

2021 Regular Session

SENATE BILL NO. 215

BY SENATORS BARROW, BERNARD, BOUDREAUX, BOUIE, CORTEZ, FESI, FOIL, HARRIS, HEWITT, JACKSON, JOHNS, LUNEAU, MCMATH, MILLIGAN, FRED MILLS, ROBERT MILLS, MIZELL, POPE, PRICE, SMITH, TARVER, WARD AND WOMACK AND REPRESENTATIVE LANDRY

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

EMPLOYMENT. Provides for reasonable accommodations of employees who become temporarily disabled due to certain pregnancy-related medical conditions. (8/1/21)

AN ACT

To amend and reenact R.S. 23:341(B)(1) and 342 and to enact R.S. 23:341(D) and 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(B)(1) and 342 are hereby amended and reenacted and R.S. 23:341(D) and 341.1 are hereby enacted to read as follows:

§341. Application

* * *

B.(1) For purposes of this Part, pregnancy, childbirth, and related medical conditions are treated as any other temporary disability-, **except pregnancy-related conditions need not meet any definition of disability for the purposes of R.S. 23:342.** ~~However, no employer shall be required to provide a female employee disability leave on account of normal pregnancy, childbirth, or related medical condition for a period exceeding six weeks.~~

1 * * *

2 D. Nothing in this Part shall impair any obligation an employer may
3 have under any local ordinance or state or federal law or regulation.

4 §341.1. Definitions

5 For the purposes of this Part:

6 (1) "Reasonable accommodation" means the following:

7 (a) Making existing facilities used by employees readily accessible to and
8 usable by individuals with medical needs arising from pregnancy, childbirth, or
9 related medical conditions provided the employer shall not be required to
10 construct a permanent, dedicated space for expressing breast milk. Nothing in
11 R.S. 23:342 exempts an employer from providing other reasonable
12 accommodations.

13 (b) For individuals with medical needs arising from pregnancy,
14 childbirth, or related medical conditions, providing scheduled and more
15 frequent or longer compensated break periods; providing more frequent
16 bathroom breaks; providing a private place, other than a bathroom stall, for the
17 purpose of expressing breast milk; modifying food or drink policy; providing
18 seating or allowing the employee to sit more frequently if the job requires the
19 employee to stand; providing assistance with manual labor and limits on lifting;
20 temporarily transferring the employee to a less strenuous or hazardous vacant
21 position, if qualified; providing job restructuring or light duty, if available;
22 acquiring or modifying equipment or devices necessary for performing essential
23 job functions; or modifying work schedules.

24 (2) "Related medical condition" includes but is not limited to lactation
25 or the need to express breast milk for up to one year after the child's birth and
26 medical conditions related to pregnancy and childbirth.

27 (3) "Undue hardship" shall have the same meaning as the meaning given
28 to it in 42 U.S.C. 12111 of the Americans with Disabilities Act of 1990, as
29 amended.

1 §342. Unlawful practice by employers prohibited; pregnancy, childbirth, or related
2 medical condition; benefits and leaves of absence; transfer of position

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

5 (1) For any employer, because of the pregnancy, childbirth, or related
6 medical condition of any female employee, to refuse to promote her, or to refuse to
7 select her for a training program leading to promotion, provided she is able to
8 complete the training program at least three months prior to the anticipated date of
9 departure for her pregnancy leave, or to discharge her from employment or from a
10 training program leading to promotion, or to discriminate against her in
11 compensation or in terms, conditions, or privileges of employment.

