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**SENATE BILL 5911**

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**State of Washington**                      **66th Legislature**                      **2019 Regular Session**

**By** Senators Randall, Hunt, Wilson, C., Nguyen, Palumbo, and Saldaña

Read first time 02/14/19. Referred to Committee on Labor & Commerce.

1            AN ACT Relating to providing reasonable accommodation for the  
2 expression of breast milk in the workplace; and amending RCW  
3 43.10.005.

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

5            **Sec. 1.** RCW 43.10.005 and 2017 c 294 s 3 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; (~~and~~)

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, which may be used by the employee to  
12 express breast milk; and

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

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

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

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

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

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

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

35 (3) An employer may request that the employee provide written  
36 certification from her treating health care professional regarding  
37 the need for reasonable accommodation, except for accommodations  
38 listed in subsection (1)(d) of this section.

39 (4)(a) This section does not require an employer to create  
40 additional employment that the employer would not otherwise have

1 created, unless the employer does so or would do so for other classes  
2 of employees who need accommodation.

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

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

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

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

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