

HOUSE BILL 1109

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8lr2202

By: **Delegates Morales, Angel, Atterbeary, Barkley, Carr, Clippinger, Cullison, Dumais, Fennell, Fraser-Hidalgo, Gilchrist, Hettleman, Kelly, Korman, R. Lewis, Lierman, Luedtke, A. Miller, Moon, Mosby, Patterson, Pena-Melnyk, Platt, Queen, Reznik, Robinson, Sanchez, Tarlau, Valderrama, Waldstreicher, M. Washington, Wilkins, and K. Young**

Introduced and read first time: February 7, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Discrimination in Employment – Pregnancy and Childbirth**

3 FOR the purpose of requiring an employer to provide certain reasonable accommodations
4 for certain employees; applying certain requirements regarding reasonable
5 accommodations in employment to employees who have certain limitations caused
6 by childbirth; altering the circumstances under which an employer is required to
7 transfer an employee for the duration of the employee's limitation caused or
8 contributed to by pregnancy; prohibiting an employer, under certain circumstances,
9 from requiring an employee to take certain leave, denying employment opportunities
10 to certain employees, or requiring an employee to accept certain accommodations
11 under certain circumstances; requiring an employer to make certain reasonable
12 accommodations for certain applicants for employment under certain circumstances;
13 requiring the Commission on Civil Rights to adopt certain regulations and conduct
14 certain ongoing public outreach; altering certain terminology; defining certain terms;
15 altering a certain definition; and generally relating to pregnancy and childbirth and
16 discrimination in employment.

17 BY repealing and reenacting, with amendments,
18 Article – State Government
19 Section 20–609
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2017 Supplement)

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

24 **Article – State Government**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 20-609.

2 (a) **(1)** In this section[, “reasonable] **THE FOLLOWING WORDS HAVE THE**
3 **MEANINGS INDICATED.**

4 **(2) “PREGNANCY OR CHILDBIRTH” INCLUDES A MEDICAL CONDITION**
5 **RELATED TO PREGNANCY OR CHILDBIRTH.**

6 **(3) “REASONABLE accommodation” means an accommodation:**

7 **[(1) (I)** for an employee’s [disability] **LIMITATION** caused or contributed
8 to by pregnancy **OR CHILDBIRTH**; and

9 **[(2) (II)** that does not impose an undue hardship on the [employee’s]
10 employer.

11 **(4) “UNDUE HARDSHIP” MEANS SIGNIFICANT DIFFICULTY OR**
12 **EXPENSE.**

13 (b) [Disabilities caused or contributed to by] **TO THE EXTENT THE LIMITATIONS**
14 **ARE DISABLING, LIMITATIONS RELATED TO** pregnancy or childbirth:

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

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

18 (c) Written and unwritten employment policies and practices involving matters
19 such as the commencement and duration of leave, the availability of extensions of leave,
20 the accrual of seniority and other benefits and privileges, reinstatement, and payment
21 under any health or temporary disability insurance or sick leave plan, formal or informal,
22 shall be applied to [disability due to] **LIMITATIONS ARISING OUT OF** pregnancy or
23 childbirth on the same terms and conditions as they are applied to other temporary
24 disabilities.

25 **(D) AN EMPLOYER SHALL PROVIDE REASONABLE ACCOMMODATIONS FOR**
26 **AN EMPLOYEE.**

27 **[(d) (E)** If an employee requests a reasonable accommodation, the employer
28 shall explore with the employee all possible means of providing the reasonable
29 accommodation, including:

30 (1) changing the employee’s job duties;

- 1 (2) changing the employee's work hours;
- 2 (3) relocating the employee's work area;
- 3 (4) providing mechanical or electrical aids;
- 4 (5) transferring the employee to a less strenuous or less hazardous
5 position; or
- 6 (6) providing leave.

