

HOUSE BILL 1985

By Gilmore

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 8, relative to public employment by women with pregnancy-related conditions.

WHEREAS, it is the intent of the General Assembly to prevent discrimination against pregnant women, promote public health, and ensure full and equal participation for women in the labor force by requiring the State of Tennessee and its political subdivisions to provide reasonable accommodations to public employees with pregnancy-related conditions; and

WHEREAS, current workplace laws are inadequate to protect pregnant women from being forced out of work or fired when these women need a reasonable accommodation to maintain their jobs; and

WHEREAS, the State of Tennessee and its political subdivisions will not tolerate discrimination against pregnant women in any form and should act as leaders among employers in this State; and

WHEREAS, many pregnant women are single mothers or the primary breadwinners for their families. If these women lose their jobs, their entire families will suffer. This is not an outcome that families can afford in today's economy; now, therefore:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Public Employees' Pregnant Workers Fairness Act."

SECTION 2. Tennessee Code Annotated, Title 8, Chapter 50, Part 1, is amended by adding the following new section:

(a) As used in this section:

(1) "Commission" means the Tennessee human rights commission;

(2) "Employer" means this state and any political or civil subdivision of this state;

(3) "Light duty" means:

(A) Temporary or permanent work that is physically or mentally less demanding than normal job duties created specifically for the purpose of providing alternative work for employees who are unable to perform some or all of their normal duties; or

(B) An excuse for an employee from performing job functions that the employee is unable to perform;

(4) "Pregnancy-related condition" means a medical condition or need related to pregnancy or childbirth;

(5) "Reasonable accommodation" includes, but is not limited to:

(A) More frequent or longer breaks;

(B) Acquisition or modification of equipment;

(C) Seating;

(D) Temporary transfer to a less strenuous or hazardous position;

(E) Job restructuring;

(F) Light duty;

(G) Private, non-bathroom space for expressing breast milk;

(H) Assistance with manual labor; and

(I) Modified work schedules; and

(6) "Undue hardship" means an action resulting in significant difficulty or expense to an employer with respect to the employer's program, enterprise, or business.

(b) It is a discriminatory practice based on sex for an employer to:

(1) Fail to make reasonable accommodations for any person with a pregnancy-related condition who is an applicant for employment or an employee

after the applicant or employee makes a request for the accommodation, unless the employer can demonstrate that the accommodation would constitute an undue hardship;

(2) Take adverse action against an employee who requests or uses a reasonable accommodation in terms, conditions, or privileges of employment;

(3) Deny employment opportunities to an applicant for employment or employee, if the employer knows the applicant or employee has a pregnancy-related condition and the denial is based on the need of the employer to make a reasonable accommodation for the applicant or employee with a pregnancy-related condition;

(4) Require an applicant for employment or employee who has a pregnancy-related condition to accept an accommodation that the applicant or employee chooses not to accept; or

(5) Require an employee known to have a pregnancy-related condition to take leave if any reasonable accommodation can be provided to the employee.

(c) The employer shall consult with each employee known to have a pregnancy-related condition to identify reasonable accommodations that will be effective for the employee.

(d) The employer has the burden of proving undue hardship under this section.

In determining undue hardship, factors to consider must include:

(1) The nature and cost of the accommodation required;

(2) The overall financial resources of the employer, the number of employees, and the number, type, and address of each facility of the employer; and

(3) Any adverse impact upon the employer as the result of authorizing the accommodation, including, but not limited to, the effect on the expenses and resources of the employer.

(e) If an employer provides or is required to provide a similar reasonable accommodation to another class of employees, a rebuttable presumption is created that the provision of a reasonable accommodation to an applicant for employment or employee with a pregnancy-related condition does not impose an undue hardship on the employer under this section.

(f)

(1) An employer is not required under this section to create additional employment positions that the employer would not otherwise create, unless the employer creates or would create additional employment positions for other classes of employees who need a reasonable accommodation.

(2) An employer is not required under this section to discharge an employee, transfer an employee with more seniority, or promote an employee who is not qualified to perform a job for purposes of compliance with this section.

(g)

(1) An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy-related conditions, including the right to reasonable accommodations for pregnancy-related conditions. The notice must be provided to:

(A) New employees at the commencement of employment;

(B) Employees hired prior to July 1, 2018. Notice must be provided under this subdivision (g)(1)(B) no later than November 1, 2018; and

(C) Each employee who provides written notice to the employer that the employee is pregnant. Notice must be provided under this subdivision (g)(1)(C) no later than ten (10) business days after receipt of written notice from the employee.

(2) Written notice provided by an employer under subdivision (g)(1) must be conspicuously displayed in a common area of an employer's place of business that is accessible to all employees.

(h) The commission shall develop courses of instruction and conduct ongoing public education as necessary to inform employers, employees, employment agencies, and applicants for employment about employer and employee rights and responsibilities under this section.

(i) This section must not be interpreted or construed to impair any rights or privileges under existing law for a person with a pregnancy-related condition.

(j) The commission may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this section.

(k) A person claiming to be aggrieved by a discriminatory practice prohibited under this section may file a complaint with the commission under § 4-21-302 and is otherwise entitled to the procedures and remedies set forth in title 4, chapter 21, part 3.

SECTION 3. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2018, the public welfare requiring it.