

HOUSE BILL REPORT

EHB 2266

As Amended by the Senate

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:

Committee Activity:

Labor & Workplace Standards: 1/26/24, 1/30/24 [DP].

Floor Activity:

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

Senate Amended.

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

Brief Summary of Engrossed Bill

- Requires the Department of Labor and Industries to adopt rules that require employers in the construction industry to provide reasonable accommodations for employees who menstruate or express milk.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Do not pass. Signed by 1 member: Representative Schmidt, Ranking Minority Member.

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.

Minority Report: Without recommendation. Signed by 2 members: Representatives Rude and Ybarra.

Staff: Trudes Tango (786-7384).

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 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 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 Engrossed Bill:

The Department must adopt rules that require employers in the construction industry to provide reasonable accommodations for workers performing construction activities who menstruate or express milk.

Reasonable accommodation for workers who menstruate means providing:

- 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 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.

Reasonable accommodation for workers expressing milk 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 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.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- removes the term “reasonable accommodations” as a descriptor for the bathroom-related rules that must be adopted for workers performing construction activities and who menstruate;
- requires the Department of Labor and Industries to, when adopting rules for workers who express milk, identify minimum reasonable accommodations that include alternatives for worksites of varying numbers of employees; and
- provides that the location for expressing milk must be lockable “if possible,” rather than requiring the location be lockable.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is a need to diversify the construction industry, and this bill helps remove barriers for underrepresented workers. These accommodations are not too much to ask to help women and working mothers in the workforce. People do not always know when they will get their period, and having menstrual supplies on hand is helpful and not too much to ask for. These jobsites need to be more sanitary for pumping breast milk. Sometimes workers are forced to pump in their cars or in uncomfortable places. Construction is a male-dominated industry, and the inequity creates a domino effect. This is about basic

sanitary conditions. Accommodations have a positive impact on the physical and mental well being of women in the workforce.

(Opposed) The bill takes a uniform approach, which could lead to potential mismatches that will unnecessarily hurt some businesses. There are so many different types of job sites. Some sites do not have a power supply and would not be able to comply with the requirement to have a refrigerator. Existing rules are effective and provide flexibility for job sites and small employers. The accommodations in this bill are not about safety and health and should not be put under the WISHA rules. There is no reason to single out the construction industry. Employers already work with their employees and have conversations so they can come up with accommodations on a case-by-case basis. The bill singles out women and can create a deterrent for hiring women because of the additional expense.

Persons Testifying: (In support) Representative Monica Jurado Stonier, prime sponsor; Grace Yoo, Washington State Women's Commission; Bob Abbott, Laborers' International Union of North America; Tawny Sayers; Heather Kurtenbach and Aubrey Russell, Ironworkers Local 86; Tirhas Gebru, Bricklayers and Allied Craftworkers Local 1; Mallorie Davies, Washington and North Idaho District Council of Laborers; Andrea Ornelas; Mark Riker, Washington State Building and Construction Trades Council; April Sims, Washington State Labor Council; Nicole Grant, Jaye Jones, and Misty Wheeler, International Brotherhood of Electrical Workers Local 46; Nina Wurz; and Madison Stewart, Skanska Civil West.

(Opposed) America George, Safety Site Solutions; Carolyn Logue, Associated Builders and Contractors of Washington; Michele Willms, Associated General Contractors of Washington; Tammy Birkliid, Merit Construction; Tricia Gullion, Building Industry Association of Washington; and Daimon Doyle.

Persons Signed In To Testify But Not Testifying: Heather Winfrey and Cameron Bowers, Seattle Area Pipe Trades; Ashley Ruiz, McKinstry; and Stephanie Tiburcio.