12 (2) For any employer to refuse to allow a female employee affected by
13 pregnancy, childbirth, or related medical conditions either:

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

18 (b) To take a leave on account of pregnancy for a reasonable period of time;
19 ~~provided such period shall not exceed four months. Such employee shall be entitled~~
20 ~~to utilize any accrued vacation leave during this period of time. "Reasonable period~~
21 ~~of time" means that period during which the female employee is disabled on account~~
22 ~~of pregnancy, childbirth, or related medical conditions. For the purposes of this~~
23 ~~Subparagraph, "reasonable period of time" means six weeks for a normal~~
24 ~~pregnancy and childbirth or the period of time during which the female~~
25 ~~employee is disabled on account of the pregnancy, childbirth, or related medical~~
26 ~~conditions, provided the period shall not exceed four months. The employee~~
27 ~~shall be entitled to utilize any accrued annual leave during this period of time.~~

28 Nothing herein shall be construed to limit the provisions of R.S. 23:341(C) or
29 Subparagraph ~~(2)~~(a) of this ~~Section~~ Paragraph. An employer may require any

1 employee who plans to take a leave pursuant to this Section to give the employer
2 reasonable notice of the date such leave shall commence and the estimated duration
3 of such leave.

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

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

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

17 **(1) Fail or refuse to make reasonable accommodations for medical needs**
18 **arising from pregnancy, childbirth, or related medical conditions of an**
19 **applicant for employment or an employee, unless the employer can demonstrate**
20 **that the accommodation would impose an undue hardship on the operation of**
21 **the business of the employer. However, the employer shall not be required to**
22 **make any of the following provisions, unless the employer does so for other**
23 **employees or classes of employees that need a reasonable accommodation:**

24 **(a) Create any additional employment opportunity or any new position,**
25 **including a light duty position for the employee.**

26 **(b) Discharge an employee, transfer any employee with more seniority,**
27 **or promote another employee who is not qualified to perform the job.**

28 **(2) Deny employment opportunities to a job applicant or existing**
29 **employee, if the denial is based on the need of the employer to make reasonable**

1 accommodations to the known limitations for medical needs arising from
 2 pregnancy, childbirth, or related medical conditions of an applicant for
 3 employment or an existing employee.

4 (3) Require an applicant for employment or an existing employee
 5 affected by pregnancy, childbirth, or related medical conditions, to accept an
 6 accommodation that the applicant or employee chooses not to accept, if the
 7 applicant or employee does not have a known limitation related to pregnancy,
 8 childbirth, or related medical conditions, or if the accommodation is
 9 unnecessary for the applicant or employee to perform the essential duties of her
 10 job.

11 (4) Require an employee to take leave under any leave law or policy of
 12 the employer if another reasonable accommodation can be provided to the
 13 known limitations for medical needs arising from pregnancy, childbirth, or
 14 related medical conditions.

15 (5) Take adverse action against an employee in the terms, conditions, or
 16 privileges of employment for requesting or using a reasonable accommodation
 17 to the known limitations for medical needs arising from pregnancy, childbirth,
 18 or related medical conditions.

19 C. An employer shall provide written notice of the right to be free from
 20 discrimination for medical needs arising from pregnancy, childbirth, or related
 21 medical conditions as provided in this Section to new employees at the
 22 commencement of employment and to existing employees prior to December 1,
 23 2021. The written notice shall be conspicuously posted at an employer's place
 24 of business in an area that is accessible to employees.

The original instrument was prepared by Yoursheka George. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

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 retains present law.

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. 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.

Proposed law provides that a "reasonable period of time" to be given for a pregnancy, childbirth, or related medical conditions means six weeks or a period of time not to exceed four months. Further provides that the employee shall be entitled to utilize any accrued annual leave during that period.

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", "related medical condition", 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 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.

Effective August 1, 2021.

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

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill

1. Makes technical changes.
2. Defines the term "related medical condition".

Senate Floor Amendments to engrossed bill

1. Removes provision expanding the number of businesses affected by this law based upon the number of employees and weeks worked.
2. Clarifies the definition of "related medical condition", "undue hardship"; and "reasonable period of time".
3. Allows an employee on leave for pregnancy, childbirth, or related medical conditions to utilize any accrued annual leave.
4. Removes the provision that violations may be reported by an employee to the La. Commission on Human Rights and the employee may request an investigation as provided by law.
5. Makes technical changes.