

2021 Regular Session

SENATE BILL NO. 215

BY SENATOR BARROW

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DISCRIMINATION. Provides for the reasonable accommodations of employees who become temporarily disabled due to certain medical conditions. (8/1/21)

AN ACT

To amend and reenact R.S. 23:341(A) and (B)(1) and 342 and to enact R.S. 23:341.1, relative to employment; to provide for reasonable accommodations of certain employees; to define certain terms; to provide terms and conditions of employer accommodations; to provide relative to unlawful employment practices; to provide for the equal treatment of employees; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:341(A) and (B)(1) and 342 are hereby amended and reenacted and R.S. 23:341.1 is hereby enacted to read as follows:

§341. Application

A. The provisions of this Part shall apply only to an employer who employs more than ~~twenty-five~~ **fifteen** employees within this state for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

B.(1) For purposes of this Part, pregnancy, childbirth, **lactation, postpartum,** and related medical conditions are treated as any other temporary disability, **except pregnancy-related conditions need not meet any definition of disability for an employer to provide reasonable accommodations as provided in R.S.**



1 at the facility, the impact on expenses and resources of the accommodation upon  
2 the operation of the facility.

3 (c) The overall financial resources of the employer, the overall size of the  
4 business of an employer with respect to the number of its employees, the  
5 number, type and location of its facilities.

6 (d) The type of operation of the employer, including the composition,  
7 structure, and functions of the workforce of the employer, the geographic  
8 separateness and the administrative or fiscal relationship of the facility in  
9 question to the employer.

10 §342. Unlawful practice by employers prohibited; pregnancy, childbirth, lactation,  
11 postpartum, or related medical condition; benefits and leaves of absence;  
12 transfer of position

13 A. It shall be an unlawful employment practice unless based upon a bona fide  
14 occupational qualification:

15 (1) For any employer, because of the pregnancy, childbirth, lactation,  
16 postpartum, or related medical condition of any ~~female~~ employee, to refuse to  
17 promote ~~her~~ the employee, or to refuse to select ~~her~~ the employee for a training  
18 program leading to promotion, provided ~~she~~ the employee is able to complete the  
19 training program at least three months prior to the anticipated date of departure for  
20 ~~her~~ the employee's pregnancy leave, or to discharge ~~her~~ the employee from  
21 employment or from a training program leading to promotion, or to discriminate  
22 against ~~her~~ the employee in compensation or in terms, conditions, or privileges of  
23 employment.

24 (2) For any employer to refuse to allow a ~~female~~ an employee affected by  
25 pregnancy, childbirth, lactation, postpartum, or related medical conditions either:

26 (a) To receive the same benefits or privileges of employment granted by that  
27 employer to other persons not so affected who are similar in their ability or inability  
28 to work, including to take disability or sick leave or any other accrued leave which  
29 is made available by the employer to temporarily disabled employees.

1 (b) To take a leave on account of pregnancy for a reasonable period of time,  
2 provided such period shall not exceed four months. Such employee shall be entitled  
3 to utilize any accrued vacation leave during this period of time. "Reasonable period  
4 of time" means that period during which the female employee is disabled on account  
5 of pregnancy, childbirth, **lactation, postpartum**, or related medical conditions.  
6 Nothing herein shall be construed to limit the provisions of R.S. 23:341(C) or  
7 Subparagraph (2)(a) of this Section. An employer may require any employee who  
8 plans to take a leave pursuant to this Section to give the employer reasonable notice  
9 of the date such leave shall commence and the estimated duration of such leave.

10 (3) For an employer who has a policy, practice, or collective bargaining  
11 agreement requiring or authorizing the transfer of temporarily disabled employees  
12 to less strenuous or hazardous positions for the duration of the disability to refuse to  
13 transfer a pregnant female employee who so requests.

14 ~~(4) For any employer to refuse to temporarily transfer a pregnant female~~  
15 ~~employee to a less strenuous or hazardous position for the duration of her pregnancy~~  
16 ~~if she so requests, with the advice of her physician, where such transfer can be~~  
17 ~~reasonably accommodated, provided, however, that no employer shall be required~~  
18 ~~by this Part to create additional employment which the employer would not~~  
19 ~~otherwise have created, nor shall such employer be required to discharge any~~  
20 ~~employee, transfer any employee with more seniority, or promote any employee who~~  
21 ~~is not qualified to perform the job.~~

22 **B. It shall be an unlawful employment practice to:**

23 **(1) Fail or refuse to make reasonable accommodations for medical needs**  
24 **arising from pregnancy, childbirth, lactation, postpartum, or related medical**  
25 **conditions of an applicant for employment or an employee, unless the employer**  
26 **can demonstrate that the accommodation would impose an undue hardship on**  
27 **the operation of the business of the employer. However, the employer is not**  
28 **required to make any of the following provisions, unless the employer does so**  
29 **for other employees or classes of employees that need a reasonable**

1           **accommodation:**

2                   **(a) Hire new employees that the employer would not have otherwise**  
3                   **hired.**

