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**ENGROSSED SUBSTITUTE HOUSE BILL 2307**

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

**By** House Labor & Workplace Standards (originally sponsored by Representatives Farrell, Senn, Riccelli, Appleton, Wylie, Robinson, Tarleton, Goodman, Ormsby, Tharinger, Gregerson, Pollet, Sullivan, Stanford, Jinkins, Kuderer, Ortiz-Self, S. Hunt, Blake, Lytton, Kilduff, Fitzgibbon, Kagi, Sells, Reykdal, Walkinshaw, Rossetti, Sawyer, Orwall, Peterson, Van De Wege, McBride, Kirby, Fey, Santos, Cody, Hudgins, Bergquist, Moscoso, and Frame)

AN ACT Relating to providing reasonable accommodations in the workplace for pregnant women; adding a new section to chapter 43.10 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) It is an unfair practice for any employer:

(a) To fail or refuse to make reasonable accommodation for an employee for pregnancy, childbirth, or a pregnancy-related health condition including, but not limited to, 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, subject to subsection (2) of this section;

(b) To take adverse action against an employee who requests or uses an accommodation under this section that affects the terms, conditions, or privileges of employment;

(c) To 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;

(d) To require an employee to take leave if another reasonable accommodation can be provided for the employee's pregnancy, childbirth, or pregnancy-related health condition, unless the employee declines to accept the accommodation offered in lieu of taking leave; or

(e) To require an employee who is pregnant, has a condition related to childbirth, or has a pregnancy-related health condition to accept an accommodation that the person chooses not to accept.

(2)(a) Except as provided in (b) of this subsection, an employer may request that the employee provide written certification from her treating health care professional regarding the need for reasonable accommodation if the need for reasonable accommodation is not apparent to a reasonable person.

(b) An employer may not require an employee to provide written certification, and the employer may not claim undue hardship, for the following accommodations:

(i) Longer, more frequent, or flexible restroom, food, or water breaks;

(ii) Seating;

(iii) Limits on lifting over twenty pounds; and

(iv) Flexible scheduling to accommodate for prenatal and postnatal health care visits.

(3) For the purposes of this section, "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. "Reasonable accommodation" includes, but is not limited to:

(a) Allowing for time off to recover from childbirth;

(b) Acquiring or modifying equipment or an employee's work station;

(c) Providing for a temporary transfer to a less strenuous or less hazardous position;

(d) Providing assistance with manual labor; and

(e) Modifying work schedules.

(4)(a) This section does not require an employer to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

(b) This section does not require an employer to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need accommodation.

(5) 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 a condition related to pregnancy, childbirth, or a pregnancy-related health condition.

(6) The attorney general shall investigate complaints and enforce this section. In addition to the complaint process with the attorney general, any person deeming himself or herself injured by any act in violation of this section shall have a civil cause of action in court to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law.

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