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HOUSE BILL 2266

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State of Washington

66th Legislature

2020 Regular Session

By Representatives Doglio and Dolan

Prefiled 12/23/19.

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

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

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

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

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

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

15 (c) "Reasonable accommodation" means:

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

17 (ii) Modifying a no food or drink policy;

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

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

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

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

7 (vii) Scheduling flexibility for prenatal visits;

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

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

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

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

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

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

34 (c) Deny employment opportunities to an otherwise qualified  
35 employee if such denial is based on the employer's need to make  
36 reasonable accommodation required by this section;

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

39 (3) An employer may request that the employee provide written  
40 certification from her treating health care professional regarding

1 the need for reasonable accommodation, except for accommodations  
2 listed in subsection (1) (c) (viii) and (d) of this section.

3 (4) (a) This section does not require an employer to create  
4 additional employment that the employer would not otherwise have  
5 created, unless the employer does so or would do so for other classes  
6 of employees who need accommodation.

7 (b) This section does not require an employer to discharge any  
8 employee, transfer any employee with more seniority, or promote any  
9 employee who is not qualified to perform the job, unless the employer  
10 does so or would do so to accommodate other classes of employees who  
11 need accommodation.

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

17 (6) The attorney general shall investigate complaints and enforce  
18 this section, including by conference and conciliation. In addition  
19 to the complaint process with the attorney general, any person  
20 believed to be injured by a violation of this section has a civil  
21 cause of action in court to enjoin further violations, or to recover  
22 the actual damages sustained by the person, or both, together with  
23 the cost of suit and reasonable attorneys' fees or any other  
24 appropriate remedy authorized by state or federal law.

25 (7) This section does not preempt, limit, diminish, or otherwise  
26 affect any other provision of law relating to sex discrimination or  
27 pregnancy, or in any way diminish or limit legal protections or  
28 coverage for pregnancy, childbirth, or a pregnancy-related health  
29 condition.

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