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**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; amending RCW 49.60.030 and 49.60.180; and adding a new section to chapter 49.60 RCW.

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

**Sec.**  RCW 49.60.030 and 2009 c 164 s 1 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; ((~~and~~))

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement; and

(h) The right to receive reasonable accommodation in employment for pregnancy, childbirth, or pregnancy-related health conditions.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction 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 this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

(1) In addition to the unfair practices under RCW 49.60.180, 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;

(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) 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) Providing more frequent, longer, or flexible restroom breaks;

(b) Modifying a no food or drink policy;

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

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

(e) Providing seating or allowing the employee to sit more frequently if her job requires her to stand;

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

(g) Providing assistance with manual labor; and

(h) Modifying work schedules.

(3)(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.

(4) 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.

**Sec.**  RCW 49.60.180 and 2007 c 187 s 9 are each amended to read as follows:

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.

(5) To violate any provision of section 2 of this act.

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