

HOUSE BUSINESS AND EMPLOYMENT COMMITTEE SUBSTITUTE FOR
HOUSE BILL 37

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE PREGNANT WORKER
ACCOMMODATION ACT; PROHIBITING DISCRIMINATION IN EMPLOYMENT ON
THE BASIS OF PREGNANCY, CHILDBIRTH OR A RELATED SERIOUS MEDICAL
CONDITION; REQUIRING THAT EMPLOYERS MAKE REASONABLE
ACCOMMODATION OF AN EMPLOYEE'S OR JOB APPLICANT'S PREGNANCY,
CHILDBIRTH OR RELATED SERIOUS MEDICAL CONDITION; PROHIBITING
RETALIATION FOR AN EMPLOYEE'S OR JOB APPLICANT'S ASSERTION OF A
CLAIM PURSUANT TO THE PREGNANT WORKER ACCOMMODATION ACT;
PROVIDING FOR GRIEVANCE PROCEDURE AND PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 28 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Pregnant Worker Accommodation Act"."

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1 SECTION 2. A new section of Chapter 28 NMSA 1978 is
2 enacted to read:

3 "[NEW MATERIAL] DEFINITIONS.--As used in the Pregnant
4 Worker Accommodation Act:

5 A. "employer" means a person or entity, including a
6 partnership, association, corporation, business trust,
7 unassociated group or agency employing four or more employees
8 or a person or entity acting on behalf of or as an agent of an
9 employer;

10 B. "reasonable accommodation" means modification or
11 adaptation of a work environment, work rules or job
12 responsibilities that enables an employee, who is incapacitated
13 due to pregnancy, childbirth or a related serious medical
14 condition that limits one or more of the employee's major life
15 activities, to perform the employee's job and that does not
16 impose an undue hardship on the employer; and

17 C. "undue hardship" means an action requiring
18 significant difficulty or expense when considered in light of
19 the following factors:

- 20 (1) the nature and cost of the accommodation;
21 (2) the financial resources of the employer
22 involved in the provision of the reasonable accommodation;
23 (3) the number of persons the employer
24 employs;
25 (4) the effect on expenses and resources;

1 (5) the impact otherwise of the accommodation
2 upon the employer's business;

3 (6) the overall financial resources of the
4 employer;

5 (7) the overall size of the business of an
6 employer with respect to the number, type and location of its
7 facilities;

8 (8) the type of operation of the employer,
9 including the composition, structure and functions of the work
10 force of the employer; and

11 (9) the geographic separateness or
12 administrative or fiscal relationship to the employer of the
13 employer's facilities."

14 SECTION 3. A new section of Chapter 28 NMSA 1978 is
15 enacted to read:

16 "[NEW MATERIAL] EMPLOYMENT DISCRIMINATION--PROHIBITION.--

17 A. It is an unlawful discriminatory practice for an
18 employer to:

19 (1) refuse to allow an employee incapacitated
20 by pregnancy, childbirth or a related serious medical condition
21 to take unpaid leave for a reasonable period of time not to
22 exceed three months and thereafter return to work in the same
23 or a similar position in the workplace. The employee shall be
24 entitled to use any accrued vacation, personal or sick leave
25 during this period of time. An employer may require an

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1 employee who plans to take leave pursuant to this section to
2 give the employer reasonable notice of the date the leave will
3 commence and the estimated duration of the leave;

4 (2) refuse to maintain coverage for an
5 eligible female employee who takes leave under a group health
6 plan that the employer offers, as defined in Section 5000(b)(1)
7 of the federal Internal Revenue Code of 1986, for the duration
8 of leave that the employee takes pursuant to this section, not
9 to exceed three months over the course of a twelve-month period
10 in accordance with federal law, at the level and the conditions
11 under which the employee would have been covered by the group
12 health plan coverage if the employee had continued in
13 employment continuously for the duration of the leave; provided
14 that:

15 (a) nothing in this paragraph shall
16 preclude an employer from maintaining and paying for coverage
17 under a group health plan for an employee for leave that
18 extends beyond three months;

19 (b) an employer may recover from the
20 employee the premium that the employer paid as required under
21 this paragraph for maintaining coverage for the employee under
22 the group plan; and

23 (c) if the employer is a state agency,
24 the collective bargaining agreement shall govern with respect
25 to the continued receipt by an eligible female employee of

1 group health plan coverage pursuant to the provisions of this
2 paragraph;

3 (3) refuse a request for reasonable
4 accommodation or fail to make reasonable accommodation for an
5 employee or job applicant incapacitated by pregnancy,
6 childbirth or a related serious medical condition, unless the
7 employer demonstrates that the accommodation constitutes an
8 undue hardship;

9 (4) refuse to hire, discharge, refuse to
10 promote, demote or discriminate in matters of compensation or
11 leave or terms, conditions or privileges of employment against
12 any person otherwise qualified for employment on the basis of
13 the employer's failure to treat an employee or job applicant
14 incapacitated by pregnancy, childbirth or a related serious
15 medical condition in the same manner as other persons similar
16 in ability to work for all employment-related purposes,
17 including receipt of benefits under employee benefit programs;

18 (5) print or circulate or cause to be printed
19 or circulated any statement, advertisement or publication; use
20 any form of application for employment; or make any inquiry
21 regarding prospective employment that expresses directly or
22 indirectly any limitation, specification or discrimination as
23 to pregnancy, childbirth or a related serious medical condition
24 unless based on a bona fide qualification; and

25 (6) require an employee to take leave under

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1 any leave law or policy of the employer if another reasonable
2 accommodation can be provided to the known incapacity related
3 to the employee's pregnancy, childbirth or related serious
4 medical condition.