4                   **(b) Discharge an employee, transfer another employee with more**  
5                   **seniority, or promote another employee who is not qualified to perform the new**  
6                   **job.**

7                   **(c) Create a new position, including a light duty position for the**  
8                   **employee, unless a light duty position would be provided for another equivalent**  
9                   **employee.**

10                  **(2) Deny employment opportunities to a job applicant or existing**  
11                  **employee, if the denial is based on the need of the employer to make reasonable**  
12                  **accommodations to the known limitations for medical needs arising from**  
13                  **pregnancy, childbirth, lactation, postpartum, or related medical conditions of**  
14                  **an applicant for employment or an existing employee.**

15                  **(3) Require an applicant for employment or an existing employee**  
16                  **affected by pregnancy, childbirth, lactation, postpartum, or related medical**  
17                  **conditions, to accept an accommodation that the applicant or employee chooses**  
18                  **not to accept, if the applicant or employee does not have a known limitation**  
19                  **related to pregnancy, childbirth, lactation, postpartum, or related medical**  
20                  **conditions, or if the accommodation is unnecessary for the applicant or**  
21                  **employee to perform the essential duties of her job.**

22                  **(4) Require an employee to take leave under any leave law or policy of**  
23                  **the employer if another reasonable accommodation can be provided to the**  
24                  **known limitations for medical needs arising from pregnancy, childbirth,**  
25                  **lactation, postpartum, or related medical conditions.**

26                  **(5) Take adverse action against an employee in the terms, conditions, or**  
27                  **privileges of employment for requesting or using a reasonable accommodation**  
28                  **to the known limitations for medical needs arising from pregnancy, childbirth,**  
29                  **lactation, postpartum, or related medical conditions.**

- 1                    **C. An employer shall provide written notice of the right to be free from**  
 2                    **discrimination for medical needs arising from pregnancy, childbirth, lactation,**  
 3                    **postpartum, or related medical conditions as provided in this Section to new**  
 4                    **employees at the commencement of employment and to existing employees prior**  
 5                    **to December 1, 2021. The written notice shall be conspicuously posted at an**  
 6                    **employer's place of business in an area that is accessible to employees.**
- 7                    **D. If an employee believes that a violation of this Section has occurred,**  
 8                    **the employee may file a complaint with the Louisiana Commission on Human**  
 9                    **Rights requesting an investigation of the complaint pursuant to R.S. 51:2231 et.**  
 10                   **seq.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Yoursheka George.

DIGEST

SB 215 Original

2021 Regular Session

Barrow

Present law provides relative to accommodations for pregnancy, childbirth, and related medical conditions in certain places of employment. The provisions of present law are applicable only to employers who employ more than 25 employees within this state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

Proposed law makes present law applicable to employers who employ more than 15 employees within this state.

Present law provides that pregnancy, childbirth, and related medical conditions are to be treated as any other temporary disability with the employer being relieved of any responsibility to provide a female employee disability leave for a period exceeding six-weeks following a normal pregnancy, childbirth, or related medical condition.

Proposed law retains present law and adds that lactation and postpartum are to be treated as any other temporary disability. Provides the caveat that pregnancy-related medical conditions do not have to meet any definition of disability to trigger an employer's obligation to provide reasonable accommodations under proposed law.

Present law makes it an unlawful employment practice for any employer to refuse to promote, compensate, or train any female employee due to pregnancy, childbirth, or a related medical condition.

Proposed law adds lactation and postpartum to the list of conditions that are subject to unlawful employment practices. Removes gender restriction regarding an employer's requirement to provide employee disability leave on account of normal pregnancy, childbirth, lactation, postpartum, or related medical condition for a period exceeding six weeks.

Present law makes it an unlawful employment practice for any employer to refuse to allow a female employee affected by pregnancy, childbirth, or related medical conditions to receive the same benefits or privileges of employment granted by the employer to other

employees who are temporarily disabled.

Proposed law removes the term female used to describe the employee, but otherwise retains present law.

Present law provides that it is an unlawful employment practice for any employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position, per the female employee's request and with the advice of her physician, if the transfer can be reasonably accommodated.

Proposed law removes present law.

Proposed law defines the phrases "reasonable accommodation" and "undue hardship".

Proposed law makes it an unlawful employment practice for an employer to fail or refuse to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or other related medical conditions for an applicant for employment or an existing employee unless the employer first demonstrates that the accommodation would impose an undue hardship on the operation of the business.

Proposed law provides that an employer is not required to make certain provisions for an employee due to pregnancy, childbirth, or other related medical condition if the employer would not make the same provisions for other employees similarly situated.

Proposed law requires employers to provide written notice to new and existing employees of their discretionary power to accommodate the medical needs of an employee arising from pregnancy, childbirth, lactation, postpartum, or related medical conditions.

If the provisions of proposed law are violated, an employee may file a complaint with the La. Commission on Human Rights requesting an investigation of the complaint as provided by law.

Effective August 1, 2021.

(Amends R.S. 23:341(A) and (B)(1) and 342; adds R.S. 23:341.1)