

1 AN ACT  
2 RELATING TO EMPLOYMENT; ENACTING THE PREGNANT WORKER  
3 ACCOMMODATION ACT; PROHIBITING DISCRIMINATION IN EMPLOYMENT  
4 ON THE BASIS OF A NEED ARISING FROM PREGNANCY OR CHILDBIRTH  
5 OR A RELATED MEDICAL CONDITION; REQUIRING THAT EMPLOYERS MAKE  
6 REASONABLE ACCOMMODATION OF AN EMPLOYEE'S OR JOB APPLICANT'S  
7 NEED ARISING FROM PREGNANCY OR CHILDBIRTH OR A RELATED  
8 MEDICAL CONDITION; PROHIBITING RETALIATION FOR AN EMPLOYEE'S  
9 OR JOB APPLICANT'S ASSERTION OF A CLAIM PURSUANT TO THE  
10 PREGNANT WORKER ACCOMMODATION ACT; PROVIDING FOR GRIEVANCE  
11 PROCEDURES AND PENALTIES.

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 SECTION 1. A new section of Chapter 28 NMSA 1978 is  
15 enacted to read:

16 "SHORT TITLE.--This act may be cited as the "Pregnant  
17 Worker Accommodation Act"."

18 SECTION 2. A new section of Chapter 28 NMSA 1978 is  
19 enacted to read:

20 "DEFINITIONS.--As used in the Pregnant Worker  
21 Accommodation Act:

22 A. "employer" means a person or entity, including  
23 a partnership, association, corporation, business trust,  
24 unassociated group or agency employing four or more employees  
25 for each working day in each of twenty or more calendar weeks

1 in the current or preceding calendar year, or a person or  
2 entity acting on behalf of or as an agent of an employer;

3 B. "reasonable accommodation" means a modification  
4 or adaptation of the work environment, work rules or job  
5 responsibilities for as long as reasonably necessary upon an  
6 employee's request to enable the employee with a need arising  
7 from the employee's pregnancy or childbirth or a related  
8 medical condition to perform the job that does not impose an  
9 undue hardship on the employee's employer; and

10 C. "undue hardship" means an employment  
11 accommodation requiring significant difficulty or expense on  
12 the part of the employer when considered in light of any of  
13 the following factors:

14 (1) the nature and cost of the  
15 accommodation;

16 (2) the number of persons the employer  
17 employs;

18 (3) the variety of jobs performed at the  
19 employer's place of business;

20 (4) the effect of the accommodation on  
21 expenses and resources;

22 (5) the impact of the accommodation  
23 otherwise upon the employer's business;

24 (6) the overall financial resources of the  
25 employer;

1 (7) the overall size of the business of an  
2 employer with respect to the number, type and location of its  
3 facilities, including geographic separateness; or

4 (8) the type of operation of the employer,  
5 including the composition, structure and functions of the  
6 workforce of the employer."

7 SECTION 3. A new section of Chapter 28 NMSA 1978 is  
8 enacted to read:

9 "EMPLOYMENT DISCRIMINATION--PROHIBITION.--

10 A. It is an unlawful discriminatory practice for  
11 an employer to:

12 (1) fail to make reasonable accommodation  
13 for an employee or job applicant with a need arising from  
14 pregnancy or childbirth or a related medical condition,  
15 unless the employer demonstrates that the accommodation  
16 constitutes an undue hardship;

17 (2) refuse to hire, discharge, refuse to  
18 promote, demote or discriminate in matters of compensation or  
19 leave or terms, conditions or privileges of employment  
20 against any person otherwise qualified for employment on the  
21 basis of a need arising from that person's pregnancy or  
22 childbirth or a related medical condition, including receipt  
23 of benefits under fringe benefit programs, unless based on a  
24 bona fide occupational qualification;

25 (3) print or circulate or cause to be

1 printed or circulated any statement, advertisement or  
2 publication; use any form of application for employment; or  
3 make any inquiry regarding prospective employment that  
4 expresses, directly or indirectly, any limitation,  
5 specification or discrimination as to a need arising from a  
6 person's pregnancy or childbirth or a related medical  
7 condition, unless based on a bona fide occupational  
8 qualification; and

9 (4) require an employee to take paid or  
10 unpaid leave if another reasonable accommodation can be  
11 provided to the employee with a need arising from pregnancy  
12 or childbirth or a related medical condition.

