

SENATE BILL REPORT

EHB 2266

As Passed Senate - Amended, February 27, 2024

Title: An act relating to addressing sanitary conditions for construction workers who menstruate or express milk.

Brief Description: Concerning sanitary conditions for construction workers who menstruate or express milk.

Sponsors: Representatives Stonier, Berry, Leavitt, Davis, Alvarado, Ramel, Peterson, Doglio, Ormsby, Fosse, Morgan, Simmons and Macri.

Brief History: Passed House: 2/9/24, 84-13.

Committee Activity: Labor & Commerce: 2/19/24 [DP, w/oRec].

Floor Activity: Passed Senate - Amended: 2/27/24, 49-0.

Brief Summary of Bill (As Amended by Senate)

- Requires the Department of Labor and Industries to adopt rules to address safety and health issues for workers performing construction activities who menstruate or express milk, or both.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Hansen and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, MacEwen and Schoesler.

Staff: Susan Jones (786-7404)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Bathroom Facilities. The Washington Industrial Safety and Health Act (WISHA) requires employers to provide safe workplaces for their employees. The Department of Labor and Industries (L&I) administers the WISHA and has adopted general core safety rules applicable to all employers and specific rules applicable to particular industries, such as the construction industry.

All employers covered by the WISHA are required to provide employees an appropriate number of toilets for each gender, based on the number of male and female employees at the workplace.

The rules specific to the construction industry require employers to provide clean, tepid wash water at all construction sites. The bathrooms must be maintained in clean, sanitary, and functional condition with internal locks for privacy. The rules establish the minimum number of toilets required depending on the number of employees at the site. For example, for one to ten employees, at least one toilet is required. For 11 to 25 employees, at least two toilets are required. Where there are 20 or more employees of both sexes, the employer must provide facilities for each sex.

Reasonable Accommodations. It is an unfair practice for an employer with 15 or more employees to fail to make reasonable accommodations for an employee's pregnancy or pregnancy-related health conditions, including the need to express breast milk, unless the employer can demonstrate that doing so would impose an undue hardship on the employer's program, enterprise, or business.

Reasonable accommodation means:

- providing more frequent, longer, or flexible restroom breaks;
- modifying a no food or drink policy;
- job restructuring, modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;
- providing seating or allowing the employee to sit more frequently;
- providing for a temporary transfer to a less strenuous or less hazardous position;
- providing assistance with manual labor and limits on lifting;
- scheduling flexibility for prenatal visits;
- providing reasonable break time for an employee to express breast milk for two years after the child's birth, and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite. If the business location does not have such a space, the employer must work with the employee to identify a convenient location and work schedule to accommodate their needs; and
- any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration.

Undue hardship means an action requiring significant difficulty or expense. However, an employer may not claim undue hardship for accommodations on providing more restroom breaks, modifying a no food or drink policy, providing seating or allowing the employee to

sit more often if the employee's job requires standing, or for providing limits on lifting over 17 pounds.

The Attorney General's Office has jurisdiction to investigate complaints and enforce these provisions. A person may also file a civil cause of action. These provisions do not preempt or limit any other provision relating to pregnancy or diminish or limit legal protections for pregnancy or pregnancy-related health conditions.

Summary of Amended Bill: L&I must adopt rules to address safety and health issues specific to workers performing construction activities who menstruate or express milk, or both. The rules must be included in the rules governing construction safety standards and must be applicable only to employers in the construction industry.

The rules must require construction industry employers to provide workers, performing construction activities and who menstruate, with:

- a minimum size bathroom, accessible on the jobsite, that is equivalent to a standard sized portable chemical toilet, or access to a permanent structure with a bathroom. The bathroom must have an internal latch to be secured from inadvertent entry;
- adequate time to accommodate for multiple layers of clothing while using the bathroom; and
- an adequate and convenient supply of menstrual hygiene products available at no cost to the workers. Menstrual hygiene products must either be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate, or provided in kits.

The rules adopted must require construction industry employers to provide reasonable accommodations for workers performing construction activities to express milk. L&I must identify minimum reasonable accommodations, including alternatives for worksites with varying numbers of employees. Reasonable accommodations means providing:

- flexible work scheduling, including scheduling breaks and permitting work patterns for time for the expression of milk;
- a location, other than a bathroom, that is convenient and sanitary for the worker to express milk, which must be private, free from intrusion, and lockable, if possible;
- convenient hygienic refrigeration on the worksite for the milk storage; and
- a convenient water source to clean and wash hands and milk expression equipment, which must be in a private location near the location where milk is expressed.

On multi-employer worksites, each employer is responsible for the facilities for their own workers.

Until 30 days after the adopted rule is filed with the Code Reviser, or July 1, 2025, whichever date is later, L&I may not impose any monetary penalties for violations. This does not prohibit L&I from receiving complaints, conducting inspections, issuing citations with no assessed penalty, and fixing reasonable time for abatement of the violation.

When the final rules are published by the Code Reviser in the State Register, L&I, in partnership with relevant labor organizations and the Office of Minority and Women's Business Enterprises, must conduct educational outreach to construction employers on the rights and responsibilities.

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: No public hearing was held.

Persons Testifying: No one.

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