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HOUSE BILL 2404

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Kochmar, Stambaugh, Short, Caldier, Walsh, Van Werven, and Pike

1 AN ACT Relating to providing reasonable accommodations in the  
2 workplace for pregnant women; and adding a new section to chapter  
3 49.44 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44  
6 RCW to read as follows:

7 (1) An employer must provide reasonable accommodations to an  
8 employee for a pregnancy-related or childbirth-related health  
9 condition if she so requests, with written certification from her  
10 licensed health care provider, unless the employer demonstrates that  
11 the accommodation would impose an undue hardship on the operation of  
12 the employer's business. The employee must provide written notice to  
13 the employer stating that a health condition related to pregnancy or  
14 childbirth requires accommodation.

15 (2) Notwithstanding subsection (1) of this section, an employee  
16 who is pregnant or has a health condition related to pregnancy or  
17 childbirth shall not be required to obtain the advice of her licensed  
18 health care provider, nor may an employer claim undue hardship, for  
19 the following accommodations: (a) More frequent, longer, or flexible  
20 restroom, food, and water breaks; (b) seating; and (c) limits on  
21 lifting over twenty pounds.

1 (3) The employee and employer shall engage in an interactive  
2 process with respect to an employee's request for a reasonable  
3 accommodation. To assist in this process, the department shall post  
4 information in a printable format, such as a brochure, explaining the  
5 respective rights and responsibilities of the employer and the  
6 employee who has a health condition related to pregnancy or  
7 childbirth. Additionally, the department shall include information in  
8 the "Your Rights as a Worker" poster, or similar required workplace  
9 poster, regarding these respective rights and responsibilities.

10 (4) Notwithstanding any other provision of this section, an  
11 employer shall not be required to create a new or additional position  
12 in order to accommodate an employee pursuant to this section, and  
13 shall not be required to discharge any employee, transfer any other  
14 employee with greater seniority, or promote any employee.

15 (5) An employer shall not require an employee who has a  
16 pregnancy-related or childbirth-related health condition to accept an  
17 accommodation, if such accommodation is unnecessary to enable the  
18 employee to perform her job.

19 (6) An employer shall not:

20 (a) Take adverse action against an employee who requests or uses  
21 an accommodation under this section that affects the terms,  
22 conditions, or privileges of employment;

23 (b) Deny employment opportunities to an otherwise qualified  
24 employee if such denial is based on the employer's need to make  
25 reasonable accommodation required by this section; or

26 (c) Require an employee to take leave if another reasonable  
27 accommodation can be provided for the employee's pregnancy-related or  
28 childbirth-related health condition.

29 (7) Upon complaint by an employee, the director shall investigate  
30 to determine if there has been compliance with this section and the  
31 rules adopted under this section. If the investigation indicates that  
32 a violation may have occurred, a hearing must be held in accordance  
33 with chapter 34.05 RCW. The director must issue a written  
34 determination including his or her findings after the hearing. A  
35 judicial appeal from the director's determination may be taken in  
36 accordance with chapter 34.05 RCW, with the prevailing party entitled  
37 to recover reasonable costs and attorneys' fees.

38 (8) This section does not preempt, limit, diminish, or otherwise  
39 affect any other provision of law relating to sex discrimination or

1 pregnancy, or in any way diminish or limit the coverage for  
2 pregnancy, childbirth, or a pregnancy-related health condition.

3 (9) The definitions in this subsection apply throughout this  
4 section unless the context clearly requires otherwise.

5 (a) "Department" means the department of labor and industries.

6 (b) "Director" means the director of labor and industries.

7 (c) "Employee" means an individual employed by an employer.

8 (d) "Employer" means a person engaged in an industry who has  
9 fifteen or more employees for each working day in each of twenty or  
10 more calendar weeks in the current or preceding calendar year, except  
11 that this section does not apply to an entity that is exempt from  
12 federal taxation under U.S.C. Title 26, section 501(c).

13 (e) "Reasonable accommodation" means:

14 (i) Making existing facilities used by employees readily  
15 accessible to and usable by employees who have a pregnancy-related or  
16 childbirth-related disability;

17 (ii) Job restructuring, part-time or modified work schedules,  
18 reassignment to a vacant position, acquisition or modification of  
19 equipment or devices, appropriate adjustment or modifications of  
20 examinations;

21 (iii) Temporary transfer to a less strenuous or hazardous  
22 position; and

23 (iv) Limits on heavy lifting.

24 (f) "Undue hardship" means an action requiring significant  
25 difficulty or expense, when considered in light of the following  
26 factors:

27 (i) The nature and cost of the accommodation needed;

28 (ii) The overall financial resources of the facility or  
29 facilities involved in the provision of the reasonable accommodation;  
30 the number of persons employed by the employer; the effect on  
31 expenses and resources; or the impact otherwise of such accommodation  
32 upon the employer;

33 (iii) The overall financial resources of the employer; the  
34 overall size of the business, including the number of employees; and  
35 the number, type, and location of its facilities; and

36 (iv) The type of operation or operations of the employer,  
37 including the composition, structure, and functions of the workforce  
38 of such employer, the geographic separateness, and administrative or

1 fiscal relationship of the facility or facilities in question to the  
2 employer.

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