in any way, and an  
38 employer is prohibited from requiring any such disclosure.

39 (8)(a) Except as provided in (b) of this subsection, an employer  
40 shall maintain the confidentiality of all information provided by the

1 employee under this section, including the fact that the employee or  
2 employee's family member is a victim of domestic violence, sexual  
3 assault, or stalking, that the employee has requested or obtained  
4 leave under this chapter, and any written or oral statement,  
5 documentation, record, or corroborating evidence provided by the  
6 employee.

7 (b) Information given by an employee may be disclosed by an  
8 employer only if:

9 (i) Requested or consented to by the employee;

10 (ii) Ordered by a court or administrative agency; or

11 (iii) Otherwise required by applicable federal or state law.

12 **Sec. 4.** RCW 49.76.060 and 2008 c 286 s 6 are each amended to  
13 read as follows:

14 (1) The rights provided in this chapter (~~((286, Laws of 2008))~~) are  
15 in addition to any other rights provided by state and federal law.

16 (2) Nothing in this chapter shall be construed to discourage  
17 employers from adopting policies that provide greater leave rights or  
18 greater safety accommodations to employees who are victims of  
19 domestic violence, sexual assault, or stalking than those required by  
20 this chapter (~~((286, Laws of 2008))~~).

21 (3) Nothing in this chapter (~~((286, Laws of 2008))~~) shall be  
22 construed to diminish an employer's obligation to comply with any  
23 collective bargaining agreement, or any employment benefit program or  
24 plan, that provides greater leave rights or greater safety  
25 accommodations to employees than the rights provided by this chapter  
26 (~~((286, Laws of 2008))~~).

27 **Sec. 5.** RCW 49.76.100 and 2008 c 286 s 12 are each amended to  
28 read as follows:

29 (1) Any employee or applicant for employment deeming herself or  
30 himself injured by any act in violation of this chapter shall have a  
31 civil action in a court of competent jurisdiction to enjoin further  
32 violations, or to recover the actual damages sustained by the person,  
33 or both, together with the cost of suit including reasonable  
34 attorneys' fees.

35 (2) The remedy provided by this section is in addition to any  
36 common law remedy or other remedy that may be available to an  
37 employee.

1           (3) An employee is not required to exhaust administrative  
2 remedies before filing a civil action to enforce this chapter.

3           **Sec. 6.** RCW 49.76.120 and 2008 c 286 s 11 are each amended to  
4 read as follows:

5           No employer may discharge, threaten to discharge, demote, deny a  
6 promotion to, sanction, discipline, retaliate against, harass, or  
7 otherwise discriminate against an employee with respect to  
8 compensation, terms, conditions, or privileges of employment because  
9 the employee:

10           (1) Exercised rights under RCW 49.76.030 or section 2 of this  
11 act;

12           (2) Filed or communicated to the employer an intent to file a  
13 complaint under RCW 49.76.070 or 49.76.100; or

14           (3) Participated or assisted, as a witness or otherwise, in  
15 another employee's attempt to exercise rights under RCW 49.76.030,  
16 section 2 of this act, 49.76.070, or 49.76.100.

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