



Legislative Council Staff
Research Note

Version: Final
Date: 10/20/2016

Bill Number

House Bill 16-1438

Sponsors

Representative Winter
Senator Martinez Humenik

Short Title

Employer Accommodations
Related To Pregnancy

Research Analyst

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Status

This research note reflects the final version of the bill which became effective on August 10, 2016.

Summary

This bill requires employers to provide reasonable accommodations to perform the essential functions of the job to an applicant for employment or an employee for health conditions related to pregnancy or childbirth. Reasonable accommodations may include, but are not limited to: providing more frequent or longer break periods; acquiring or modifying equipment; limiting lifting; assisting with manual labor; and modifying work schedules. A violation of the bill constitutes a discriminatory or unfair employment practice.

Employers are prohibited from:

- taking adverse action against an employee who requests or uses a reasonable accommodation;
- denying employment opportunities based on the need to make a reasonable accommodation;
- requiring an applicant or employee to accept an accommodation that is unnecessary for the applicant or employee to perform the essential functions of the job; and
- requiring an employee to take leave if the employer can provide another reasonable alternative accommodation.

The employer may require a note from a health care provider prior to providing a reasonable accommodation. Employers must provide new and existing employees with written notice of the right to be free from discriminatory or unfair employment practices related to pregnancy.

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Background

The Colorado Civil Rights Division in the Department of Regulatory Agencies is charged with enforcing the state's anti-discrimination laws in the areas of employment, housing, and public accommodations. Prohibited discriminatory practices in employment must be based on certain protected classes and include these adverse actions, among others: discharge, discipline, suspension, harassment, terms and conditions, failure to accommodate, and retaliation. Protected classes for employment discrimination include race, color, religion, creed, national origin, ancestry, sex, age, sexual orientation, and physical or mental disability. Legally, a charge of discrimination must be filed within six months of an adverse action in employment discrimination claims.

House Action

House Health, Insurance, and Environment Committee (April 21, 2016). At the hearing, representatives from 9 to 5 Colorado, Association of Women's Health, Obstetric, and Neonatal Nurses - Colorado Section, Colorado Plaintiff Employment Lawyers Association, Colorado Women's Bar Association, Department of Regulatory Agencies, and March of Dimes - Colorado Chapter testified in support of the bill. Representatives from the Colorado Association of Commerce and Industry and Sherman & Howard, LLC. testified in a neutral capacity on the bill.

House Health, Insurance, and Environment Committee (April 26, 2016). The committee adopted amendment L.003, and referred the bill, as amended, to the House Committee of the Whole. Amendment L.003:

- requires the employer to engage in good faith negotiations regarding reasonable accommodations with job applicants as well as employees, if an accommodation is requested by the applicant or employee;
- clarified the definition of "reasonable accommodations," as it relates to creating a new position with light duties;
- specified that the bill does not increase or decrease any employee's rights to paid or unpaid leave in connection with the employee's pregnancy; and
- prohibited a court from awarding punitive damages in a civil action if the defendant can demonstrate a good-faith effort to make reasonable accommodations.

House second reading (April 28, 2016). The House adopted the House Health, Insurance and Environment committee report. The House passed the bill on second reading, as amended.

House third reading (April 29, 2016). The House passed the bill on third reading with no amendments.

Senate Action

Senate Business, Labor, and Technology Committee (May 6, 2016). A representative from the Association of Women's Health, Obstetric, and Neonatal Nurses - Colorado Section testified in support of the bill, and two representatives from the Colorado Association of Commerce and Industry testified on the bill, but did not indicate their position on the bill. The committee referred the bill to the Senate Committee of the Whole with no amendments.

Senate second reading (May 6, 2016). The Senate passed the bill on second reading with no amendments.

Senate third reading (May 9, 2016). The House passed the bill on third reading with no amendments.