

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 214
Economic Matters

(Delegate Morales, *et al.*)

Discrimination in Employment - Conditions Related to Pregnancy or Childbirth

This bill expands and clarifies existing statutory provisions regarding employment protections for pregnant women by requiring employers to provide reasonable accommodations for the known limitations of an applicant or an employee due to “conditions related to pregnancy or childbirth.” The bill alters the definition of a “reasonable accommodation” to mean an accommodation for the known limitations of an employee due to conditions related to pregnancy or childbirth and that does not impose an undue hardship on the employee’s employer. An “undue hardship” is defined as a significant difficulty or expense.

Fiscal Summary

State Effect: The Maryland Commission on Civil Rights (MCCR) can handle any increase in complaints using existing resources. The Department of Budget and Management advises that the State of Maryland complies with the bill’s requirements; therefore, there is no impact on State agencies.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal. Any impact on small businesses is limited by the bill’s provision that any accommodation related to pregnancy or childbirth must be reasonable.

Analysis

Bill Summary: “Conditions related to pregnancy or childbirth” means any physical change that directly results from pregnancy or childbirth, including lactation. In

determining whether an accommodation would cause an undue hardship, the following factors must be considered: (1) the nature and cost of the accommodation; (2) the overall financial resources of the employer; (3) the overall size of the employer, as specified; and (4) how a proposed accommodation would impact the operations and expenses of the employer. If the employer provides or would be required to provide a similar accommodation to an employee with a disability, there is a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

The bill adds a requirement for employers to explore all possible means of providing break time and a private location to express breast milk as a reasonable accommodation. The bill specifies that conditions related to pregnancy or childbirth, to the extent they are disabling, are temporary disabilities and that requirements to apply specified employment policies and practices to disabilities due to pregnancy or childbirth are to be applied to limitations arising out of conditions related to pregnancy or childbirth. The bill authorizes an employer to require an applicant for employment to provide a certification concerning the medical advisability of a reasonable accommodation, as specified. It also alters requirements relating to requests by an employee to be transferred to a less strenuous or less hazardous position as a reasonable accommodation by adding that an employer's responsibility to do so must also take into consideration whether the employer would accommodate other classes of employees with disabilities in a similar manner.

The bill prohibits an employer from:

- requiring an employee to take leave, whether paid or unpaid, if another reasonable accommodation for the employee's known limitation caused or contributed to by conditions related to pregnancy or childbirth can be provided;
- denying employment opportunities to an applicant for employment or an employee based on the requirement that the employer make reasonable accommodations for the known limitations of the applicant or employee caused or contributed to by conditions related to pregnancy or childbirth;
- taking adverse action in terms, conditions, or privileges of employment against an employee because the employee requests or uses a reasonable accommodation for the employee's known limitations caused or contributed to by conditions related to pregnancy or childbirth; or
- requiring an applicant or an employee to accept an accommodation if the applicant or employee chooses not to and the accommodation is unnecessary, as specified.

MCCR must develop courses of instruction and conduct ongoing public education efforts in order to inform employers, employees, employment agencies, and applicants for employment about their rights and responsibilities. An employer must post in a conspicuous location, and include in any employee handbook, information concerning an employee's rights to reasonable accommodations and leave for limitations due to conditions related to childbirth, as well as pregnancy.

Current Law: Disabilities caused or contributed to by pregnancy or childbirth are temporary disabilities for all job-related purposes and must be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. 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 must be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

A "reasonable accommodation" is an accommodation for an employee's disability caused or contributed to by pregnancy and that does not impose an undue hardship on the employee's employer.

If an employee requests a reasonable accommodation, the employer must explore with the employee all possible means of providing the reasonable accommodation, including (1) changing the employee's job duties or work hours; (2) relocating the employee's work area; (3) providing mechanical or electrical aids; (4) transferring the employee to a less strenuous or less hazardous position; or (5) providing leave.

If an employee requests a transfer to a less strenuous or less hazardous position, the employer must transfer the employee for a period of time up to the duration of the employee's pregnancy if 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. The employee must also be transferred if the employee's health care provider advises the transfer and the employer can provide the reasonable accommodation by transferring the employee without (1) creating additional employment that the employer would not otherwise have created; (2) discharging any employee; (3) transferring any employee with more seniority than the employee requesting the reasonable accommodation; or (4) promoting any employee who is not qualified to perform the job.

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. A certification

must include (1) the date the reasonable accommodation became medically advisable; (2) the probable duration of the reasonable accommodation; and (3) an explanatory statement as to the medical advisability of the reasonable accommodation.

An employer must 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. An employer may not interfere with, restrain, or deny the exercise of, or the attempt to exercise any right provided under these provisions. These provisions may not be construed to affect any other provision of law relating to discrimination on the basis of sex or pregnancy or diminish in any way the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2017
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