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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES

Introduced By: Senators Gallo, Ruggerio, Miller, Archambault, and Goldin

Date Introduced: March 20, 2014

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings and intent. It is the intent of the General Assembly to
2 combat pregnancy discrimination, promote public health, and ensure full and equal participation
3 for women in the labor force by requiring employers to provide reasonable accommodations to
4 employees with conditions related to pregnancy, childbirth, or a related condition. Current
5 workplace laws are inadequate to protect pregnant women from being forced out or fired when
6 they need a simple, reasonable accommodation in order to stay on the job. Many pregnant women
7 are single mothers or the primary breadwinners for their families; if they lose their jobs then the
8 whole family will suffer. This is not an outcome that families can afford in today's difficult
9 economy.

10 SECTION 2. Section 28-5-7 of the General Laws in Chapter 28-5 entitled "Fair
11 Employment Practices" is hereby amended to read as follows:

12 **28-5-7. Unlawful employment practices. [Effective January 1, 2014.] – (a)** It shall be
13 an unlawful employment practice:

14 (1) For any employer:

15 (i) To refuse to hire any applicant for employment because of his or her race or color,
16 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
17 ancestral origin;

18 (ii) Because of those reasons, to discharge an employee or discriminate against him or
19 her with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or

1 any other matter directly or indirectly related to employment. However, if an insurer or employer
2 extends insurance related benefits to persons other than or in addition to the named employee,
3 nothing in this subdivision shall require those benefits to be offered to unmarried partners of
4 named employees;

5 (iii) In the recruiting of individuals for employment or in hiring them, to utilize any
6 employment agency, placement service, training school or center, labor organization, or any other
7 employee referring source which the employer knows, or has reasonable cause to know,
8 discriminates against individuals because of their race or color, religion, sex, sexual orientation,
9 gender identity or expression, disability, age, or country of ancestral origin;

10 (iv) To refuse to reasonably accommodate an employee's or prospective employee's
11 disability unless the employer can demonstrate that the accommodation would pose a hardship on
12 the employer's program, enterprise, or business; or

13 (v) When an employee has presented to the employer an internal complaint alleging
14 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual
15 orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a
16 timely manner in writing to that employee the disposition of the complaint, including a
17 description of any action taken in resolution of the complaint; provided, however, no other
18 personnel information shall be disclosed to the complainant.

19 (2) (i) For any employment agency to fail or refuse to properly classify or refer for
20 employment or otherwise discriminate against any individual because of his or her race or color,
21 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
22 ancestral origin; or

23 (ii) For any employment agency, placement service, training school or center, labor
24 organization, or any other employee referring source to comply with an employer's request for the
25 referral of job applicants if the request indicates either directly or indirectly that the employer will
26 not afford full and equal employment opportunities to individuals regardless of their race or color,
27 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
28 ancestral origin;

29 (3) For any labor organization:

30 (i) To deny full and equal membership rights to any applicant for membership because of
31 his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability,
32 age, or country of ancestral origin;

33 (ii) Because of those reasons, to deny a member full and equal membership rights, expel
34 him or her from membership, or otherwise discriminate in any manner against him or her with

1 respect to his or her hire, tenure, compensation, terms, conditions or privileges of employment, or
2 any other matter directly or indirectly related to membership or employment, whether or not
3 authorized or required by the constitution or bylaws of the labor organization or by a collective
4 labor agreement or other contract;

5 (iii) To fail or refuse to classify properly or refer for employment, or otherwise to
6 discriminate against any member because of his or her race or color, religion, sex, sexual
7 orientation, gender identity or expression, disability, age, or country of ancestral origin; or

8 (iv) To refuse to reasonably accommodate a member's or prospective member's disability
9 unless the labor organization can demonstrate that the accommodation would pose a hardship on
10 the labor organization's program, enterprise, or business;