7 **[(e)] (F)** If an employee requests a transfer to a less strenuous or less hazardous
8 position as a reasonable accommodation, the employer shall transfer the employee for a
9 period of time up to the duration of the employee's **LIMITATION CAUSED OR**
10 **CONTRIBUTED TO BY** pregnancy **OR CHILDBIRTH** if:

11 (1) the employer has a policy, practice, or collective bargaining agreement
12 requiring or authorizing the transfer of a temporarily disabled employee to a less strenuous
13 or less hazardous position for the duration of the disability; or

14 (2) the employee's health care provider advises the transfer and the
15 employer **WOULD ACCOMMODATE OTHER EMPLOYEES WITH DISABILITIES IN A**
16 **SIMILAR MANNER OR** can provide the reasonable accommodation by transferring the
17 employee without:

18 (i) creating additional employment that the employer would not
19 otherwise have created;

20 (ii) discharging any employee;

21 (iii) transferring any employee with more seniority than the
22 employee requesting the reasonable accommodation; or

23 (iv) promoting any employee who is not qualified to perform the job.

24 **[(f)] (G)** (1) An employer may require an employee to provide a certification
25 from the employee's health care provider concerning the medical advisability of a
26 reasonable accommodation to the same extent a certification is required for other
27 temporary disabilities.

28 (2) A certification under paragraph (1) of this subsection shall include:

29 (i) the date the reasonable accommodation became medically
30 advisable;

31 (ii) the probable duration of the reasonable accommodation; and

1 (iii) an explanatory statement as to the medical advisability of the
2 reasonable accommodation.

3 (H) AN EMPLOYER MAY NOT:

4 (1) REQUIRE AN EMPLOYEE TO TAKE LEAVE, WHETHER PAID OR
5 UNPAID, IF THE EMPLOYER CAN PROVIDE ANOTHER REASONABLE ACCOMMODATION
6 FOR THE EMPLOYEE'S LIMITATIONS CAUSED OR CONTRIBUTED TO BY PREGNANCY
7 OR CHILDBIRTH;

8 (2) DENY EMPLOYMENT OPPORTUNITIES TO AN EMPLOYEE BASED ON
9 THE REQUIREMENTS OF THIS SECTION; OR

10 (3) REQUIRE AN EMPLOYEE TO ACCEPT AN ACCOMMODATION THAT
11 THE EMPLOYEE CHOOSES NOT TO ACCEPT IF:

12 (I) THE EMPLOYEE DOES NOT HAVE A LIMITATION CAUSED OR
13 CONTRIBUTED TO BY PREGNANCY OR CHILDBIRTH; AND

14 (II) THE ACCOMMODATION IS NOT NECESSARY FOR THE
15 EMPLOYEE TO PERFORM THE ESSENTIAL DUTIES OF THE EMPLOYEE'S JOB.

16 [(g)] (I) An employer shall post in a conspicuous location, and include in any
17 employee handbook, information concerning an employee's rights to reasonable
18 accommodations and leave for a disability caused or contributed to by pregnancy.

19 [(h)] (J) An employer may not interfere with, restrain, or deny the exercise of,
20 or the attempt to exercise, any right provided under this section.

21 [(i)] (K) This section may not be construed to:

22 (1) affect any other provision of law relating to discrimination on the basis
23 of sex or pregnancy; or

24 (2) diminish in any way the coverage of pregnancy, childbirth, or a medical
25 condition related to pregnancy or childbirth under this section.

26 (L) TO THE EXTENT PRACTICABLE AND APPLICABLE, IF AN EMPLOYER
27 WOULD PROVIDE A REASONABLE ACCOMMODATION FOR AN EMPLOYEE UNDER THIS
28 SECTION, THE EMPLOYER SHALL PROVIDE THE SAME REASONABLE
29 ACCOMMODATION FOR AN APPLICANT FOR EMPLOYMENT.

30 (M) THE COMMISSION SHALL:

1 **(1) ADOPT REGULATIONS TO CARRY OUT THE REQUIREMENTS OF**
2 **THIS SECTION; AND**

3 **(2) CONDUCT ONGOING PUBLIC OUTREACH TO INFORM EMPLOYERS,**
4 **EMPLOYEES, AND EMPLOYMENT AGENCIES ABOUT THE RIGHTS AND**
5 **RESPONSIBILITIES ESTABLISHED UNDER THIS SECTION.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2018.