
**Labor & Workplace Standards
Committee**

HB 2266

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 Summary of Bill

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

Hearing Date: 1/26/24

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.

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.

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 one 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 Bill:

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

Reasonable accommodation for workers who menstruate means providing:

- bathrooms designated specifically for workers who menstruate to be accessible on job sites. Bathroom stalls must be lockable. If there is more than one individual bathroom stall within a larger room, the larger room must be lockable;
- adequate space and time to accommodate for multiple layers of clothing while using the bathroom; and
- 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 instruction, and lockable;
- a convenient hygienic refrigerator 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.

Appropriation: None.

Fiscal Note: Requested on January 16, 2024.

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