13 B. It is an unlawful discriminatory practice for  
14 an employer to refuse to list, properly classify for  
15 employment or refer a person for employment in a known  
16 available job for which the person is otherwise qualified on  
17 the basis of a need arising from the person's pregnancy or  
18 childbirth or a related medical condition, unless the  
19 employer's action is based on a bona fide occupational  
20 qualification.

21 C. It is an unlawful discriminatory practice for  
22 an employer's agent to comply with a request from an employer  
23 for referral of applicants for employment if the request  
24 indicates, directly or indirectly, that the employer  
25 discriminates in employment on the basis of a need arising

1 from the person's pregnancy or childbirth or a related  
2 medical condition, unless that discrimination is based on a  
3 bona fide occupational qualification.

4 D. An employer shall not disclose the reason for  
5 the employee accommodation granted pursuant to the Pregnant  
6 Worker Accommodation Act, including the employee's need  
7 arising from pregnancy or childbirth or a related medical  
8 condition."

9 SECTION 4. A new section of Chapter 28 NMSA 1978 is  
10 enacted to read:

11 "PREGNANCY ACCOMMODATION NOTICE.--

12 A. An employer shall provide written notice of an  
13 employee's rights pursuant to the Pregnant Worker  
14 Accommodation Act to be free from discrimination related to  
15 pregnancy or childbirth or a related medical condition,  
16 including the right to reasonable accommodation for a need  
17 arising from pregnancy or childbirth or a related medical  
18 condition, to:

- 19 (1) job applicants;  
20 (2) new employees at the commencement of  
21 employment;  
22 (3) existing employees within one hundred  
23 twenty days after the effective date of the Pregnant Worker  
24 Accommodation Act; and  
25 (4) within ten days of an employee giving an

1 employer notice of pregnancy or childbirth or a related  
2 medical condition.

3 B. The notice provided pursuant to this section  
4 shall also be conspicuously posted at an employer's place of  
5 business in an area accessible to employees."

6 SECTION 5. A new section of Chapter 28 NMSA 1978 is  
7 enacted to read:

8 "RETALIATION PROHIBITED.--It is a violation of the  
9 Pregnant Worker Accommodation Act for an employer or any  
10 other person to refuse to hire, discharge, refuse to promote,  
11 demote or discriminate against a person in matters of  
12 compensation or leave or terms, conditions or privileges of  
13 employment in retaliation for the person having a need  
14 arising from pregnancy, childbirth or a related medical  
15 condition, for asserting a claim or right pursuant to the  
16 Pregnant Worker Accommodation Act, for assisting another  
17 person to assert a claim or right pursuant to the Pregnant  
18 Worker Accommodation Act or for informing another person  
19 about employment rights or other rights provided by law."

20 SECTION 6. A new section of Chapter 28 NMSA 1978 is  
21 enacted to read:

22 "GRIEVANCE PROCEDURE.--

23 A. A person claiming to be aggrieved by an  
24 unlawful discriminatory practice in violation of the Pregnant  
25 Worker Accommodation Act may seek relief under the Human

1 Rights Act pursuant to the process set out in Sections  
2 28-1-10 through 28-1-13 NMSA 1978.

3 B. The secretary of workforce solutions shall  
4 adopt and promulgate rules to carry out the provisions of the  
5 Pregnant Worker Accommodation Act and provide for grievance  
6 procedures pursuant to that act. These rules shall provide  
7 for grievance procedures pursuant to which:

