

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 523
Appropriations

(Delegates Valderrama and Hettleman)

Finance

State Personnel - Employee Accommodations - Pregnancy and Childbirth

This bill requires a unit of State government to provide reasonable accommodations for an employee with a limitation caused or contributed to by pregnancy or childbirth. A “limitation” includes (1) a temporary disability caused or contributed to by pregnancy or childbirth and (2) a restriction on the ability of an employee to perform job functions caused or contributed to by pregnancy or childbirth.

Fiscal Summary

State Effect: The bill generally codifies existing practice for most State agencies under the State Personnel and Pensions Article. To the extent that a unit of State government does not already comply with the bill’s requirements, State finances are not materially affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Reasonable accommodations include changing the employee’s job duties or work hours, relocating the employee’s work area, providing mechanical or electrical aids, transferring the employee to a less strenuous or less hazardous position, or providing leave.

The bill prohibits an employer from requiring an employee to take leave, whether paid or unpaid, if the employer can provide another reasonable accommodation for the employee’s limitations caused or contributed to by pregnancy or childbirth. It also prohibits an

employer from requiring an employee to accept an accommodation if the employee chooses not to under specified circumstances.

The bill applies to all units in the Executive, Judicial, and Legislative branches of the State, including units with independent personnel systems.

Current Law: The Maryland Commission on Civil Rights enforces the State’s laws against employment discrimination and on reasonable accommodation found in Title 20 of the State Government Article. The State’s laws regarding discrimination in employment generally apply to employers with at least 15 employees, including the State. 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.

Designated Cross File: SB 225 (Senator Feldman, *et al.*) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); University System of Maryland; St. Mary's College of Maryland; Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

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