

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 CONDITION; REQUIRING THAT EMPLOYERS MAKE REASONABLE
ACCOMMODATION OF AN EMPLOYEE'S OR JOB APPLICANT'S NEED ARISING
FROM PREGNANCY OR CHILDBIRTH OR A RELATED 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

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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 or a person or entity acting on behalf of or as an agent of an
10 employer;

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

18 C. "undue hardship" means an employment
19 accommodation requiring significant difficulty or expense when
20 considered in light of the following factors:

- 21 (1) the nature and cost of the accommodation;
22 (2) the financial resources of the employer
23 involved in the provision of the reasonable accommodation;
24 (3) the number of persons the employer
25 employs;

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

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

5 (6) the overall financial resources of the
6 employer;

7 (7) the overall size of the business of an
8 employer with respect to the number, type and location of its
9 facilities;

10 (8) the type of operation of the employer,
11 including the composition, structure and functions of the
12 workforce of the employer; and

13 (9) the geographic separateness or
14 administrative or fiscal relationship to the employer of the
15 employer's facilities."

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

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

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

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

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1 hardship;

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

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

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

22 B. It is an unlawful discriminatory practice for an
23 employer to refuse to list, properly classify for employment or
24 refer a person for employment in a known available job for
25 which the person is otherwise qualified on the basis of a need

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

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

12 D. An employer shall keep confidential an
13 employee's request for an accommodation pursuant to the
14 Pregnant Worker Accommodation Act, including the employee's
15 need arising from pregnancy or childbirth or a related
16 condition, and all accommodations granted pursuant to that
17 act."

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

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

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

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1 childbirth or a related condition, to:

2 (1) job applicants;

3 (2) new employees at the commencement of
4 employment;

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

8 (4) within ten days of an employee giving an
9 employer notice of pregnancy or childbirth or a related
10 condition.

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

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

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

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1 Act or for informing another person about employment rights or
2 other rights provided by law."

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

5 "[NEW MATERIAL] GRIEVANCE PROCEDURE.--

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

11 B. In addition to any judgment awarded to the
12 plaintiff of actual damages and reasonable attorney fees, a
13 court may order:

14 (1) in its discretion, treble damages;

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

20 (3) appropriate equitable relief, including
21 employment reinstatement or promotion; and

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

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

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1 "[NEW MATERIAL] HUMAN RIGHTS ACT--APPLICABILITY.--Nothing
2 in the Pregnant Worker Accommodation Act shall be construed to
3 invalidate or limit the remedies, rights and procedures of the
4 Human Rights Act or the law of any jurisdiction that provides
5 greater or equal protection for workers with a need arising
6 from pregnancy or childbirth or a related condition. A person
7 shall not construe the Pregnant Worker Accommodation Act to
8 create a negative inference as to the applicability of the
9 Human Rights Act to discrimination based on pregnancy or
10 childbirth or a related condition."

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