

SENATE BILL 1159

By Massey

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 50, relative to employment discrimination based on pregnancy, childbirth, or a related condition.

WHEREAS, it is the intent of the General Assembly to prevent pregnancy discrimination, promote public health, and ensure full and equal participation for women in the labor force by requiring employers to provide reasonable accommodations to employees with conditions related to pregnancy, childbirth, or a related condition; 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 in order to stay on the job; and

WHEREAS, many pregnant women are single mothers or the primary breadwinners for their families—if these women lose their jobs, then the whole family will suffer. This is not an outcome that families can afford in today's difficult 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 Pregnant Workers Fairness Act.”

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 21, Part 4, is amended by adding the following language as a new section:

(a) For the purposes of this section:

(1) “Commission” means the Tennessee human rights commission;

(2) “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; and

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

(3) “Reasonable accommodation”:

(A) Has the same meaning as defined in the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.); and

(B) Includes:

(i) More frequent or longer breaks;

(ii) Leave to recover from childbirth pursuant to § 4-21-408;

(iii) Acquisition or modification of equipment;

(iv) Seating;

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

(vi) Job restructuring;

(vii) Light duty;

(viii) Private, nonbathroom space for expressing breast milk;

(ix) Assistance with manual labor; and

(x) Modified work schedules;

(4) “Related conditions” includes lactation or the need to express breast milk for a nursing child; and

(5) “Undue hardship” means an action requiring significant difficulty or expense.

(b) Notwithstanding § 4-21-401, it is a discriminatory practice based on sex for an employer to:

(1) Fail to make reasonable accommodations for any condition of an applicant for employment or employee related to pregnancy, childbirth, or a related condition, including, but not limited to, the need to express breast milk for a nursing child, after the employee or applicant for employment makes a request, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise, or business;

(2) Take adverse action against an employee who requests or uses an accommodation in terms, conditions, or privileges of employment, including, but not limited to, failing to reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other applicable service credits when her need for reasonable accommodations ceases;

(3) Deny employment opportunities to an applicant for employment or employee, if the denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy, childbirth, or related conditions of the applicant for employment or employee;

(4) Require an applicant for employment or employee affected by pregnancy, childbirth, or related conditions to accept an accommodation that the applicant or employee chooses not to accept; or

(5) Require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy, childbirth, or related conditions of an employee.

(c) The employer shall consult with the employee to determine effective reasonable accommodations for the employee.

(d) The employer shall have the burden of proving undue hardship. In determining undue hardship, factors to consider shall include:

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

(2)

(A) The overall financial resources of the employer, the number of employees, and the number, type, and location of its facility; and

(B) The number of locations, the type of location, and the specific address of each location, if the employer has more than one (1) location; and

(3) The effect of a reasonable accommodation on the expenses and resources or the impact otherwise of the accommodation upon the employer.

(e) The fact that the employer provides or would be required to provide a similar accommodation to other classes of employees who need it shall create a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

(f) Notwithstanding subdivision (a)(3):

(1) No employer shall be required by this section to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need the reasonable accommodation; and

(2) The employer shall not be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need a reasonable accommodation.

(g)

(1) An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodations for conditions related to pregnancy, childbirth, or related conditions, to:

(A) New employees at the commencement of employment;

(B) Employees hired prior to July 1, 2015; provided, that employers shall have one hundred twenty (120) days to provide written notice to those employees; and

(C) Any employee who notifies the employer of her pregnancy within ten (10) days of the employer's written notice as required in subdivision (g)(1).

(2) The notice shall be conspicuously displayed in the 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 efforts as necessary to inform employers, employees, employment agencies, and applicants for employment about the employer's and employees' rights and responsibilities pursuant to this section.

(i) Nothing in this section diminishes coverage for pregnancy, childbirth, or a condition related to pregnancy or childbirth under any other provision of law.

SECTION 3. The Tennessee human rights commission is authorized to promulgate rules to effectuate the purposes of this act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. 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, 2015, the public welfare requiring it.