

CHAPTER 207

LABOR AND INDUSTRY

HOUSE BILL 16-1438

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also SENATOR(S) Martinez Humenik, Aguilar, Carroll, Donovan, Garcia, Guzman, Heath, Hodge, Johnston, Jones, Kefalas, Kerr, Merrifield, Newell, Roberts, Steadman, Todd, Ulibarri.

AN ACT**CONCERNING THE PROVISION OF REASONABLE ACCOMMODATIONS BY AN EMPLOYER FOR PERSONS WHO HAVE A CONDITION RELATED TO PREGNANCY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Current workplace laws are inadequate to protect pregnant women from being terminated from employment when they need a simple, reasonable accommodation in order to stay employed;

(b) Many pregnant women are the primary breadwinners or co-breadwinners for their families, and, if they lose their jobs, their families will suffer;

(c) Becoming unemployed due to lack of accommodations in the workplace is an outcome that families cannot afford in today's difficult economy; and

(d) By continuing to stay employed, pregnant women are able to generate income that is not only integral to their families' economic security, but that also benefits the larger economy by contributing to the gross national product. Additionally, keeping women in the work force saves taxpayer money in the form of unemployment insurance and other public benefits.

(2) Therefore, it is the intent of the general assembly to combat pregnancy discrimination, promote public health, and ensure full and equal protection for

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

women in the labor force by requiring employers to provide reasonable accommodations to employees with conditions related to pregnancy, childbirth, or a related condition.

SECTION 2. In Colorado Revised Statutes, 24-34-401, **amend** (8) as follows:

24-34-401. Definitions. As used in this part 4, unless otherwise defined in section 24-34-301 or unless the context otherwise requires:

(8) "Unfair employment practice" means those practices specified as discriminatory or unfair in ~~section~~ SECTIONS 24-34-402 AND 24-34-402.3.

SECTION 3. In Colorado Revised Statutes, **add** 24-34-402.3 as follows:

24-34-402.3. Prohibition of discrimination - pregnancy, childbirth, and related conditions - reasonable accommodations required - notice of rights - definitions. (1) (a) AN EMPLOYER SHALL:

(I) 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 THE PHYSICAL RECOVERY FROM CHILDBIRTH, IF THE APPLICANT OR EMPLOYEE REQUESTS THE REASONABLE ACCOMMODATIONS, UNLESS THE ACCOMMODATION WOULD IMPOSE AN UNDUE HARDSHIP ON THE EMPLOYER'S BUSINESS;

(II) NOT TAKE ADVERSE ACTION AGAINST AN EMPLOYEE WHO REQUESTS OR USES A REASONABLE ACCOMMODATION RELATED TO PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED CONDITION;

(III) NOT DENY EMPLOYMENT OPPORTUNITIES TO AN APPLICANT OR EMPLOYEE BASED ON THE NEED TO MAKE A REASONABLE ACCOMMODATION RELATED TO THE APPLICANT'S OR EMPLOYEE'S PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED CONDITION;

(IV) NOT REQUIRE AN APPLICANT OR EMPLOYEE AFFECTED BY PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED CONDITION TO ACCEPT AN ACCOMMODATION THAT THE APPLICANT OR EMPLOYEE HAS NOT REQUESTED OR AN ACCOMMODATION THAT IS UNNECESSARY FOR THE APPLICANT OR EMPLOYEE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB; AND

(V) NOT REQUIRE AN EMPLOYEE TO TAKE LEAVE IF THE EMPLOYER CAN PROVIDE ANOTHER REASONABLE ACCOMMODATION FOR THE EMPLOYEE'S PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR RELATED CONDITION.

(b) AN EMPLOYER MAY REQUIRE AN EMPLOYEE OR APPLICANT TO PROVIDE A NOTE STATING THE NECESSITY OF A REASONABLE ACCOMMODATION FROM A LICENSED HEALTH CARE PROVIDER BEFORE PROVIDING A REASONABLE ACCOMMODATION.

(2) IF AN APPLICANT OR AN EMPLOYEE REQUESTS AN ACCOMMODATION, THE EMPLOYER AND APPLICANT OR EMPLOYEE SHALL ENGAGE IN A TIMELY, GOOD-FAITH,

AND INTERACTIVE PROCESS TO DETERMINE EFFECTIVE, REASONABLE ACCOMMODATIONS FOR THE APPLICANT OR EMPLOYEE FOR CONDITIONS RELATED TO PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED CONDITION.

(3)(a) THE EMPLOYER SHALL PROVIDE WRITTEN NOTICE OF THE RIGHT TO BE FREE FROM DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES PURSUANT TO THIS SECTION TO:

(I) NEW EMPLOYEES AT THE START OF EMPLOYMENT; AND

(II) EXISTING EMPLOYEES WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

(b) THE EMPLOYER SHALL POST THE REQUIRED NOTICE IN A CONSPICUOUS PLACE IN THE EMPLOYER'S PLACE OF BUSINESS IN AN AREA ACCESSIBLE TO EMPLOYEES.

