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A BILL

20-769

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA



To eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protecting Pregnant Workers Fairness Act of 2014".

Sec. 2. Definitions.

For purposes of this act, the term:

(1) "Reasonable accommodations" means an accommodation that an employer can make that does not cause undue hardship in the operation of the employer's business.

Reasonable accommodations include: more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private non-bathroom space for expressing breast milk, refraining from heavy lifting, relocating the employee's work area, or modified work schedules.

(2) "Undue hardship" means any action that requires significant difficulty or expense on the behalf of the employer when considered in relation to factors such as the size of the business, its financial resources, and the nature and structure of its operation.

Sec. 3. Nondiscrimination with regard to reasonable accommodations.

30 (a) An employer shall not:

31 (1) Refuse to make reasonable accommodations to the known limitations related
32 to pregnancy, childbirth, related medical conditions, or breastfeeding for any job applicant or
33 employee, unless the employer can demonstrate that the accommodation would impose an undue
34 hardship on the employer's program, enterprise, or business;

35 (2) Take an adverse action against an employee who requests or uses a reasonable
36 accommodation in terms, conditions or privileges of employment, including failing to reinstate
37 the employee to her original job or to an equivalent position with equivalent pay and
38 accumulated seniority, retirement, fringe benefits and other applicable service credits when her
39 need for reasonable accommodations ceases;

40 (3) Deny employment opportunities to a job applicant or employee, if such denial
41 is based on the need of the employer to make reasonable accommodations to the known
42 limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding of an
43 employee or applicant;

44 (4) Require a job applicant or employee affected by pregnancy, childbirth, related
45 medical conditions, or breastfeeding to accept an accommodation that such applicant or
46 employee chooses not to accept if the applicant or employee does not have a known limitation
47 related to pregnancy, childbirth, related medical conditions, or breastfeeding or if the
48 accommodation is unnecessary for the applicant or employee to perform her job; or

49 (5) Require an employee to take leave if a reasonable accommodation can be
50 provided.

51 (b) The employer shall engage in a timely, good faith, and interactive process with the
52 employee to determine effective reasonable accommodations.

53 (c)(1) The employer may require an employee to provide a certification from the
54 employee's health care provider concerning the medical advisability of a reasonable
55 accommodation to the same extent a certification is required for other temporary disabilities.

56 (2) A certification shall include;

57 (A) The date the reasonable accommodation became medically advisable;

58 (B) The probable duration of the reasonable accommodation; and

59 (C) An explanatory statement as to the medical advisability of the
60 reasonable accommodation.

61 Sec. 4. Notice of rights.

62 (a) An employer shall provide written notice to an employee of the employee's right to be
63 free from discrimination for conditions related to pregnancy, childbirth, related medical
64 conditions, or breastfeeding and the right to be provided with reasonable accommodations for
65 conditions pursuant to this act. The notice shall be provided to:

66 (1) New employees at the commencement of employment;

67 (2) Existing employees within 120 days after the effective date of this act; and

68 (3) An employee who notifies the employer of her pregnancy, within 10 days
69 of the notification.

70 (b) The notice of rights shall be available in both English and Spanish and conspicuously
71 posted at the employer's place of business in an area accessible to employees.

72 (c) The employer shall provide accurate written translations of the notice of rights to any
73 non-English and non-Spanish speaking employees.

74 (d) The Department of Employment Services (“DOES”) shall develop courses of
75 instruction and conduct ongoing public education efforts as necessary to inform employers,
76 employees, employment agencies, and job applicants about their rights and responsibilities under
77 this act.

78 Sec. 5. Enforcement and remedies.

79 (a) An employee or similarly situated employees injured by a violation of this act shall be
80 entitled to maintain a civil action or an administrative action.

81 (b) If DOES determines that an employer has violated any provision of this act, DOES
82 shall order the employer to provide affirmative remedies including:

83 (1) Back pay for lost wages caused by the employer's violation of this act;

84 (2) Reinstatement or other injunctive relief; and

85 (3) Reasonable attorney's fees and costs of enforcement.

86 (c) An action may be maintained against any employer in a court of competent
87 jurisdiction by any one or more employees for and on behalf of himself or themselves. An
88 employer who violates the provisions of this act shall be liable to the employee or employees
89 affected for:

90 (1) Back pay for lost wages caused by the employer's violation of this act;

91 (2) Reinstatement or other injunctive relief; and

92 (3) Reasonable attorney's fees and costs.

93 (d) Where an employer is not in in compliance with this act DOES shall take any
94 appropriate enforcement action to secure compliance, including initiating a civil action and,
95 except where prohibited by another law, revoking or suspending any registration certificates,
96 permits or licenses held or requested by the employer until the violation is remedied. Prior to
97 suspension or revocation, the employer will have an opportunity to request a hearing to be held
98 pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968
99 (82 Stat. 1203; D.C. Official Code § 1-1501 *et seq.*).

100 (e) To compensate the District for the costs of investigating and remedying the violation,
101 DOES may also order the violating employer to pay to the District a sum of not more than \$500
102 for each day or portion thereof and for each employee for whom the violation occurred or
103 continued. The funds recovered by the District under this act shall be allocated to offset the costs
104 of implementing and enforcing this act.

105 (f) In any administrative or civil action brought under this act, the Mayor or court shall
106 award interest on all amounts due and unpaid at the rate of interest specified in sections 28-
107 3302(b) or 28-3302(c) of the District of Columbia Official Code.

108 (g) Any money awarded to an employee under this act shall be enforceable by the
109 employee to whom the debt is owed or may be collected by the District on behalf of the
110 employee.

111 (h) This act shall not be construed to preempt, limit, diminish or otherwise affect any
112 other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the
113 coverage for pregnancy, childbirth, or a condition related to pregnancy or childbirth.

114 Sec. 6. Penalties.

115 (a) An employer who willfully violates section 3 of this act shall be subject to a civil
116 penalty of \$1,000 for the 1st offense, \$1,500 for the 2nd offense, and \$2,000 for the 3rd and each
117 subsequent offense.

118 (b) An employer who violates section 4 of this act shall be assessed a civil penalty not to
119 exceed \$50 for each day that the employer fails to post the notice; provided that the total penalty
120 shall not exceed \$250 unless the ongoing violation is willful.

121 Sec. 7. Pregnant workers protection fund.

122 (a) There is established as a special fund the “Pregnant Workers Protection Fund”
123 (“Fund”),” which shall be administered by DOES in accordance with subsection (c) of this
124 subsection.

125 (b) The Fund shall consist of the revenue from the following sources recovered under this
126 act:

127 (1) Civil fines; and

128 (2) Administrative penalties.

129 (c) The Fund shall be used to offset the costs of implementing and enforcing this act.

130 (d)(1) The money deposited into the Fund, and interest earned, shall not revert to the
131 unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal
132 year, or at any other time.

133 (2) Subject to authorization by Congress, any funds appropriated in the Fund shall
134 be continually available without regard to fiscal year limitation.

135 Sec. 8. Fiscal impact statement.

136 The Council adopts the fiscal impact statement in the committee report as the fiscal
137 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
138 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

139 Sec. 9. Applicability.

140 This act shall apply upon the inclusion of its fiscal effect in an approved budget and
141 financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in
142 a certification published by the Council in the District of Columbia Register.

143 Sec. 10. Effective date.

144 This act shall take effect following approval by the Mayor (or in the event of veto by the
145 Mayor, action by Council to override the veto), a 30-day period of Congressional review as
146 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
147 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
148 Columbia Register.