

HOUSE BILL 214

D5, K2, P4

7lr1075

By: **Delegates Morales, Angel, Barkley, B. Barnes, Cullison, Davis, Frick, Glenn, Jameson, Kelly, Korman, Lisanti, Luedtke, A. Miller, Pena–Melnyk, Proctor, Queen, Tarlau, Valderrama, and M. Washington**

Introduced and read first time: January 20, 2017

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Discrimination in Employment – Conditions Related to Pregnancy or Childbirth**

3 FOR the purpose of requiring employers to make reasonable accommodations for employees
4 and applicants for employment who have known limitations due to conditions related
5 to pregnancy or childbirth; requiring certain factors to be considered when
6 determining whether a certain action is an undue hardship; establishing a
7 rebuttable presumption that a certain accommodation is not an undue hardship if
8 the employer would provide the accommodation to an employee with a disability;
9 adding a certain accommodation to the list of reasonable accommodations employers
10 must explore with employees; altering the circumstances under which employers are
11 required to transfer employees to less strenuous positions; prohibiting an employer
12 from requiring an employee to take leave if other accommodations are available, from
13 denying employment opportunities because the employer is required to make
14 reasonable accommodations, from taking certain adverse actions against an
15 employee due to a request for or use of reasonable accommodations, and from
16 requiring an applicant for employment or an employee to accept certain
17 accommodations under certain circumstances; requiring the Commission on Civil
18 Rights to develop certain courses and conduct certain educational efforts; defining
19 certain terms; and generally relating to reasonable accommodations for employees
20 and applicants for employment with conditions related to pregnancy or childbirth.

21 BY repealing and reenacting, with amendments,
22 Article – State Government
23 Section 20–609
24 Annotated Code of Maryland
25 (2014 Replacement Volume and 2016 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Government

20–609.

(a) (1) In this section[,] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CONDITIONS RELATED TO PREGNANCY OR CHILDBIRTH” MEANS ANY PHYSICAL CHANGE THAT DIRECTLY RESULTS FROM PREGNANCY OR CHILDBIRTH, INCLUDING LACTATION.

(3) [“reasonable] “REASONABLE accommodation” means an accommodation:

[(1)] (I) for THE KNOWN LIMITATIONS OF an EMPLOYEE [employee’s disability caused or contributed to by] DUE TO CONDITIONS RELATED TO pregnancy OR CHILDBIRTH; and

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

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

(B) AN EMPLOYER SHALL PROVIDE REASONABLE ACCOMMODATIONS FOR THE KNOWN LIMITATIONS OF AN APPLICANT FOR EMPLOYMENT OR AN EMPLOYEE DUE TO CONDITIONS RELATED TO PREGNANCY OR CHILDBIRTH.

(c) (1) IN DETERMINING WHETHER AN ACCOMMODATION WOULD CAUSE AN UNDUE HARDSHIP, THE FOLLOWING FACTORS SHALL BE CONSIDERED:

(I) THE NATURE AND COST OF THE ACCOMMODATION;

(II) THE OVERALL FINANCIAL RESOURCES OF THE EMPLOYER;

(III) THE OVERALL SIZE OF THE EMPLOYER INCLUDING:

1. THE NUMBER OF EMPLOYEES; AND

2. THE NUMBER, TYPE, AND LOCATION OF THE EMPLOYER’S FACILITIES; AND

1 **(IV) HOW A PROPOSED ACCOMMODATION WOULD IMPACT THE**
2 **OPERATIONS AND EXPENSES OF THE EMPLOYER.**

3 **(2) IF THE EMPLOYER PROVIDES OR WOULD BE REQUIRED TO**
4 **PROVIDE A SIMILAR ACCOMMODATION TO AN EMPLOYEE WITH A DISABILITY, THERE**
5 **SHALL BE A REBUTTABLE PRESUMPTION THAT THE ACCOMMODATION DOES NOT**
6 **IMPOSE AN UNDUE HARDSHIP ON THE EMPLOYER.**

7 **[(b)] (D) [Disabilities caused or contributed to by] TO THE EXTENT THEY ARE**
8 **DISABLING, CONDITIONS RELATED TO** pregnancy or childbirth:

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

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

12 **[(c)] (E)** Written and unwritten employment policies and practices involving
13 matters such as the commencement and duration of leave, the availability of extensions of
14 leave, the accrual of seniority and other benefits and privileges, reinstatement, and
15 payment under any health or temporary disability insurance or sick leave plan, formal or
16 informal, shall be applied to **[disability due to] LIMITATIONS ARISING OUT OF**
17 **CONDITIONS RELATED TO** pregnancy or childbirth on the same terms and conditions as
18 they are applied to other temporary disabilities.

19 **[(d)] (F)** If an employee requests a reasonable accommodation, the employer
20 shall explore with the employee all possible means of providing the reasonable
21 accommodation, including:

22 (1) changing the employee's job duties;

23 (2) changing the employee's work hours;

24 (3) relocating the employee's work area;

25 (4) providing mechanical or electrical aids;

26 (5) transferring the employee to a less strenuous or less hazardous
27 position; **[or]**

28 (6) **PROVIDING BREAK TIME AND A PRIVATE LOCATION TO EXPRESS**
29 **BREAST MILK; OR**

30 (7) providing leave.