8 (1) an employee seeking accommodation may  
9 seek expedited review of the employee's request for  
10 accommodation; and

11 (2) within twenty days of the filing of an  
12 expedited complaint by the employee seeking accommodation,  
13 the director shall:

14 (a) issue a probable cause or no  
15 probable cause determination related to the initial  
16 complaint;

17 (b) initiate the resolution of a  
18 probable cause determination through mediation or other  
19 voluntary means deemed appropriate; or

20 (c) when voluntary resolution to the  
21 complaint cannot be reached, the director shall afford the  
22 complainant a right to sue opportunity or shall file the  
23 necessary complaint with the human rights commission in  
24 accordance with the provisions of the Human Rights Act.

25 C. The director shall resolve all expedited

1 complaints under the Pregnant Worker Accommodation Act and  
2 shall issue final written findings of fact served on the  
3 complainant and the responding employer within fifty days of  
4 the complaint being filed, unless good cause is shown for a  
5 delay.

6 D. An employee seeking accommodation pursuant to  
7 the Pregnant Worker Accommodation Act may request, and the  
8 director shall issue without delay upon an employee's  
9 request, an order of nondetermination after the director's  
10 receipt of the complaint and, in jointly filed cases, after  
11 the federal complaint has been closed. The order of  
12 nondetermination may be appealed pursuant to the provisions  
13 of Section 28-1-13 NMSA 1978.

14 E. In addition to any judgment awarded to the  
15 plaintiff of actual damages and reasonable attorney fees, a  
16 court may order:

17 (1) in its discretion, treble damages;

18 (2) appropriate injunctive relief, including  
19 requiring an employer to post in the place of business a  
20 notice describing violations by the employer, as determined  
21 by the court or a copy of a cease and desist order applicable  
22 to the employer;

23 (3) appropriate equitable relief, including  
24 employment reinstatement or promotion; or

25 (4) in its discretion, punitive damages to

1 an employee or job applicant.

2 F. A court shall deny treble or punitive damages  
3 if an employer shows to the satisfaction of the court:

4 (1) that the act or omission giving rise to  
5 an alleged violation of the Pregnant Worker Accommodation Act  
6 was consistent with an act or omission of a reasonable  
7 employer in the same or similar circumstances;

8 (2) that the employer had reasonable grounds  
9 for believing that the employer's act or omission was not a  
10 violation of the Pregnant Worker Accommodation Act; or

11 (3) that other good cause exists for an act  
12 or omission giving rise to an alleged violation of the  
13 Pregnant Worker Accommodation Act.

14 G. As used in this section, "director" means the  
15 director of the human rights bureau of the labor relations  
16 division of the workforce solutions department."

17 **SECTION 7.** A new section of Chapter 28 NMSA 1978 is  
18 enacted to read:

19 "HUMAN RIGHTS ACT--CONSTRUCTION.--

20 A. Nothing in the Pregnant Worker Accommodation  
21 Act shall be construed to affect any bargaining agreement,  
22 employment agreement or company policy providing remedies,  
23 rights, procedures or benefits related to pregnancy,  
24 childbirth or a related medical condition that are greater  
25 than, or in addition to, those required under that act. An

1 employer may grant greater accommodations than those required  
2 under the Pregnant Worker Accommodation Act.

3 B. Nothing in the Pregnant Worker Accommodation  
4 Act shall be construed to restrict, limit or invalidate any  
5 remedies, rights or procedures available pursuant to the  
6 Human Rights Act or pursuant to any law of any jurisdiction  
7 or at common law that provides greater or equal protection  
8 for workers. The rights, remedies and procedures under the  
9 Pregnant Worker Accommodation Act are in addition to those  
10 under the Human Rights Act and any law of any jurisdiction,  
11 including at common law, and shall not be used to construe  
12 any laws against the worker." \_\_\_\_\_

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