

SENATE BILL REPORT

SB 5217

As Reported by Senate Committee On:
Labor & Commerce, January 31, 2025
Ways & Means, February 27, 2025

Title: An act relating to expanding pregnancy-related accommodations.

Brief Description: Expanding pregnancy-related accommodations.

Sponsors: Senators Nobles, Lovelett, Hasegawa, Liias, Riccelli, Saldaña, Salomon, Stanford, Trudeau and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/20/25, 1/31/25 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/20/25, 2/27/25 [DP2S, DNP, w/oRec].

Brief Summary of Second Substitute Bill

- Modifies the definition of employer for purposes of pregnancy and pregnancy-related accommodation.
- Requires an employer to pay an employee for break and travel time to express milk during work at the employee's regular compensation rate, in addition to meal and rest periods.
- Transfers investigative and enforcement authority for complaints of failure to provide pregnancy-related accommodations to the Department of Labor and Industries.
- Allows a person with an infant under 12 months old to request a delay or excusal from jury service if the person is unable to serve due to having an infant under 12 months old.

SENATE COMMITTEE ON LABOR & COMMERCE

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.

Majority Report: That Substitute Senate Bill No. 5217 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Saldaña, Chair; Conway, Vice Chair; Alvarado, Ramos and Stanford.

Minority Report: Do not pass.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators King, Ranking Member; Braun and MacEwen.

Staff: Marlon Llanes (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5217 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Stanford, Vice Chair, Operating; Trudeau, Vice Chair, Capital; Frame, Vice Chair, Finance; Cleveland, Conway, Dhingra, Hansen, Hasegawa, Kauffman, Pedersen, Riccelli, Saldaña, Wellman and Wilson, C..

Minority Report: Do not pass.

Signed by Senators Schoesler, Ranking Member, Capital; Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Gildon, Ranking Member, Operating; Torres, Assistant Ranking Member, Operating; Dozier, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall and Warnick.

Staff: Samuel Brown (786-7470)

Background: Reasonable Accommodation. It is an unfair practice for an employer to fail to make reasonable accommodation for an employee's pregnancy or pregnancy-related health conditions, including the need to express breast milk. This law applies to employers who employ 15 or more persons and excludes non-profit religious organizations.

An employee alleging an unfair practice may file a complaint with the Human Rights Commission, which must investigate and attempt to eliminate the unfair practice by conference, conciliation, and persuasion. An employee may also bring a civil cause of action in court to recover actual damages, costs, reasonable attorneys' fees, and any other appropriate remedy.

Reasonable accommodation includes 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 to express milk if the space is available at the place of business or

worksite. If there is no space, the employer must work with the employee to identify a convenient location and work schedule to accommodate the employee's needs.

Under the federal Fair Labor Standards Act (FLSA), most employees have the right to reasonable break time and a private place to pump breast milk for their nursing child for one year after the child's birth. The FLSA does not require that employees be compensated for break time needed to pump breast milk.

In 2024, the state of New York passed a law requiring employers to provide up to 30 minutes of paid lactation breaks to employees each time an employee has a reasonable need to express breast milk at work. Georgia, Illinois, and Minnesota have similar laws requiring paid lactation breaks for expressing milk.

Jury Service. A person may not be excused from jury service by the court unless there is an undue hardship, extreme inconvenience, public necessity, or a reason the court decides is acceptable. A person who is 80 years of age or older may request to be excused from jury service if the person attests that the person is unable to serve due to health reasons.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Second Substitute): Reasonable Accommodation. An employer is required to pay an employee for break time, and travel time if the business does not have a private location other than a bathroom, to express milk during work at the employee's regular compensation rate.

An employer may not require an employee to use paid leave during break or travel time to express milk. Any break time to express milk is in addition to meal and rest periods provided under current law.

Definitions. The definition of employer that applies to reasonable work accommodations for pregnancy, including the pay requirement for break and travel time to express milk, is expanded to include any employer who employs one or more persons and any religious or sectarian organization not organized for private profit.

