CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2266**

Chapter 111, Laws of 2020

66th Legislature

2020 Regular Session

EXPRESSION OF BREAST MILK--EMPLOYEE REASONABLE ACCOMMODATION--WRITTEN CERTIFICATION

EFFECTIVE DATE: June 11, 2020

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| Passed by the House February 12, 2020  Yeas 97 Nays 0  LAURIE JINKINS  **Speaker of the House of Representatives**  Passed by the Senate March 3, 2020  Yeas 48 Nays 0  CYRUS HABIB  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2266** as passed by the House of Representatives and the Senate on the dates hereon set forth.  BERNARD DEAN  Chief Clerk |
| Approved March 25, 2020 2:58 PM | March 26, 2020 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**HOUSE BILL 2266**

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Passed Legislature - 2020 Regular Session

**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Doglio, Dolan, Leavitt, Ryu, Tarleton, Appleton, Paul, Ormsby, Sells, Macri, Wylie, Senn, Cody, Kloba, Hudgins, and Pollet

AN ACT Relating to reasonable accommodation for the expression of breast milk without requiring written certification from a health care professional; and amending RCW 43.10.005.

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

**Sec.**  RCW 43.10.005 and 2019 c 134 s 1 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Employer" has the same meaning as and shall be interpreted consistent with how that term is defined in RCW 49.60.040, except that for the purposes of this section only the threshold of employees must be fifteen or more.

(b) "Pregnancy" includes the employee's pregnancy and pregnancy-related health conditions, including the need to express breast milk.

(c) "Reasonable accommodation" means:

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

(ii) Modifying a no food or drink policy;

(iii) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;

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

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

(vi) Providing assistance with manual labor and limits on lifting;

(vii) Scheduling flexibility for prenatal visits;

(viii) Providing reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has need to express the milk and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs; and

(ix) Any further pregnancy accommodation an employee may request, and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the attending health care provider of the employee.

(d) "Undue hardship" means an action requiring significant difficulty or expense. An employer may not claim undue hardship for the accommodations under (c)(i), (ii), and (iv) of this subsection, or for limits on lifting over seventeen pounds.

(2) It is an unfair practice for any employer to:

(a) Fail or refuse to make reasonable accommodation for an employee for pregnancy, unless the employer can demonstrate that doing so would impose an undue hardship on the employer's program, enterprise, or business;

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

(c) 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) Require an employee to take leave if another reasonable accommodation can be provided for the employee's pregnancy.

(3) An employer may request that the employee provide written certification from her treating health care professional regarding the need for reasonable accommodation, except for accommodations listed in subsection (1)(c)(viii) and (d) of this section.

(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) The department of labor and industries must provide online education materials explaining the respective rights and responsibilities of employers and employees who have a health condition related to pregnancy or childbirth. The online education materials must be prominently displayed on the department's web site.

(6) The attorney general shall investigate complaints and enforce this section, including by conference and conciliation. In addition to the complaint process with the attorney general, any person believed to be injured by a violation of this section has 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 and reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law.

(7) 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 legal protections or coverage for pregnancy, childbirth, or a pregnancy-related health condition.

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Passed by the House February 12, 2020.

Passed by the Senate March 3, 2020.

Approved by the Governor March 25, 2020.

Filed in Office of Secretary of State March 26, 2020.