

# HOUSE . . . . . No. 3816

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Text of a further amendment, offered by Mr. Brodeur of Melrose, to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2104) of the House Bill establishing the Massachusetts pregnant workers fairness act (House, No. 3680, amended). July 17, 2017.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court  
(2017-2018)  
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By striking out all after the enacting clause (inserted by amendment by the Senate) and inserting in place thereof the following:—

1           “SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by inserting after the word “information”, in lines 5, 89 and  
3 in lines 93 and 94, the following words, in each instance:- , pregnancy or a condition related to  
4 said pregnancy including, but not limited to, lactation or the need to express breast milk for a  
5 nursing child.

6           SECTION 2. Said section 4 of said chapter 151B, as so appearing, is hereby further  
7 amended by inserting after subsection 1D the following subsection:-

8           1E. (a) For an employer to deny a reasonable accommodation for an employee’s  
9 pregnancy or any condition related to the employee’s pregnancy including, but not limited to,  
10 lactation or the need to express breast milk for a nursing child if the employee requests such an  
11 accommodation; provided, however, that an employer may deny such an accommodation if the  
12 employer can demonstrate that the accommodation would impose an undue hardship on the

13 employer's program, enterprise or business. It shall also be an unlawful practice under this  
14 subsection to:

15 (i) take adverse action against an employee who requests or uses a reasonable  
16 accommodation in terms, conditions or privileges of employment including, but not limited to,  
17 failing to reinstate the employee to the original employment status or to an equivalent position  
18 with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable  
19 service credits when the need for a reasonable accommodation ceases;

20 (ii) deny an employment opportunity to an employee if the denial is based on the need of  
21 the employer to make a reasonable accommodation to the known conditions related to the  
22 employee's pregnancy including, but not limited to, lactation or the need to express breast milk  
23 for a nursing child;

24 (iii) require an employee affected by pregnancy, or require said employee affected by a  
25 condition related to the pregnancy, including, but not limited to, lactation or the need to express  
26 breast milk for a nursing child, to accept an accommodation that the employee chooses not to  
27 accept, if that accommodation is unnecessary to enable the employee to perform the essential  
28 functions of the job;

29 (iv) require an employee to take a leave if another reasonable accommodation may be  
30 provided for the known conditions related to the employee's pregnancy, including, but not  
31 limited to, lactation or the need to express breast milk for a nursing child, without undue  
32 hardship on the employer's program, enterprise or business;

33 (v) refuse to hire a person who is pregnant because of the pregnancy or because of a  
34 condition related to the person's pregnancy, including, but not limited to, lactation or the need to

35 express breast milk for a nursing child; provided, however, that the person is capable of  
36 performing the essential functions of the position with a reasonable accommodation and that  
37 reasonable accommodation would not impose an undue hardship, demonstrated by the employer,  
38 on the employer's program, enterprise or business.

39 (b) As used in this subsection, the following words shall have the following meanings  
40 unless the context clearly requires otherwise:

41 "Reasonable accommodation", may include, but shall not be limited to: (i) more frequent  
42 or longer paid or unpaid breaks; (ii) time off to attend to a pregnancy complication or recover  
43 from childbirth with or without pay; (iii) acquisition or modification of equipment or seating; (iv)  
44 temporary transfer to a less strenuous or hazardous position; (v) job restructuring; (vi) light duty;  
45 (vii) private non-bathroom space for expressing breast milk; (viii) assistance with manual labor;  
46 or (ix) a modified work schedule; provided, however, that an employer shall not be required to  
47 discharge or transfer an employee with more seniority or promote an employee who is not able to  
48 perform the essential functions of the job with or without a reasonable accommodation.

49 "Undue hardship", an action requiring significant difficulty or expense; provided,  
50 however, that the employer shall have the burden of proving undue hardship; provided further,  
51 that in making a determination of undue hardship, the following factors shall be considered:(i)  
52 the nature and cost of the needed accommodation; (ii) the overall financial resources of the  
53 employer; (iii) the overall size of the business of the employer with respect to the number of  
54 employees and the number, type and location of its facilities; and (iv) the effect on expenses and  
55 resources or any other impact of the accommodation on the employer's program, enterprise or  
56 business.

57 (c) Upon request for an accommodation from the employee or prospective employee  
58 capable of performing the essential functions of the position involved, the employee or  
59 prospective employee and the employer shall engage in a timely, good faith and interactive  
60 process to determine an effective, reasonable accommodation to enable the employee or  
61 prospective employee to perform the essential functions of the employee's job or the position to  
62 which the prospective employee has applied. An employer may require that documentation about  
63 the need for a reasonable accommodation come from an appropriate health care or rehabilitation  
64 professional; provided, however, that an employer shall not require documentation from an  
65 appropriate health care or rehabilitation professional for the following accommodations: (i) more  
66 frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting over 20 pounds; and  
67 (iv) private non-bathroom space for expressing breast milk. An "appropriate health care or  
68 rehabilitation professional" shall include, but shall not be limited to, a medical doctor, including  
69 a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical  
70 nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational  
71 rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health  
72 professional authorized to perform specified mental health services. An employer may require  
73 documentation for an extension of the accommodation beyond the originally agreed to  
74 accommodation.

75 (d) Written notice of the right to be free from discrimination in relation to pregnancy or a  
76 condition related to the employee's pregnancy including, but not limited to, lactation or the need  
77 to express breast milk for a nursing child, including the right to reasonable accommodations for  
78 conditions related to pregnancy pursuant to this subsection, shall be distributed by an employer  
79 to its employees. The notice shall be provided in a handbook, pamphlet or other means of notice

80 to all employees including, but not limited to: (i) new employees at or prior to the  
81 commencement of employment; and (ii) an employee who notifies the employer of a pregnancy  
82 or an employee who notifies the employer of a condition related to the employee's pregnancy  
83 including, but not limited to, lactation or the need to express breast milk for a nursing child not  
84 more than 10 days after such notification.

85 (e) Subject to appropriation, the commission shall develop courses of instruction and  
86 conduct public education efforts as necessary to inform employers, employees and employment  
87 agencies about the rights and responsibilities established under this subsection within 180 days  
88 of the appropriation.

89 (f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect  
90 any other law relating to sex discrimination or pregnancy or in any way diminish the coverage  
91 for pregnancy or a condition related to pregnancy including, but not limited to, lactation or the  
92 need to express breast milk for a nursing child under section 105D of chapter 149.

93 SECTION 3. An employer shall provide written notice in a handbook, pamphlet or by  
94 other means to its employees of the right to be free from discrimination in relation to pregnancy  
95 or a condition related to pregnancy including, but not limited to, lactation or the need to express  
96 breast milk for a nursing child, including the right to reasonable accommodations for conditions  
97 related to pregnancy, pursuant to subsection 1E of section 4 of chapter 151B of the General Laws  
98 on or before April 1, 2018.

99 SECTION 4. This act shall take effect on April 1, 2018.”