

SENATE BILL 518

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9lr2323
CF 9lr2128

By: **Senators Feldman, Beidle, Benson, and Klausmeier**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

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

18 BY repealing and reenacting, with amendments,
19 Article – State Government
20 Section 20–609
21 Annotated Code of Maryland
22 (2014 Replacement Volume and 2018 Supplement)

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

25 **Article – State Government**

26 20–609.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 (2) **“LIMITATIONS” INCLUDES:**

4 (I) **DISABILITIES CAUSED OR CONTRIBUTED TO BY PREGNANCY**
5 **OR CHILDBIRTH; AND**

6 (II) **RESTRICTIONS ON THE ABILITY OF AN EMPLOYEE OR AN**
7 **APPLICANT FOR EMPLOYMENT TO PERFORM JOB FUNCTIONS CAUSED OR**
8 **CONTRIBUTED TO BY PREGNANCY OR CHILDBIRTH.**

9 (3) **“PREGNANCY OR CHILDBIRTH” INCLUDES A CONDITION RELATED**
10 **TO PREGNANCY OR CHILDBIRTH.**

11 (4) **“REASONABLE accommodation” means an accommodation:**

12 [(1)] (I) for [an employee’s disability] **A LIMITATION OF AN EMPLOYEE**
13 **OR AN APPLICANT FOR EMPLOYMENT** caused or contributed to by pregnancy **OR**
14 **CHILDBIRTH; and**

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

17 (5) **“UNDUE HARDSHIP” MEANS SIGNIFICANT DIFFICULTY OR**
18 **EXPENSE.**

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

21 (1) are temporary disabilities for all job–related purposes; and

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

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

31 (D) **AN EMPLOYER SHALL PROVIDE REASONABLE ACCOMMODATIONS FOR**
32 **AN EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT.**

1 **[(d)] (E)** If an employee **OR AN APPLICANT FOR EMPLOYMENT** requests a
2 reasonable accommodation, the employer shall explore with the employee **OR APPLICANT**
3 **FOR EMPLOYMENT** all possible means of providing the reasonable accommodation,
4 including:

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

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

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

8 (4) providing mechanical or electrical aids;

9 (5) transferring the employee to a less strenuous or less hazardous
10 position; or

11 (6) providing leave.

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

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

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

23 (i) creating additional employment that the employer would not
24 otherwise have created;

25 (ii) discharging any employee;

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

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

29 **[(f)] (G)** (1) An employer may require an employee **OR AN APPLICANT FOR**
30 **EMPLOYMENT** to provide a certification from the [employee's] health care provider **OF THE**
31 **EMPLOYEE OR APPLICANT FOR EMPLOYMENT** concerning the medical advisability of a

1 reasonable accommodation to the same extent a certification is required for other
2 temporary disabilities.

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

4 (i) the date the reasonable accommodation became medically
5 advisable;

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

7 (iii) an explanatory statement as to the medical advisability of the
8 reasonable accommodation.

9 (H) AN EMPLOYER MAY NOT:

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

14 (2) DENY EMPLOYMENT OPPORTUNITIES TO AN EMPLOYEE OR AN
15 APPLICANT FOR EMPLOYMENT BASED ON THE REQUIREMENTS OF THIS SECTION; OR

16 (3) REQUIRE AN EMPLOYEE TO ACCEPT AN ACCOMMODATION THAT
17 THE EMPLOYEE CHOOSES NOT TO ACCEPT IF:

18 (I) THE EMPLOYEE DOES NOT HAVE A LIMITATION CAUSED OR
19 CONTRIBUTED TO BY PREGNANCY OR CHILDBIRTH; OR

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

22 [(g)] (I) An employer shall post in a conspicuous location, and include in any
23 employee handbook, information concerning an employee's rights to reasonable
24 accommodations and leave for a [disability] LIMITATION caused or contributed to by
25 pregnancy OR CHILDBIRTH.

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

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

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

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

3 **(L) THE COMMISSION SHALL:**

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

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2019.