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FISCAL IMPACT REPORT

ORIGINAL DATE 03/10/17

SPONSOR HJC LAST UPDATED _____ HB CS/CS/179/HJCS

SHORT TITLE Pregnant Worker Accommodation Act SB _____

ANALYST Chilton/Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|---------|---------|---------|----------------------|------------------------------|------------------|
| Total | >\$68.8 | >\$58.8 | >\$58.8 | >\$186.4 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 Department of Health (DOH)
 Public Employee Labor Relations (PELR)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for the House Health and Human Services Committee Substitute for House Bill 179 enacts the Pregnant Worker Accommodation Act. It requires employers make reasonable accommodations to employees with a need arising from a person’s pregnancy or childbirth or a related medical condition unless to do so would cause the employer undue hardship. “Reasonable accommodation” and “undue hardship” are both defined in the bill’s Section 2.

Employers are generally prohibited from refusing to make reasonable accommodations or from making job-related decisions based on a need arising from the employee’s pregnancy, childbirth or related medical condition, or from requiring pregnant employees to take leave when reasonable accommodations might enable them to work. Employers are required to give written notice of pregnant employees’ rights to job applicants and new employees and to all existing employees within 120 days, and within ten days of an employee notifying her employer that she is pregnant. Employers cannot disclose the reason for accommodations granted an employee under this Act.

Retaliation against pregnant employees asserting their rights is prohibited, and a grievance procedure through the Human Rights Act is specified, including an expedited process which requires a determination of probable cause or no probable cause within 20 days and resolution within 50 days of the complaint. Violations of the act may result in actual damages, reasonable attorney fees, and injunctive relief (including reinstatement or promotion). In addition, treble or punitive damages may be awarded, but must be denied if the employer acted reasonably, or for other good cause.

The Act cannot be construed to affect any bargaining agreement, employment agreement, or company policy providing relief greater than or in addition to that provided in the Act, and an employer may grant accommodations greater than those required. If greater or equal protections for workers are granted in other New Mexico laws or those of other jurisdictions, or at common law, they remain in effect.

FISCAL IMPLICATIONS

WSD reported in an analysis of an earlier version of this bill that its Human Rights Bureau of the Labor Relations Division would need one additional full time employee to handle the anticipated increase in investigations related to CS/House Bill 179, at a pay band 65 and budgeted at midpoint, plus thirty five percent for benefits and overhead. In addition, the Bureau would need to provide printed material and education to employers and employees regarding this Act. The additional \$10,000 specified in the first year after the bill's effective date reflects WSD's estimate of the costs of promulgating new regulations and providing training to employees based on those regulations. Additionally, LFC staff anticipates there could be additional costs in light of the expedited grievance process required in CS/HB 179. Because of timing issues, LFC has not received updated information from WSD, so the amount of any such increase is unknown and is reflected in the operating budget impact table above by the ">" sign.

SIGNIFICANT ISSUES

WSD noted that its Human Rights Bureau already accepts claims based on alleged pregnancy discrimination.

DOH noted in its analysis of an earlier version of this bill the application of the federal Family Medical Leave Act, the Americans with Disabilities Act (ADA), and the Pregnancy Discrimination Act to the case of the pregnant worker.

DOH quoted statistics indicating that 57.8 percent of women giving live birth in 2013-2014 had a paying job while they were pregnant. Only 40 per cent of those had paid maternity leave, and many felt the need to return to work immediately after giving birth. DOH noted study results showing that paid maternity leave (not addressed in this bill) leads to greater family economic stability and longer duration of breast-feeding, which itself confers economic benefits to families and to employers.

ADMINISTRATIVE IMPLICATIONS

WSD reported that new regulations would need to be drafted to meet the requirements of this bill.

OTHER SUBSTANTIVE ISSUES

A State Personnel Office rule requires separation without prejudice for state employees who “are physically or mentally unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation.” See 1.7.10.13, Section A, NMAC.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Federal law would continue to apply, and that as well as state law (including rules contained in the administrative code) would continue to provide some protections for pregnant workers.

LAC/MD/sb