

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 REPRESENTATIVES BRASS, CARPENTER, GARY CARTER, WILFORD CARTER, COX, DUPLESSIS, FREEMAN, FREIBERG, GAINES, GREEN, HILFERTY, HUGHES, JAMES, JEFFERSON, JENKINS, TRAVIS JOHNSON, JONES, JORDAN, LANDRY, LARVADAIN, LYONS, MARCELLE, MOORE, NEWELL, PIERRE, SELDERS, STAGNI AND WILLARD

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

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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**

1 conditions need not meet any definition of disability for the purposes of R.S.
 2 23:342. ~~However, no employer shall be required to provide a female employee~~
 3 ~~disability leave on account of normal pregnancy, childbirth, or related medical~~
 4 ~~condition for a period exceeding six weeks.~~

5 * * *

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

8 §341.1. Definitions

9 A. The terms defined in this Part are to be construed in accordance with
 10 federal laws regarding disability, and based on pregnancy, childbirth, and
 11 related medical conditions.

12 B. For the purposes of this Part:

13 (1) "Applicant or employee with covered limitations" means an applicant
 14 for employment or an employee with medical needs causing limitations arising
 15 from pregnancy, childbirth, or related medical conditions, where such
 16 limitations are known to the employer.

17 (2) "Reasonable accommodation" may include but is not limited to the
 18 following:

19 (a) Making existing facilities used by employees readily accessible to and
 20 usable by an applicant or employee with covered limitations, provided the
 21 employer shall not be required to construct a permanent, dedicated space for
 22 expressing breast milk. Nothing in R.S. 23:342 exempts an employer from
 23 providing other reasonable accommodations.

24 (b) For an applicant or employee with covered limitations, providing
 25 scheduled and more frequent or longer compensated break periods; providing
 26 more frequent bathroom breaks; providing a private place, other than a
 27 bathroom stall, for the purpose of expressing breast milk; modifying food or
 28 drink policy; providing seating or allowing the employee to sit more frequently
 29 if the job requires the employee to stand; providing assistance with manual
 30 labor and limits on lifting; temporarily transferring the employee to a less

1 strenuous or hazardous vacant position, if qualified; providing job
 2 restructuring or light duty, if available; acquiring or modifying equipment or
 3 devices necessary for performing essential job functions; or modifying work
 4 schedules.

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

8 (4) "Undue hardship" shall have the same meaning as the meaning given
 9 to it in 42 U.S.C. 12111 of the Americans with Disabilities Act of 1990, as
 10 amended.

11 §342. Unlawful practice by employers prohibited; pregnancy, childbirth, or related
 12 medical condition; benefits and leaves of absence; 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, or related
 16 medical condition of any female employee, to refuse to promote her, or to refuse to
 17 select her for a training program leading to promotion, provided she is able to
 18 complete the training program at least three months prior to the anticipated date of
 19 departure for her pregnancy leave, or to discharge her from employment or from a
 20 training program leading to promotion, or to discriminate against her in
 21 compensation or in terms, conditions, or privileges of employment.

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

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

28 (b) To take a leave on account of pregnancy for a reasonable period of time;
 29 ~~provided such period shall not exceed four months. Such employee shall be entitled~~
 30 ~~to utilize any accrued vacation leave during this period of time. "Reasonable period~~

1 of time" means that period during which the female employee is disabled on account
 2 of pregnancy, childbirth, or related medical conditions. For the purposes of this
 3 Subparagraph, "reasonable period of time" means six weeks for a normal
 4 pregnancy and childbirth or the period of time during which the female
 5 employee is disabled on account of the pregnancy, childbirth, or related medical
 6 conditions, provided the period shall not exceed four months. The employee
 7 shall be entitled to utilize any accrued annual leave during this period of time.

8 Nothing herein shall be construed to limit the provisions of R.S. 23:341(C) or
 9 Subparagraph ~~(2)~~(a) of this Section Paragraph. An employer may require any
 10 employee who plans to take a leave pursuant to this Section to give the employer
 11 reasonable notice of the date such leave shall commence and the estimated duration
 12 of such leave.

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

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

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

26 **(1) Fail or refuse to make reasonable accommodations for an applicant**
 27 **or employee with covered limitations, unless the employer can demonstrate that**
 28 **the accommodation would impose an undue hardship on the operation of the**
 29 **business of the employer. However, the employer shall not be required to make**
 30 **any of the following provisions, unless the employer does so for other employees**

1 or classes of employees who need a reasonable accommodation:

2 (a) Create any additional employment opportunity or any new position,
3 including a light duty position for the employee.

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

6 (2) Deny employment opportunities to a job applicant or existing
7 employee, if the denial is based on the need of the employer to make reasonable
8 accommodations to the known limitations for medical needs arising from
9 pregnancy, childbirth, or related medical conditions of the applicant for
10 employment or existing employee.

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

18 (4) Require an employee with covered limitations to take leave under any
19 leave law or policy of the employer if another reasonable accommodation can
20 be provided to the known limitations for medical needs arising from pregnancy,
21 childbirth, or related medical conditions.

22 (5) Take adverse action against an employee with covered limitations in
23 the terms, conditions, or privileges of employment for requesting or using a
24 reasonable accommodation to the known limitations for medical needs arising
25 from pregnancy, childbirth, or related medical conditions.

26 C. An employer shall provide written notice of the right to be free from
27 discrimination based on medical needs arising from pregnancy, childbirth, or
28 related medical conditions, known to the employer, as provided in this Section
29 to new employees at the commencement of employment and to existing
30 employees prior to December 1, 2021. The written notice shall be conspicuously

1 posted at an employer's place of business in an area that is accessible to
2 employees.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____