

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10428-LRa-152D

Short Title: Protection Against Pregnancy Discrimination. (Public)

Sponsors: Representative von Haefen.

Referred to:

A BILL TO BE ENTITLED
AN ACT PROTECTING AGAINST EMPLOYMENT DISCRIMINATION BASED ON
PREGNANCY, CHILDBIRTH, AND PREGNANCY RELATED CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 49A of Chapter 143 of the General Statutes reads as rewritten:

"Article 49A.

"Equal Employment Practices.

"§ 143-422.1. Short title.

This Article shall be known and may be cited as the Equal Employment Practices Act.

"§ 143-422.2. Legislative declaration.

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.

(b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

(c) Repealed by Session Laws 2017-4, s. 1, effective March 30, 2017.

"§ 143-422.3. Investigations; conciliations.

The Human Relations Commission in the Civil Rights Division of the Office of Administrative Hearings shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination.

"§ 143-422.4. Discrimination based upon pregnancy, childbirth, or pregnancy related conditions prohibited.

(a) The following definitions apply in this section:

(1) Bona fide occupational qualification or BFOQ. – A qualification that is reasonably necessary to the normal operation of the particular business.

(2) Business necessity. – A practice that is essential to safe and efficient business operations, and demonstrably related to job performance, when there is not a less discriminatory alternative available.

(3) Pregnancy. – The condition of being pregnant, the perceived capacity to become pregnant, and pregnancy related conditions.



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(4) Pregnancy related conditions. – Medical conditions directly related to pregnancy or childbirth, including miscarriage, pregnancy termination, pregnancy complications, recovery from childbirth, and lactation.

(5) Undue hardship. – A significant difficulty or expense for the employer when considered in light of factors such as: (i) the nature and cost of the accommodation needed; (ii) the overall financial resources of the facility, the number of persons employed at the facility, and the effect on expenses and resources; (iii) the overall financial resources of the employer, the overall size of the business with respect to the number of employees, and the number, type, and location of facilities; and (iv) the type of operation of the employer, including the composition, structure, and functions of the workforce.

(b) It is the public policy of this State to protect and safeguard the right and opportunity of individuals to seek, obtain, and hold employment without discrimination or abridgement on account of pregnancy, childbirth, or pregnancy related conditions. It is contrary to the public policy of this State for an employer, because of the pregnancy, childbirth, or pregnancy related condition of any individual, to refuse to hire, discharge, or otherwise discriminate against that individual with respect to compensation, terms, conditions, or privileges of employment. However, no person violates this section solely because the individual followed a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or because the person made a distinction or differentiation based on a bona fide business necessity.

(c) Individuals affected by pregnancy, childbirth, or pregnancy related conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other individuals not so affected but similar in their ability or inability to work.

(d) An employer shall provide a pregnant individual with a leave of absence for the period of time that the individual is sick or temporarily disabled because of pregnancy, childbirth, or pregnancy related conditions. Employers must treat an individual on pregnancy related leave the same as other employees on leave for sickness or other temporary disabilities.

(e) An employer shall allow a pregnant individual to return to the same job, or a similar job of at least the same pay, if the individual has taken a leave of absence only for the actual period of disability relating to pregnancy, childbirth, or pregnancy related conditions unless the employer can demonstrate business necessity for not doing so.

(f) An employer shall provide reasonable accommodations for conditions related to pregnancy, childbirth, or pregnancy related conditions unless the accommodation would impose an undue hardship. Reasonable accommodations may include modified work schedules, modified work assignments, seating or equipment modifications, temporary transfers, or break time and space for expressing breast milk. An employer shall not deny employment opportunities based on the need to provide reasonable accommodations.

(g) An employer claiming a BFOQ defense must prove that: (i) the qualification is reasonably necessary to the essence of the business operation; (ii) substantially all individuals excluded by the qualification cannot safely and efficiently perform the essential duties of the job; and (iii) there are no less discriminatory alternatives available to achieve the same business purpose.

(h) An individual who claims to be aggrieved by an unlawful discriminatory practice regarding pregnancy, childbirth, or pregnancy related conditions in violation of this section may file a civil action in the General Court of Justice. The action must be filed within three years of the alleged discriminatory act.

(i) The court may award back pay, reinstatement, compensatory damages, injunctive relief, and reasonable costs and attorneys' fees in an action brought pursuant to this section."

SECTION 2. G.S. 168A-3(7a) is amended by adding a new sub-subdivision to read:

1 "e. Pregnancy, childbirth, and pregnancy related conditions, when such
2 conditions cause temporary disability."

3 **SECTION 3.** G.S. 168A-5 is amended by adding a new subsection to read:

4 "(c) An employer or covered governmental entity shall provide reasonable
5 accommodations for an employee's pregnancy, childbirth, or pregnancy related conditions that
6 cause temporary disability, unless the employer or covered governmental entity can demonstrate
7 that providing the accommodations would impose an undue hardship."

8 **SECTION 4.** G.S. 7A-759 is amended by adding a new subsection to read:

9 "(a1) The Division may receive and investigate charges of discrimination based on
10 pregnancy, childbirth, or pregnancy related conditions under G.S. 143-422.4, in accordance with
11 its role as a deferral agency for the Equal Employment Opportunity Commission."

12 **SECTION 5.** This act is effective when it becomes law and applies to acts or
13 omissions occurring on or after that date.