1 **[(e)] (G)** If an employee requests a transfer to a less strenuous or less hazardous
2 position as a reasonable accommodation, the employer shall transfer the employee for a
3 period of time up to the duration of the employee's **CONDITIONS RELATED TO** pregnancy
4 **OR CHILDBIRTH** if:

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

8 (2) the employee's health care provider advises the transfer and the
9 employer **WOULD ACCOMMODATE OTHER CLASSES OF EMPLOYEES WITH**
10 **DISABILITIES IN A SIMILAR MANNER OR** can provide the reasonable accommodation by
11 transferring the employee without:

12 (i) creating additional employment that the employer would not
13 otherwise have created;

14 (ii) discharging any employee;

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

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

18 **[(f)] (H)** (1) An employer may require an **APPLICANT FOR EMPLOYMENT**
19 **OR AN** employee to provide a certification from the **APPLICANT'S OR** employee's health
20 care provider concerning the medical advisability of a reasonable accommodation to the
21 same extent a certification is required for other temporary disabilities.

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

23 (i) the date the reasonable accommodation became medically
24 advisable;

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

26 (iii) an explanatory statement as to the medical advisability of the
27 reasonable accommodation.

28 **(I) AN EMPLOYER MAY NOT:**

29 **(1) REQUIRE AN EMPLOYEE TO TAKE LEAVE, WHETHER PAID OR**
30 **UNPAID, IF ANOTHER REASONABLE ACCOMMODATION FOR THE EMPLOYEE'S KNOWN**
31 **LIMITATIONS CAUSED OR CONTRIBUTED TO BY CONDITIONS RELATED TO**
32 **PREGNANCY OR CHILDBIRTH CAN BE PROVIDED;**

1 **(2) DENY EMPLOYMENT OPPORTUNITIES TO AN APPLICANT FOR**
2 **EMPLOYMENT OR AN EMPLOYEE BASED ON THE REQUIREMENT THAT THE**
3 **EMPLOYER MAKE REASONABLE ACCOMMODATIONS FOR THE KNOWN LIMITATIONS**
4 **OF THE APPLICANT OR EMPLOYEE CAUSED OR CONTRIBUTED TO BY CONDITIONS**
5 **RELATED TO PREGNANCY OR CHILDBIRTH;**

6 **(3) TAKE ADVERSE ACTION IN TERMS, CONDITIONS, OR PRIVILEGES**
7 **OF EMPLOYMENT AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE REQUESTS OR**
8 **USES A REASONABLE ACCOMMODATION FOR THE EMPLOYEE'S KNOWN LIMITATIONS**
9 **CAUSED OR CONTRIBUTED TO BY CONDITIONS RELATED TO PREGNANCY OR**
10 **CHILDBIRTH; OR**

11 **(4) REQUIRE AN APPLICANT FOR EMPLOYMENT OR AN EMPLOYEE TO**
12 **ACCEPT AN ACCOMMODATION IF THE APPLICANT OR EMPLOYEE CHOOSES NOT TO**
13 **ACCEPT THE ACCOMMODATION AND THE ACCOMMODATION IS UNNECESSARY**
14 **BECAUSE:**

15 **(I) THE APPLICANT OR EMPLOYEE DOES NOT HAVE A KNOWN**
16 **LIMITATION CAUSED OR CONTRIBUTED TO BY CONDITIONS RELATED TO**
17 **PREGNANCY OR CHILDBIRTH; OR**

18 **(II) THE PERFORMANCE OF THE ESSENTIAL DUTIES OF THE**
19 **APPLICANT OR EMPLOYEE'S JOB DOES NOT REQUIRE AN ACCOMMODATION.**

20 **[(g)] (J) An employer shall post in a conspicuous location, and include in any**
21 **employee handbook, information concerning an employee's rights to reasonable**
22 **accommodations and leave for [a disability caused or contributed to by] LIMITATIONS DUE**
23 **TO CONDITIONS RELATED TO pregnancy OR CHILDBIRTH.**

24 **[(h)] (K) An employer may not interfere with, restrain, or deny the exercise of,**
25 **or the attempt to exercise, any right provided under this section.**

26 **(L) THE COMMISSION SHALL DEVELOP COURSES OF INSTRUCTION AND**
27 **CONDUCT ONGOING PUBLIC EDUCATION EFFORTS IN ORDER TO INFORM**
28 **EMPLOYERS, EMPLOYEES, EMPLOYMENT AGENCIES, AND APPLICANTS FOR**
29 **EMPLOYMENT ABOUT THEIR RIGHTS AND RESPONSIBILITIES UNDER THIS SECTION.**

30 **[(i)] (M) This section may not be construed to:**

31 **(1) affect any other provision of law relating to discrimination on the basis**
32 **of sex or pregnancy; or**

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2017.