The definition of reasonable accommodation is expanded to include scheduling flexibility for postpartum visits.

Enforcement Authority. Authority to investigate and enforce complaints for an employer's failure or refusal to make a reasonable work accommodation for pregnancy is transferred from the Office of the Attorney General to the Department of Labor and Industries (L&I). Civil penalties collected for failure to provide a reasonable work accommodation for pregnancy are deposited in the Supplemental Pension Fund. L&I must adopt rules to implement the act. L&I must contact employers who are the subject of complaints and work in good faith to reach an agreement about a reasonable accommodation before issuing

any administrative order. which may last for up to 90 days. A private cause of action to enforce laws requiring pregnancy-related accommodations is created.

Jury Duty. A person with an infant under 12 months old may request a delay or excusal from jury service if the person attests that the person is unable to serve due to having an infant under 12 months old.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Requires L&I to contact employers who are the subject of complaints and work in good faith to reach an agreement about a reasonable accommodation before issuing any administrative order, which may last for up to 90 days.
- Creates a private cause of action to enforce laws requiring pregnancy-related accommodations.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Provides that it is unfair practice for an employer to require an employee to use meal and rest periods provided under current law to express milk.
- Provides that it is unfair practice for an employer to require an employee to arrange coverage of their schedule, shift, or work duties when granted a reasonable accommodation.
- Clarifies that any break time to express milk is in addition to meal and rest periods provided under current law.
- Modifies the definition of reasonable accommodation to include scheduling flexibility for prenatal and postpartum visits, rather than only for prenatal visits.
- Authorizes L&I to adopt rules to implement and enforce this bill.
- Allows a person with an infant under 12 months old to request a delay or excusal from jury service if the person attests that the person is unable to serve due to having an infant under 12 months old, rather than allowing a person to request a delay or excusal due to breastfeeding.
- Provides an effective date of January 1, 2026, for the bill provisions related to pregnancy accommodations.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 18, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2027.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: This bill removes a financial burden that affects nursing mothers. Members of the public shared personal experiences relating to the difficulty of balancing a full-time job with the time and space required to pump. Currently, mothers must pump during a shift or work additional unpaid hours to avoid a pay cut. Members of the public shared personal experiences about the uncleanliness and lack of privacy in a court's lactation room. There are serious health risks if a mother is unable to pump in a timely manner.

OTHER: There are concerns about the feasibility of the bill's requirements for small employers with less than 15 employees. More time is needed before the bill is implemented to educate small employers and workers about the changes to the law. L&I should be considered as the enforcing agency of this bill instead of the attorney general.

Persons Testifying (Labor & Commerce): PRO: Senator T'wina Nobles, Prime Sponsor; Maggie Humphreys, MomsRising; Ellie Klein, PEPS; Haley Bannow, Teamsters 174; Brooke Iverson, Teamsters 174.

OTHER: Katie Beeson, Washington Food Industry Association (WFIA); Patrick Connor, NFIB; Rose Gundersen, WA Retail Association.

Persons Signed In To Testify But Not Testifying (Labor & Commerce):

CON: Loni Simone; Anthony Stockman.

Staff Summary of Public Testimony on Proposed Second Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This legislation modestly expands pregnancy and postpartum accommodations that passed in 2017 with bipartisan support. Given the fiscal environment, there's a necessity for shifting enforcement to L&I. There's a clear link between pregnancy accommodations and reduced workplace injuries and illness. L&I is a natural fit because they enforce other workplace regulations. This legislation is a win for working moms and families.

OTHER: We support the underlying intent of the bill and appreciate the expansion for lactating employees. All employers should be making these accommodations. Changing the enforcement mechanism will provide continuity for employers. We're still working to perfect the bill language and are excited to continue working on it. L&I stands ready to implement the bill.

Persons Testifying (Ways & Means): PRO: Maggie Humphreys, MomsRising.

OTHER: Katie Beeson, Washington Food Industry Association (WFIA); Tammy Fellin , Department of Labor & Industries.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.