11 ~~(4)~~(v) Except where based on a bona fide occupational qualification certified by the
12 commission or where necessary to comply with any federal mandated affirmative action
13 programs, for any employer or employment agency, labor organization, placement service,
14 training school or center, or any other employee referring source, prior to employment or
15 admission to membership of any individual, to:

16 ~~(i)~~(A) Elicit or attempt to elicit any information directly or indirectly pertaining to his or
17 her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or
18 country of ancestral origin;

19 ~~(ii)~~(B) Make or keep a record of his or her race or color, religion, sex, sexual orientation,
20 gender identity or expression, disability, age, or country of ancestral origin;

21 ~~(iii)~~(C) Use any form of application for employment, or personnel or membership blank
22 containing questions or entries directly or indirectly pertaining to race or color, religion, sex,
23 sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

24 ~~(iv)~~(D) Print or publish or cause to be printed or published any notice or advertisement
25 relating to employment or membership indicating any preference, limitation, specification, or
26 discrimination based upon race or color, religion, sex, sexual orientation, gender identity or
27 expression, disability, age, or country of ancestral origin; or

28 ~~(v)~~(E) Establish, announce, or follow a policy of denying or limiting, through a quota
29 system or otherwise, employment or membership opportunities of any group because of the race
30 or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country
31 of ancestral origin of that group;

32 ~~(5)~~(4) For any employer or employment agency, labor organization, placement service,
33 training school or center, or any other employee referring source to discriminate in any manner
34 against any individual because he or she has opposed any practice forbidden by this chapter, or

1 because he or she has made a charge, testified, or assisted in any manner in any investigation,
2 proceeding, or hearing under this chapter;

3 ~~(6)~~(5) For any person, whether or not an employer, employment agency, labor
4 organization, or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by
5 this section to be an unlawful employment practice, or to obstruct or prevent any person from
6 complying with the provisions of this chapter or any order issued pursuant to this chapter, or to
7 attempt directly or indirectly to commit any act declared by this section to be an unlawful
8 employment practice;

9 ~~(7)~~(6) For any employer to include on any application for employment, except
10 applications for law enforcement agency positions or positions related to law enforcement
11 agencies, a question inquiring or to otherwise inquire either orally or in writing whether the
12 applicant has ever been arrested, charged with or convicted of any crime; provided, that:

13 (i) If a federal or state law or regulation creates a mandatory or presumptive
14 disqualification from employment based on a person's conviction of one or more specified
15 criminal offenses, an employer may include a question or otherwise inquire whether the applicant
16 has ever been convicted of any of those offenses; or

17 (ii) If a standard fidelity bond or an equivalent bond is required for the position for
18 which the applicant is seeking employment and his or her conviction of one or more specified
19 criminal offenses would disqualify the applicant from obtaining such a bond, an employer may
20 include a question or otherwise inquire whether the applicant has ever been convicted of any of
21 those offenses; and

22 (iii) Notwithstanding, any employer may ask an applicant for information about his or
23 her criminal convictions at the first interview or thereafter, in accordance with all applicable state
24 and federal laws.

25 ~~(8)~~(7) (i) For any person who, on June 7, 1988, is providing either by direct payment or
26 by making contributions to a fringe benefit fund or insurance program, benefits in violation with
27 sections 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7,
28 1988 or if there is an applicable collective bargaining agreement in effect on June 7, 1988, until
29 the termination of that agreement, in order to come into compliance with sections 28-5-6, 28-5-7
30 and 28-5-38, to reduce the benefits or the compensation provided any employee on June 7, 1988,
31 either directly or by failing to provide sufficient contributions to a fringe benefit fund or
32 insurance program.

33 (ii) Where the costs of these benefits on June 7, 1988 are apportioned between employers
34 and employees, the payments or contributions required to comply with sections 28-5-6, 28-5-7

1 and 28-5-38 may be made by employers and employees in the same proportion.