5 B. It is an unlawful discriminatory practice for an
6 employer to refuse to list or properly classify for employment
7 or to refuse to refer a person for employment in a known
8 available job for which the person is otherwise qualified on
9 the basis of the person's pregnancy, childbirth or related
10 serious medical condition, unless based on a bona fide
11 occupational qualification.

12 C. It is an unlawful discriminatory practice for an
13 employer's agent to comply with a request from an employer for
14 referral of applicants for employment if the request indicates
15 either directly or indirectly that the employer discriminates
16 in employment on the basis of pregnancy, childbirth or related
17 serious medical condition, unless that discrimination is based
18 on a bona fide occupational qualification.

19 D. Nothing in the Pregnant Worker Accommodation Act
20 shall be construed to invalidate or limit the remedies, rights
21 or procedures of the Human Rights Act or the law of any
22 jurisdiction that provides greater or equal protection for
23 workers."

24 SECTION 4. A new section of Chapter 28 NMSA 1978 is
25 enacted to read:

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1 "[NEW MATERIAL] PREGNANCY ACCOMMODATION NOTICE.--

2 A. An employer shall provide written notice of an
3 employee's rights pursuant to the Pregnant Worker Accommodation
4 Act to be free from discrimination in relation to pregnancy,
5 childbirth or a related serious medical condition, including
6 the right to reasonable accommodations for conditions related
7 to pregnancy, childbirth or a related serious medical
8 condition, to:

9 (1) job applicants; and

10 (2) new employees at the commencement of
11 employment.

12 B. The notice provided pursuant to this section
13 shall also be conspicuously posted at an employer's place of
14 business in an area accessible to employees."

15 SECTION 5. A new section of Chapter 28 NMSA 1978 is
16 enacted to read:

17 "[NEW MATERIAL] ADMINISTRATIVE REVIEW--JUDICIAL REVIEW.--

18 A. A person claiming to be aggrieved by an unlawful
19 discriminatory practice in violation of the Pregnant Worker
20 Accommodation Act may:

21 (1) maintain an action to establish liability
22 and recover damages and injunctive relief in any court of
23 competent jurisdiction by an employee or job applicant on
24 behalf of the employee or job applicant or on behalf of other
25 employees or job applicants similarly situated; or

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1 (2) seek relief under the Human Rights Act
2 pursuant to the process set out in Sections 28-1-10 through
3 28-1-13 NMSA 1978.

4 B. The court in any action brought pursuant to this
5 section shall, in addition to any judgment awarded to the
6 plaintiff, allow costs of the action and reasonable attorney
7 fees to be paid by the defendant. In any proceedings brought
8 pursuant to the provisions of this section, the employee or job
9 applicant shall not be required to pay any filing fee or other
10 court costs necessarily incurred in such proceedings.

11 C. The court in any action brought under this
12 section may order appropriate injunctive relief, including
13 requiring an employer to post in the place of business a notice
14 describing violations by the employer, as determined by the
15 court or a copy of a cease and desist order applicable to the
16 employer.

17 D. An action arising pursuant to the Pregnant
18 Worker Accommodation Act shall be initiated within one year
19 from the date of discovery of the violation.

20 E. A person claiming to be aggrieved by an unlawful
21 discriminatory practice in violation of the Pregnant Worker
22 Accommodation Act need not exhaust state administrative
23 remedies before filing an action in court.

24 F. The initiation of an administrative process
25 under the Human Rights Act pursuant to the process set out in

1 Sections 28-1-10 through 28-1-13 NMSA 1978 shall toll the
 2 statute of limitations for initiating a claim under the
 3 Pregnant Worker Accommodation Act."

4 SECTION 6. A new section of Chapter 28 NMSA 1978 is
 5 enacted to read:

6 "[NEW MATERIAL] RETALIATION PROHIBITED.--It is a violation
 7 of the Pregnant Worker Accommodation Act for an employer or any
 8 other person to discharge, demote, deny promotion to or in any
 9 other way discriminate against an employee in the terms or
 10 conditions of employment in retaliation for the person
 11 asserting a claim or right pursuant to the Pregnant Worker
 12 Accommodation Act, for assisting another person to assert a
 13 claim or right pursuant to the Pregnant Worker Accommodation
 14 Act or for informing another person about employment rights or
 15 other rights provided by law."

16 SECTION 7. A new section of Chapter 28 NMSA 1978 is
 17 enacted to read:

18 "[NEW MATERIAL] REMEDIES.--A prevailing plaintiff may
 19 recover from an employer for violation of a provision of the
 20 Pregnant Worker Accommodation Act:

21 A. equitable relief, including employment,
 22 reinstatement or promotion;

23 B. damages that shall be calculated on the basis
 24 of:

25 (1) an affected employee's unpaid wages and

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1 damages arising from retaliation; or

2 (2) any other actual damages; or

3 C. reasonable attorney fees and costs."

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