

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 179

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

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

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

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

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the

.207895.1

underscoring material = new  
[bracketed material] = delete

1 "Pregnant Worker Accommodation Act"."

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

4 "[NEW MATERIAL] DEFINITIONS.--As used in the Pregnant  
5 Worker Accommodation Act:

6 A. "employer" means a person or entity, including a  
7 partnership, association, corporation, business trust,  
8 unassociated group or agency employing four or more employees  
9 for each working day in each of twenty or more calendar weeks  
10 in the current or preceding calendar year, or a person or  
11 entity acting on behalf of or as an agent of an employer;

12 B. "reasonable accommodation" means a modification  
13 or adaptation of the work environment, work rules or job  
14 responsibilities for as long as reasonably necessary upon an  
15 employee's request to enable the employee with a need arising  
16 from the employee's pregnancy or childbirth or a related  
17 medical condition to perform the job that does not impose an  
18 undue hardship on the employee's employer; and

19 C. "undue hardship" means an employment  
20 accommodation requiring significant difficulty or expense on  
21 the part of the employer when considered in light of any of the  
22 following factors:

- 23 (1) the nature and cost of the accommodation;  
24 (2) the number of persons the employer  
25 employs;

1 (3) the variety of jobs performed at the  
2 employer's place of business;

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

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

7 (6) the overall financial resources of the  
8 employer;

9 (7) the overall size of the business of an  
10 employer with respect to the number, type and location of its  
11 facilities, including geographic separateness; and

12 (8) the type of operation of the employer,  
13 including the composition, structure and functions of the  
14 workforce of the employer."

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

17 "[NEW MATERIAL] EMPLOYMENT DISCRIMINATION--PROHIBITION.--

18 A. It is an unlawful discriminatory practice for an  
19 employer to:

20 (1) fail to make reasonable accommodation for  
21 an employee or job applicant with a need arising from pregnancy  
22 or childbirth or a related medical condition, unless the  
23 employer demonstrates that the accommodation constitutes an  
24 undue hardship;

25 (2) refuse to hire, discharge, refuse to

.207895.1

1 promote, demote or discriminate in matters of compensation or  
2 leave or terms, conditions or privileges of employment against  
3 any person otherwise qualified for employment on the basis of a  
4 need arising from that person's pregnancy or childbirth or a  
5 related medical condition, including receipt of benefits under  
6 fringe benefit programs, unless based on a bona fide  
7 occupational qualification;

8 (3) print or circulate or cause to be printed  
9 or circulated any statement, advertisement or publication; use  
10 any form of application for employment; or make any inquiry  
11 regarding prospective employment that expresses, directly or  
12 indirectly, any limitation, specification or discrimination as  
13 to a need arising from a person's pregnancy or childbirth or a  
14 related medical condition, unless based on a bona fide  
15 occupational qualification; and

16 (4) require an employee to take paid or unpaid  
17 leave if another reasonable accommodation can be provided to  
18 the employee with a need arising from pregnancy or childbirth  
19 or a related medical condition.

20 B. It is an unlawful discriminatory practice for an  
21 employer to refuse to list, properly classify for employment or  
22 refer a person for employment in a known available job for  
23 which the person is otherwise qualified on the basis of a need  
24 arising from the person's pregnancy or childbirth or a related  
25 medical condition, unless the employer's action is based on a

1 bona fide occupational qualification.

2 C. It is an unlawful discriminatory practice for an  
3 employer's agent to comply with a request from an employer for  
4 referral of applicants for employment if the request indicates,  
5 directly or indirectly, that the employer discriminates in  
6 employment on the basis of a need arising from the person's  
7 pregnancy or childbirth or a related medical condition, unless  
8 that discrimination is based on a bona fide occupational  
9 qualification.

10 D. An employer shall not disclose the reason for  
11 the employee accommodation granted pursuant to the Pregnant  
12 Worker Accommodation Act, including the employee's need arising  
13 from pregnancy or childbirth or a related medical condition."

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

16 "[NEW MATERIAL] PREGNANCY ACCOMMODATION NOTICE.--

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

- 23 (1) job applicants;  
24 (2) new employees at the commencement of  
25 employment;

.207895.1

1                   (3) existing employees within one hundred  
2 twenty days after the effective date of the Pregnant Worker  
3 Accommodation Act; and

4                   (4) within ten days of an employee giving an  
5 employer notice of pregnancy or childbirth or a related medical  
6 condition.

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

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

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

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

.207895.1

1           "[NEW MATERIAL] GRIEVANCE PROCEDURE.--

2           A. A person claiming to be aggrieved by an unlawful  
3 discriminatory practice in violation of the Pregnant Worker  
4 Accommodation Act may seek relief under the Human Rights Act  
5 pursuant to the process set out in Sections 28-1-10 through  
6 28-1-13 NMSA 1978.

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

12                   (1) an employee seeking accommodation may seek  
13 expedited review of the employee's request for accommodation;  
14 and

15                   (2) within twenty days of the filing of an  
16 expedited complaint by the employee seeking accommodation, the  
17 director shall:

18                           (a) issue a probable cause or no  
19 probable cause determination related to the initial complaint;

20                           (b) initiate the resolution of a  
21 probable cause determination through mediation or other  
22 voluntary means deemed appropriate; or

23                           (c) when voluntary resolution to the  
24 complaint cannot be reached, the director shall afford the  
25 complainant a right to sue opportunity or shall file the

.207895.1

underscoring material = new  
~~[bracketed material] = delete~~

1 necessary complaint with the human rights commission in  
2 accordance with the provisions of the Human Rights Act.

3 C. The director shall resolve all expedited  
4 complaints under the Pregnant Worker Accommodation Act and  
5 shall issue final written findings of fact served on the  
6 complainant and the responding employer within fifty days of  
7 the complaint being filed, unless good cause is shown for a  
8 delay.

9 D. An employee seeking accommodation pursuant to  
10 the Pregnant Worker Accommodation Act may request, and the  
11 director shall issue without delay upon an employee's request,  
12 an order of nondetermination after the director's receipt of  
13 the complaint and, in jointly filed cases, after the federal  
14 complaint has been closed. The order of nondetermination may  
15 be appealed pursuant to the provisions of Section 28-1-13 NMSA  
16 1978.

17 E. In addition to any judgment awarded to the  
18 plaintiff of actual damages and reasonable attorney fees, a  
19 court may order:

- 20 (1) in its discretion, treble damages;  
21 (2) appropriate injunctive relief, including  
22 requiring an employer to post in the place of business a notice  
23 describing violations by the employer, as determined by the  
24 court or a copy of a cease and desist order applicable to the  
25 employer;

.207895.1

1 (3) appropriate equitable relief, including  
2 employment reinstatement or promotion; and

3 (4) in its discretion, punitive damages to an  
4 employee or job applicant.

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

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

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

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

17 G. As used in this section, "director" means the  
18 director of the human rights bureau of the labor relations  
19 division of the workforce solutions department."

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

22 "[NEW MATERIAL] HUMAN RIGHTS ACT--CONSTRUCTION.--

23 A. Nothing in the Pregnant Worker Accommodation Act  
24 shall be construed to affect any bargaining agreement,  
25 employment agreement or company policy providing remedies,

.207895.1

1 rights, procedures or benefits related to pregnancy, childbirth  
2 or a related medical condition that are greater than, or in  
3 addition to, those required under that act. An employer may  
4 grant greater accommodations than those required under the  
5 Pregnant Worker Accommodation Act.

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