

FINAL BILL REPORT

EHB 2266

C 258 L 24

Synopsis as Enacted

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.

House Committee on Labor & Workplace Standards

Senate Committee on Labor & Commerce

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 (Department) 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 1 to 10 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.

On multi-employer worksites, the prime contractor must ensure that the requirements are

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met. Each employer is responsible for seeing that facilities for their own employees are provided.

The bathroom provisions do not apply to mobile crews or to normally unattended work locations, as long as employees working at those locations have transportation immediately available, within the normal course of their duties, to nearby facilities.

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 the reasonable accommodation 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:

The Department must adopt rules to address safety and health issues specific to workers performing construction activities who menstruate or express milk. 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 employers in the construction industry to provide workers performing construction activities who menstruate:

- a minimum sized bathroom, accessible on the worksite, that is equivalent to a standard sized portable chemical toilet, or access to a permanent structure with a bathroom. The bathroom must be lockable;
- 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 worker. Products must be located in all gender-neutral bathrooms or bathrooms designated for workers who menstruate or provided in kits for such workers.

The rules must require employers in the construction industry to provide reasonable accommodation for workers performing construction activities to express milk. The Department must identify minimum reasonable accommodations that include alternatives for worksites of varying numbers of employees. Reasonable accommodations means providing:

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

On multi-employer worksites, each employer is responsible for ensuring that facilities for their own workers are provided.

The Department may not impose any monetary penalties for violations of these requirements until 30 days after the date the adopted rules are filed with the Code Reviser's Office (CRO) or July 1, 2025, whichever date is later. When the Department's final rules are published by the CRO, the Department, in partnership with labor organizations and the Office of Minority and Women's Business Enterprises, must conduct educational outreach to construction employers.

Votes on Final Passage:

House	84	13	
Senate	49	0	(Senate amended)
House	78	18	(House concurred)

Effective: June 6, 2024