(4) AS USED IN THIS SECTION:

(a) "ADVERSE ACTION" MEANS AN ACTION WHERE A REASONABLE EMPLOYEE WOULD HAVE FOUND THE ACTION MATERIALLY ADVERSE, SUCH THAT IT MIGHT HAVE DISSUADED A REASONABLE WORKER FROM MAKING OR SUPPORTING A CHARGE OF DISCRIMINATION.

(b) "REASONABLE ACCOMMODATIONS" MAY INCLUDE, BUT IS NOT LIMITED TO, THE PROVISION OF MORE FREQUENT OR LONGER BREAK PERIODS; MORE FREQUENT RESTROOM, FOOD, AND WATER BREAKS; ACQUISITION OR MODIFICATION OF EQUIPMENT OR SEATING; LIMITATIONS ON LIFTING; TEMPORARY TRANSFER TO A LESS STRENUOUS OR HAZARDOUS POSITION IF AVAILABLE, WITH RETURN TO THE CURRENT POSITION AFTER PREGNANCY; JOB RESTRUCTURING; LIGHT DUTY, IF AVAILABLE; ASSISTANCE WITH MANUAL LABOR; OR MODIFIED WORK SCHEDULES AS LONG AS THE EMPLOYER IS NOT REQUIRED TO DO ANY OF THE FOLLOWING:

(I) HIRE NEW EMPLOYEES THAT THE EMPLOYER WOULD NOT OTHERWISE HAVE HIRED;

(II) DISCHARGE AN EMPLOYEE, TRANSFER ANOTHER EMPLOYEE WITH MORE SENIORITY, OR PROMOTE ANOTHER EMPLOYEE WHO IS NOT QUALIFIED TO PERFORM THE NEW JOB;

(III) CREATE A NEW POSITION, INCLUDING A LIGHT DUTY POSITION FOR THE EMPLOYEE, UNLESS A LIGHT DUTY POSITION WOULD BE PROVIDED FOR ANOTHER EQUIVALENT EMPLOYEE; OR

(IV) PROVIDE THE EMPLOYEE PAID LEAVE BEYOND THAT WHICH IS PROVIDED TO SIMILARLY SITUATED EMPLOYEES.

(c) (I) "UNDUE HARDSHIP", IN CONNECTION WITH A REQUESTED ACCOMMODATION, MEANS AN ACTION REQUIRING SIGNIFICANT DIFFICULTY OR EXPENSE TO THE EMPLOYER. IN DETERMINING UNDUE HARDSHIP, THE FOLLOWING FACTORS MAY BE CONSIDERED:

(A) THE NATURE AND COST OF THE ACCOMMODATION;

(B) THE OVERALL FINANCIAL RESOURCES OF THE EMPLOYER;

(C) THE OVERALL SIZE OF THE EMPLOYER'S BUSINESS WITH RESPECT TO THE NUMBER OF EMPLOYEES AND THE NUMBER, TYPE, AND LOCATION OF THE AVAILABLE FACILITIES; AND

(D) THE ACCOMMODATION'S EFFECT ON EXPENSES AND RESOURCES OR ITS EFFECT UPON THE OPERATIONS OF THE EMPLOYER.

(II) THE EMPLOYER'S PROVISION OF, OR A REQUIREMENT THAT THE EMPLOYER PROVIDE, A SIMILAR ACCOMMODATION TO OTHER CLASSES OF EMPLOYEES CREATES A REBUTTABLE PRESUMPTION THAT THE ACCOMMODATION DOES NOT IMPOSE AN UNDUE HARDSHIP.

(5) IT IS A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE FOR AN EMPLOYER TO VIOLATE THIS SECTION; EXCEPT THAT A VIOLATION OF SUBSECTION (3) OF THIS SECTION IS NOT A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE.

(6)(a) THIS SECTION DOES NOT PREEMPT OR LIMIT ANY OTHER PROVISION OF LAW RELATING TO SEX DISCRIMINATION OR TO PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED CONDITION.

(b) THIS SECTION NEITHER INCREASES NOR DECREASES AN EMPLOYEE'S RIGHTS, UNDER ANY OTHER LAW, TO PAID OR UNPAID LEAVE IN CONNECTION WITH THE EMPLOYEE'S PREGNANCY.

(7) NOTWITHSTANDING SECTION 24-34-405, A COURT SHALL NOT AWARD PUNITIVE DAMAGES IN A CIVIL ACTION INVOLVING A CLAIM OF FAILURE TO MAKE A REASONABLE ACCOMMODATION FOR AN EMPLOYEE FOR CONDITIONS RELATED TO PREGNANCY OR THE PHYSICAL RECOVERY FROM CHILDBIRTH IF THE DEFENDANT DEMONSTRATES GOOD-FAITH EFFORTS TO IDENTIFY AND MAKE A REASONABLE ACCOMMODATION THAT WOULD PROVIDE AN EMPLOYEE WHO HAS A HEALTH CONDITION RELATED TO PREGNANCY OR THE PHYSICAL RECOVERY FROM CHILDBIRTH WITH AN EQUALLY EFFECTIVE OPPORTUNITY AND WOULD NOT CAUSE AN UNDUE HARDSHIP ON THE OPERATION OF THE DEFENDANT'S BUSINESS.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 1, 2016