

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 518

(Senator Feldman, *et al.*)

Judicial Proceedings

Discrimination in Employment - Pregnancy and Childbirth

This bill expands and clarifies existing statutory provisions regarding employment protections for pregnant women by requiring employers to provide reasonable accommodations for an employee or *an applicant for employment*. The bill replaces the term disability with “limitation” throughout and defines it to include (1) disabilities caused or contributed to by pregnancy or childbirth and (2) restrictions on the ability of an employer or an applicant for employment to perform job functions caused or contributed to by pregnancy or childbirth. The bill alters the definition of a “reasonable accommodation” to mean an accommodation for an employee’s limitation caused or contributed to by pregnancy or childbirth and that does not impose an undue hardship on the employer. An “undue hardship” is defined as a significant difficulty or expense.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances, as discussed below.

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

Small Business Effect: Minimal. Any impact on small businesses is limited by the bill’s provision that any accommodation related to pregnancy or childbirth must be reasonable.

Analysis

Bill Summary: “Pregnancy or childbirth” includes a medical condition related to pregnancy or childbirth. The bill specifies that limitations related to pregnancy or

childbirth, to the extent they are disabling, are temporary disabilities and that requirements to apply specified employment policies and practices to disabilities due to pregnancy or childbirth are to be applied to limitations arising out of conditions related to pregnancy or childbirth. It also alters requirements relating to requests by an employee to be transferred to a less strenuous or less hazardous position as a reasonable accommodation by adding that an employer's responsibility to do so must also take into consideration whether the employer would accommodate other classes of employees with disabilities in a similar manner. If requested, the employer must transfer the employee for a period of time up to the duration of the employee's limitation caused or contributed to by pregnancy or childbirth if specified conditions are met.

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;
- denying employment opportunities to an employee based on the requirements of statutory provisions; and
- requiring an employee to accept an accommodation if the employee chooses not to, as specified.

To the extent practicable and applicable, if an employer would provide a reasonable accommodation for an employee, the employer must provide the same reasonable accommodation for an applicant for employment.

The Maryland Commission on Civil Rights (MCCR) must adopt regulations and conduct ongoing public outreach, as specified.

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.

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.

State Expenditures: MCCR anticipates that it can handle the bill's requirements using existing resources. The Department of Budget and Management advises that the State of Maryland complies with the bill's requirements; therefore, there is no impact on State agencies. The Judiciary advises that notices and training may have to be altered to comply with the bill, and that the potential for additional accommodations for employees and applicants exists. However, the Department of Legislative Services advises that the Judiciary can meet the bill's requirements with existing resources.

Additional Information

Prior Introductions: HB 1109 of 2018, a similar bill, received a hearing in the House Economic Matters Committee, but no further action was taken. HB 214 of 2017, a similar bill, received a hearing in the House Economic Matters Committee, but no further action was taken.

Cross File: HB 1107 (Delegate Valderrama, *et al.*) - Economic Matters.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Calvert and Montgomery counties; Maryland Association of Counties; City of Takoma Park; Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2019
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