

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 804
Economic Matters

(Delegate Hucker, *et al.*)

Judicial Proceedings

Employment Discrimination - Reasonable Accommodations for Disabilities Due to Pregnancy

This bill requires an employer, if an employee requests a reasonable accommodation for a disability caused or contributed to by pregnancy, to explore all possible means of providing the reasonable accommodation.

Fiscal Summary

State Effect: The Maryland Commission on Civil Rights can handle any increase in complaints using existing resources. The Department of Budget and Management advises that there is already a statewide reasonable accommodations policy that is applicable to pregnancy-related disabilities; therefore there is no impact on State finances.

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

Small Business Effect: Minimal. Small businesses will have to explore all means of providing reasonable accommodations for disabilities caused or contributed to by pregnancy.

Analysis

Bill Summary: 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. The bill 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.

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.

Employers are prohibited from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee. Employers are not required to reasonably accommodate an employee's disability if the accommodation would cause undue hardship on the conduct of the employer's business.

Background: These provisions are modeled after regulations in California that require reasonable work accommodations for pregnant workers.

Small Business Effect: Minimal. On request for a reasonable accommodation for an employee's disability caused or contributed to by pregnancy, a small business will have to explore all means of providing the accommodation. However, because the bill specifies that the accommodation must not impose an undue hardship on the employer, it is anticipated that any impact on small businesses is minimal.

Additional Information

Prior Introductions: None.

Cross File: SB 784 (Senator Benson) - Judicial Proceedings.

Information Source(s): Department of Budget and Management, Maryland Commission on Civil Rights, Maryland Association of Counties, Maryland Department of Transportation, Department of Legislative Services

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