2 (iii) Nothing in this section shall prevent the readjustment of benefits or compensation
3 for reasons unrelated to compliance with sections 28-5-6, 28-5-7 and 28-5-38.

4 (8) To refuse to reasonably accommodate an employee's or prospective employee's
5 condition related to pregnancy, childbirth, or a related medical condition, including, but not
6 limited to, the need to express breast milk for a nursing child, if she so requests; unless the
7 employer can demonstrate that the accommodation would pose an undue hardship on the
8 employer's program, enterprise, or business.

9 (9) To require an employee to take leave if another reasonable accommodation can be
10 provided to an employee's condition related to the pregnancy, childbirth, or a related medical
11 condition.

12 (10) To deny employment opportunities to an employee or prospective employee, if such
13 denial is based on the refusal of the employer to reasonably accommodate an employee's or
14 prospective employee's condition related to pregnancy, childbirth, or a related medical condition.

15 (b) For the purposes of this section the following terms shall have the following
16 meanings:

17 (1) "Reasonably accommodate" means providing reasonable accommodations, including,
18 but not limited to: more frequent or longer breaks, time off to recover from childbirth, acquisition
19 or modification of equipment, seating, temporary transfer to a less strenuous or hazardous
20 position, job restructuring, light duty, break time and private non-bathroom space for expressing
21 breast milk, assistance with manual labor, or modified work schedules.

22 (2) "Related conditions" includes, but is not limited to, lactation or the need to express
23 breast milk for a nursing child.

24 (3) "Undue hardship" means an action requiring significant difficulty or expense to the
25 employer. In making a determination of undue hardship, the factors that may be considered
26 include, but shall not be limited to:

27 (i) The nature and cost of the accommodation;

28 (ii) The overall financial resources of the employer; the overall size of the business of the
29 employer with respect to the number of employees, and the number, type, and location of its
30 facilities; and

31 (iii) The effect on expenses and resources or the impact otherwise of such
32 accommodation upon the operation of the employer.

33 (A) The employer shall have the burden of proving undue hardship.

34 (B) The fact that the employer provides or would be required to provide a similar

1 accommodation to other classes of employees who need it, such as those who are injured on the
2 job or those with disabilities, shall create a rebuttable presumption that the accommodation does
3 not impose an undue hardship on the employer.

4 (4) "Qualified employee or prospective employee" means a "qualified individual" as
5 defined in § 42-87-1(6)(i).

6 (c) No employer shall be required by this subsection to create additional employment that
7 the employer would not otherwise have created, unless the employer does so or would do so for
8 other classes of employees who need accommodation, such as those who are injured on the job or
9 those with disabilities.

10 (d) No employer shall be required to discharge any employee, transfer any employee with
11 more seniority, or promote any employee who is not qualified to perform the job, unless the
12 employer does so or would do so to accommodate other classes of employees who need it, such
13 as those who are injured on the job or those with disabilities.

14 (e) Notice of rights. An employer shall provide written notice of the right to be free from
15 discrimination in relation to pregnancy, childbirth, and related medical conditions to:

16 (1) New employees at the commencement of employment; and

17 (2) Existing employees within one hundred twenty (120) days after the effective date of
18 the local law that added this subdivision. Such notice may also be conspicuously posted at an
19 employer's place of business in an area accessible to employees.

20 (f) The provisions of this section shall not be construed to affect any other provision of
21 law relating to sex discrimination or pregnancy, or to preempt, limit, diminish or otherwise affect
22 any other law that provides greater protection or specific benefits with respect to pregnancy,
23 childbirth or medical conditions related to childbirth.

24 (g) Nothing in this section shall be construed to require an individual with a need related
25 to pregnancy, childbirth, or a related medical condition to accept an accommodation which such
26 individual chooses not to accept.

27 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES

1 This act would prohibit employers from discriminating against employees due to
2 pregnancy or medical conditions related to pregnancy or childbirth.

3 This act would take effect upon passage.

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