

2020 Regular Session

SENATE BILL NO. 287

BY SENATOR BARROW

EMPLOYMENT. Provides for reasonable accommodations for employees temporarily disabled due to pregnancy, childbirth, or related medical conditions in the workplace. (8/1/20)

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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 the reasonable accommodations of female employees who become temporarily disabled due to pregnancy, childbirth, or related medical conditions; to define certain terms; to provide terms and conditions of employer accommodations; 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, and related medical conditions are treated as any other temporary disability-, **except pregnancy-related conditions need not meet any definition of disability to trigger an employer's**

1 obligation to provide reasonable accommodations under R.S. 23:342(B).

2 However, no employer shall be required to provide a female employee disability  
3 leave on account of normal pregnancy, childbirth, or related medical condition for  
4 a period exceeding six weeks.

5 \* \* \*

6 §341.1. Definitions

7 For the purposes of this Part:

8 (1) "Reasonable accommodation" means:

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

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

26 (2) "Undue hardship" means an action requiring significant difficulty  
27 or expense, when considered in light of all of the following factors:

28 (a) The nature and cost of the accommodation needed under this  
29 Chapter.

1           **(b) The overall financial resources of the facility involved in the**  
2           **provision of the reasonable accommodation, the number of persons employed**  
3           **at the facility, the effect on expenses and resources, or the impact otherwise of**  
4           **the accommodation upon the operation of the facility.**

5           **(c) The overall financial resources of the covered entity, the overall size**  
6           **of the business of a covered entity with respect to the number of its employees,**  
7           **the number, type, and location of its facilities.**

8           **(d) The type of operation of the covered entity, including the**  
9           **composition, structure, and functions of the workforce of the entity, the**  
10           **geographic separateness and the administrative or fiscal relationship of the**  
11           **facility in question to the covered entity.**

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

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

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

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

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

29           (b) To take a leave on account of pregnancy for a reasonable period of time,

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

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

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

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

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

29 **(a) Hire new employees that the employer would not have otherwise**

1        hired.

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

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

8                (d) Compensate an employee for more frequent or longer break periods,  
9        unless the employee uses a break period which would otherwise be  
10       compensated.

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

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

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

26               (5) To take adverse action against an employee in the terms, conditions,  
27       or privileges of employment for requesting or using a reasonable  
28       accommodation to the known limitations for medical needs arising from  
29       pregnancy, childbirth, 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, or related**  
3                    **medical conditions, pursuant to this Section to new employees at the**  
4                    **commencement of employment, and existing employees prior to December 1,**  
5                    **2020. The notice required also must be conspicuously posted at an employer's**  
6                    **place of business in an area accessible to employees.**

7                    **D. If an employee believes their rights have been violated under this**  
8                    **Section the employee may file a complaint with the Louisiana Commission on**  
9                    **Human Rights requesting an investigation of the complaint pursuant to R.S.**  
10                   **51:2257.**

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

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## DIGEST

SB 287 Original

2020 Regular Session

Barrow

Present law makes the provisions of R.S. 23:341 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 but makes the provisions of R.S. 23:341 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 but adds 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 R.S. 23:342(B).

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.

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 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 makes it an unlawful employment practice for an employer to 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 defines the phrases "reasonable accommodation" and "undue hardship".

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

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

Effective August 1, 2020.

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