

1 AN ACT relating to employment discrimination based on smoking.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 344.040 is amended to read as follows:

4 (1) It is an unlawful practice for an employer:

5 (a) To fail or refuse to hire, or to discharge any individual, or otherwise to
6 discriminate against an individual with respect to compensation, terms,
7 conditions, or privileges of employment, because of the individual's race,
8 color, religion, national origin, sex, age forty (40) and over, **or** because the
9 person is a qualified individual with a disability~~[-, or because the individual is~~
10 ~~a smoker or nonsmoker, as long as the person complies with any workplace~~
11 ~~policy concerning smoking];~~

12 (b) To limit, segregate, or classify employees in any way which would deprive or
13 tend to deprive an individual of employment opportunities or otherwise
14 adversely affect status as an employee, because of the individual's race, color,
15 religion, national origin, sex, or age forty (40) and over, **or** because the person
16 is a qualified individual with a disability~~[-, or because the individual is a~~
17 ~~smoker or nonsmoker, as long as the person complies with any workplace~~
18 ~~policy concerning smoking]; **or**~~

19 (c) To fail to make reasonable accommodations for any employee with limitations
20 related to pregnancy, childbirth, or a related medical condition who requests
21 an accommodation, including but not limited to the need to express breast
22 milk, unless the employer can demonstrate the accommodation would impose
23 an undue hardship on the employer's program, enterprise, or business. The
24 following shall be required as to reasonable accommodations:

- 25 1. An employee shall not be required to take leave from work if another
26 reasonable accommodation can be provided;
- 27 2. The employer and employee shall engage in a timely, good faith, and

1 interactive process to determine effective reasonable accommodations;
2 and

3 3. If the employer has a policy to provide, would be required to provide, is
4 currently providing, or has provided a similar accommodation to other
5 classes of employees, then a rebuttable presumption is created that the
6 accommodation does not impose an undue hardship on the employer~~;~~ or

7 ~~(d) To require as a condition of employment that any employee or applicant for~~
8 ~~employment abstain from smoking or using tobacco products outside the~~
9 ~~course of employment, as long as the person complies with any workplace~~
10 ~~policy concerning smoking].~~

11 (2) (a) A difference in employee contribution rates for smokers and nonsmokers in
12 relation to an employer-sponsored health plan shall not be deemed to be an
13 unlawful practice~~[in violation of this section]~~.

14 (b) The offering of incentives or benefits offered by an employer to employees
15 who participate in a smoking cessation program shall not be deemed to be an
16 unlawful practice~~[in violation of this section]~~.

17 (3) (a) An employer shall provide written notice of the right to be free from
18 discrimination in relation to pregnancy, childbirth, and related medical
19 conditions, including the right to reasonable accommodations, to:

- 20 1. New employees at the commencement of employment; and
21 2. Existing employees not later than thirty (30) days after June 27, 2019.

22 (b) An employer shall conspicuously post a written notice of the right to be free
23 from discrimination in relation to pregnancy, childbirth, and related medical
24 conditions, including the right to reasonable accommodations, at the
25 employer's place of business in an area accessible to employees.