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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE PREGNANT WORKER
ACCOMMODATION ACT; PROHIBITING DISCRIMINATION IN EMPLOYMENT ON
THE BASIS OF PREGNANCY OR CHILDBIRTH OR A RELATED CONDITION;
REQUIRING THAT EMPLOYERS MAKE REASONABLE ACCOMMODATION OF AN
EMPLOYEE'S OR JOB APPLICANT'S 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
"Pregnant Worker Accommodation Act"."

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

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

5 A. "employer" means a person or entity, including a
6 partnership, association, corporation, business trust,
7 unassociated group or agency employing four or more employees,
8 or a person or entity acting on behalf of or as an agent of an
9 employer;

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

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

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

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

3 (6) the overall financial resources of the
4 employer;

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

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

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

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

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

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

19 (1) refuse a request for reasonable
20 accommodation or fail to make reasonable accommodation for an
21 employee or job applicant with a known limitation arising out
22 of pregnancy or childbirth or a related condition, unless the
23 employer demonstrates that the accommodation constitutes an
24 undue hardship;

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

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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
4 that person's pregnancy or childbirth or a related condition,
5 including failing to treat an employee or job applicant
6 affected by pregnancy or childbirth or a related condition in
7 the same manner as other persons similar in ability to work for
8 all employment-related purposes, including receipt of benefits
9 under fringe benefit programs, unless based on a bona fide
10 occupational qualification;

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

18 (4) require an employee to take paid or unpaid
19 leave if another reasonable accommodation can be provided to
20 the known limitations related to the employee's pregnancy or
21 childbirth or 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 the

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

11 D. An employer may require a medical certification
12 concerning the employee's need for reasonable accommodation to
13 the same extent a certification is required for other temporary
14 disabilities."

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

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

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

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

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1 employment;

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

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

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

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

13 "[NEW MATERIAL] RETALIATION PROHIBITED.--It is a violation
14 of the Pregnant Worker Accommodation Act for an employer or any
15 other person to discharge, demote, deny promotion to or in any
16 other way discriminate against an employee in the terms or
17 conditions of employment in retaliation for the person
18 asserting a claim or right pursuant to the Pregnant Worker
19 Accommodation Act, for assisting another person to assert a
20 claim or right pursuant to the Pregnant Worker Accommodation
21 Act or for informing another person about employment rights or
22 other rights provided by law."

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

25 "[NEW MATERIAL] GRIEVANCE PROCEDURE.--

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

6 B. In addition to any judgment awarded to the
7 plaintiff of actual damages and reasonable attorney fees, a
8 court may order:

9 (1) in its discretion, treble damages;

10 (2) appropriate injunctive relief, including
11 requiring an employer to post in the place of business a notice
12 describing violations by the employer, as determined by the
13 court or a copy of a cease and desist order applicable to the
14 employer;

15 (3) appropriate equitable relief, including
16 employment reinstatement or promotion; and

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

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

21 "[NEW MATERIAL] HUMAN RIGHTS ACT--APPLICABILITY.--Nothing
22 in the Pregnant Worker Accommodation Act shall be construed to
23 invalidate or limit the remedies, rights and procedures of the
24 Human Rights Act or a union-negotiated agreement or an
25 employee-negotiated agreement, or the law of any jurisdiction

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1 that provides greater or equal protection for workers affected
2 by pregnancy or childbirth or a related condition. A person
3 shall not construe the Pregnant Worker Accommodation Act to
4 create a negative inference as to the applicability of the
5 Human Rights Act to discrimination based on pregnancy or
6 childbirth or a related condition."

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