

Chapter 548

(House Bill 804)

AN ACT concerning

Employment Discrimination – Reasonable Accommodations for Disabilities Due to Pregnancy

FOR the purpose of requiring an employer, if an employee requests a reasonable accommodation for a disability caused or contributed to by pregnancy, to explore with the employee certain means of reasonably accommodating the disability; requiring an employer to transfer an employee to a less strenuous or less hazardous position for a certain period of time under certain circumstances; authorizing an employer to require an employee to provide a certain certification from a health care provider under certain circumstances; requiring an employer to post in a certain location, and to include in a certain handbook, information concerning an employee's rights to reasonable accommodations and leave for a disability caused or contributed to by pregnancy; prohibiting an employer from interfering with, restraining, or denying the exercise of, or the attempt to exercise, certain rights; providing that a certain provision of law may not be construed to affect any other provision of law relating to discrimination on the basis of sex or pregnancy or to diminish in any way certain coverage of pregnancy, childbirth, or a related medical condition; defining a certain term; and generally relating to reasonable accommodations for temporary disabilities due to pregnancy.

BY repealing and reenacting, without amendments,
Article – State Government
Section 20–601(a) through (d) and 20–606(a)(4)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 20–609
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Government

20–601.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Disability” means:

(i) 1. a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; or

2. a mental impairment or deficiency;

(ii) a record of having a physical or mental impairment as otherwise defined under this subsection; or

(iii) being regarded as having a physical or mental impairment as otherwise defined under this subsection.

(2) “Disability” includes:

(i) 1. any degree of paralysis, amputation, or lack of physical coordination;

2. blindness or visual impairment;

3. deafness or hearing impairment;

4. muteness or speech impediment; and

5. physical reliance on a service animal, wheelchair, or other remedial appliance or device; and

(ii) retardation and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.

(c) (1) “Employee” means an individual employed by an employer.

(2) Unless the individual is subject to the State or local civil service laws, “employee” does not include:

(i) an individual elected to public office;

(ii) an individual chosen by an elected officer to be on the officer’s personal staff;

(iii) an appointee on the policy making level; or

(iv) an immediate adviser with respect to the exercise of the constitutional or legal powers of an elected office.

(d) (1) "Employer" means:

(i) a person that:

1. is engaged in an industry or business; and
2. has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; and

(ii) an agent of a person described in item (i) of this paragraph.

(2) "Employer" includes the State to the extent provided in this title.

(3) Except for a labor organization, "employer" does not include a bona fide private membership club that is exempt from taxation under § 501(c) of the Internal Revenue Code.

20-606.

(a) An employer may not:

(4) fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee.

20-609.

(A) IN THIS SECTION, "REASONABLE ACCOMMODATION" MEANS AN ACCOMMODATION:

(1) FOR AN EMPLOYEE'S DISABILITY CAUSED OR CONTRIBUTED TO BY PREGNANCY; AND

(2) THAT DOES NOT IMPOSE AN UNDUE HARDSHIP ON THE EMPLOYEE'S EMPLOYER.

[(a)] (B) Disabilities caused or contributed to by pregnancy or childbirth:

(1) are temporary disabilities for all job-related purposes; and

(2) shall be treated as temporary disabilities under any health or temporary disability insurance or sick leave plan available in connection with employment.

[(b)] (C) Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions of leave, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(D) IF AN EMPLOYEE REQUESTS A REASONABLE ACCOMMODATION, THE EMPLOYER SHALL EXPLORE WITH THE EMPLOYEE ALL POSSIBLE MEANS OF PROVIDING THE REASONABLE ACCOMMODATION, INCLUDING:

- (1) CHANGING THE EMPLOYEE'S JOB DUTIES;**
- (2) CHANGING THE EMPLOYEE'S WORK HOURS;**
- (3) RELOCATING THE EMPLOYEE'S WORK AREA;**
- (4) PROVIDING MECHANICAL OR ELECTRICAL AIDS;**
- (5) TRANSFERRING THE EMPLOYEE TO A LESS STRENUOUS OR LESS HAZARDOUS POSITION; OR**
- (6) PROVIDING LEAVE.**

(E) IF AN EMPLOYEE REQUESTS A TRANSFER TO A LESS STRENUOUS OR LESS HAZARDOUS POSITION AS A REASONABLE ACCOMMODATION, THE EMPLOYER SHALL TRANSFER THE EMPLOYEE FOR A PERIOD OF TIME UP TO THE DURATION OF THE EMPLOYEE'S PREGNANCY IF:

(1) THE EMPLOYER HAS A POLICY, PRACTICE, OR COLLECTIVE BARGAINING AGREEMENT REQUIRING OR AUTHORIZING THE TRANSFER OF A TEMPORARILY DISABLED EMPLOYEE TO A LESS STRENUOUS OR LESS HAZARDOUS POSITION FOR THE DURATION OF THE DISABILITY; OR

(2) THE EMPLOYEE'S HEALTH CARE PROVIDER ADVISES THE TRANSFER AND THE EMPLOYER CAN PROVIDE THE REASONABLE ACCOMMODATION BY TRANSFERRING THE EMPLOYEE WITHOUT:

(I) CREATING ADDITIONAL EMPLOYMENT THAT THE EMPLOYER WOULD NOT OTHERWISE HAVE CREATED;

(II) DISCHARGING ANY EMPLOYEE;

(III) TRANSFERRING ANY EMPLOYEE WITH MORE SENIORITY THAN THE EMPLOYEE REQUESTING THE REASONABLE ACCOMMODATION; OR

(IV) PROMOTING ANY EMPLOYEE WHO IS NOT QUALIFIED TO PERFORM THE JOB.

(F) (1) AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO PROVIDE A CERTIFICATION FROM THE EMPLOYEE'S HEALTH CARE PROVIDER CONCERNING THE MEDICAL ADVISABILITY OF A REASONABLE ACCOMMODATION TO THE SAME EXTENT A CERTIFICATION IS REQUIRED FOR OTHER TEMPORARY DISABILITIES.

(2) A CERTIFICATION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

(I) THE DATE THE REASONABLE ACCOMMODATION BECAME MEDICALLY ADVISABLE;

(II) THE PROBABLE DURATION OF THE REASONABLE ACCOMMODATION; AND

(III) AN EXPLANATORY STATEMENT AS TO THE MEDICAL ADVISABILITY OF THE REASONABLE ACCOMMODATION.

(G) AN EMPLOYER SHALL POST IN A CONSPICUOUS LOCATION, AND INCLUDE IN ANY EMPLOYEE HANDBOOK, INFORMATION CONCERNING AN EMPLOYEE'S RIGHTS TO REASONABLE ACCOMMODATIONS AND LEAVE FOR A DISABILITY CAUSED OR CONTRIBUTED TO BY PREGNANCY.

(H) AN EMPLOYER MAY NOT INTERFERE WITH, RESTRAIN, OR DENY THE EXERCISE OF, OR THE ATTEMPT TO EXERCISE, ANY RIGHT PROVIDED UNDER THIS SECTION.

(I) THIS SECTION MAY NOT BE CONSTRUED TO:

(1) AFFECT ANY OTHER PROVISION OF LAW RELATING TO DISCRIMINATION ON THE BASIS OF SEX OR PREGNANCY; OR

(2) DIMINISH IN ANY WAY THE COVERAGE OF PREGNANCY, CHILDBIRTH, OR A MEDICAL CONDITION RELATED TO PREGNANCY OR CHILDBIRTH UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, May 16, 2013.