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HOUSE BILL 37

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Gail Chasey

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, CHILDBIRTH OR A RELATED CONDITION;  
REQUIRING THAT EMPLOYERS MAKE REASONABLE ACCOMMODATION OF AN  
EMPLOYEE'S OR JOB APPLICANT'S PREGNANCY, CHILDBIRTH OR 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 PROCEDURE 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 one or more employees or  
8 a person or entity acting on behalf of or as an agent of an  
9 employer;

10           B. "reasonable accommodation" means an  
11 accommodation for as long as necessary to enable an employee to  
12 continue working despite limitations due to pregnancy,  
13 childbirth or a related condition that does not present an  
14 undue hardship on the employee's employer; and

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

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

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1 (6) the overall financial resources of the  
2 employer;

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

6 (8) the type of operation of the employer,  
7 including the composition, structure and functions of the work  
8 force of the employer; and

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

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

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

15 A. It is an unlawful discriminatory practice for an  
16 employer to:

17 (1) refuse to allow a female employee disabled  
18 by pregnancy, childbirth or a related condition to take a leave  
19 for a reasonable period of time not to exceed three months and  
20 thereafter return to work in the same or a similar position in  
21 the workplace. The employee shall be entitled to utilize any  
22 accrued vacation leave during this period of time. An employer  
23 may require an employee who plans to take a leave pursuant to  
24 this section to give the employer reasonable notice of the date  
25 the leave shall commence and the estimated duration of the

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1 leave;

2 (2) refuse to maintain coverage for an  
3 eligible female employee who takes leave under a group health  
4 plan that the employer offers, as defined in Section 5000(b)(1)  
5 of the federal Internal Revenue Code of 1986, for the duration  
6 of leave that the employee takes pursuant to this section, not  
7 to exceed three months over the course of a twelve-month  
8 period, at the level and the conditions under which the  
9 employee would have been covered by the group health plan  
10 coverage if the employee had continued in employment  
11 continuously for the duration of the leave; provided that:

12 (a) nothing in this paragraph shall  
13 preclude an employer from maintaining and paying for coverage  
14 under a group health plan for an employee for leave that  
15 extends beyond three months;

16 (b) an employer may recover from the  
17 employee the premium that the employer paid as required under  
18 this paragraph for maintaining coverage for the employee under  
19 the group plan if the employee fails to return from leave after  
20 the period of leave to which the employee is entitled has  
21 expired, unless the employee fails to return from leave for a  
22 reason other than the continuation, recurrence or onset of a  
23 health condition or other circumstance beyond the control of  
24 the employee; and

25 (c) if the employer is a state agency,

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1 the collective bargaining agreement shall govern with respect  
2 to the continued receipt by an eligible female employee of  
3 group health plan coverage pursuant to the provisions of this  
4 paragraph;

5 (3) refuse a request for reasonable  
6 accommodation or fail to make reasonable accommodation of an  
7 employee or job applicant disabled by pregnancy, childbirth or  
8 a related condition, unless the employer demonstrates that the  
9 accommodation constitutes an undue hardship;

10 (4) refuse to hire, discharge, refuse to  
11 promote, demote or discriminate in matters of compensation or  
12 leave or terms, conditions or privileges of employment against  
13 any person otherwise qualified for employment on the basis of  
14 that person's pregnancy, childbirth or related condition unless  
15 based on a bona fide occupational qualification;

16 (5) print or circulate or cause to be printed  
17 or circulated any statement, advertisement or publication; use  
18 any form of application for employment; or make any inquiry  
19 regarding prospective employment that expresses directly or  
20 indirectly any limitation, specification or discrimination as  
21 to pregnancy, childbirth or a related condition; and

22 (6) require an employee to take leave under  
23 any leave law or policy of the employer if another reasonable  
24 accommodation can be provided to the known limitations related  
25 to the employee's pregnancy, childbirth or related condition.

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1           B. It is an unlawful discriminatory practice for an  
2 employer to refuse to list or properly classify for employment  
3 or to refuse to refer a person for employment in a known  
4 available job for which the person is otherwise qualified on  
5 the basis of the person's pregnancy, childbirth or related  
6 condition, unless based on a bona fide occupational  
7 qualification.

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

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 in relation to pregnancy,  
21 childbirth or a related condition, including the right to  
22 reasonable accommodations for conditions related to pregnancy,  
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 her notification, any  
6 employee who notifies the employer of her pregnancy.

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] ADMINISTRATIVE REVIEW--JUDICIAL REVIEW.--

13 A. A person claiming to be aggrieved by an unlawful  
14 discriminatory practice in violation of the Pregnant Worker  
15 Accommodation Act may:

16 (1) maintain an action to establish liability  
17 and recover damages and injunctive relief in any court of  
18 competent jurisdiction by an employee or job applicant on  
19 behalf of the employee or job applicant or on behalf of other  
20 employees or job applicants similarly situated; or

21 (2) seek relief under the Human Rights Act  
22 pursuant to the process set out in Sections 28-1-10 through  
23 28-1-13 NMSA 1978.

24 B. The court in any action brought pursuant to this  
25 section shall, in addition to any judgment awarded to the

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1 plaintiff, allow costs of the action and reasonable attorney  
2 fees to be paid by the defendant. In any proceedings brought  
3 pursuant to the provisions of this section, the employee or job  
4 applicant shall not be required to pay any filing fee or other  
5 court costs necessarily incurred in such proceedings.

6 C. The court in any action brought under this  
7 section may order appropriate injunctive relief, including  
8 requiring an employer to post in the place of business a notice  
9 describing violations by the employer, as determined by the  
10 court or a copy of a cease and desist order applicable to the  
11 employer.

12 D. An action arising pursuant to the Pregnant  
13 Worker Accommodation Act shall be initiated within one year  
14 from the date of discovery of the violation.

15 E. A person claiming to be aggrieved by an unlawful  
16 discriminatory practice in violation of the Pregnant Worker  
17 Accommodation Act need not exhaust state administrative  
18 remedies before filing an action in court.

19 F. The initiation of an administrative process  
20 under the Human Rights Act pursuant to the process set out in  
21 Sections 28-1-10 through 28-1-13 NMSA 1978 shall toll the  
22 statute of limitations for initiating a claim under the  
23 Pregnant Worker Accommodation Act."

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

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1           "[NEW MATERIAL] RETALIATION PROHIBITED.--It is a violation  
2 of the Pregnant Worker Accommodation Act for an employer or any  
3 other person to discharge, demote, deny promotion to or in any  
4 other way discriminate against an employee in the terms or  
5 conditions of employment in retaliation for the person  
6 asserting a claim or right pursuant to the Pregnant Worker  
7 Accommodation Act, for assisting another person to assert a  
8 claim or right pursuant to the Pregnant Worker Accommodation  
9 Act or for informing another person about employment rights or  
10 other rights provided by law."

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

13           "[NEW MATERIAL] ENFORCEMENT--PENALTIES--REMEDIES.--

14           A. An employer that violates a provision of the  
15 Pregnant Worker Accommodation Act shall be liable to the  
16 affected employee or job applicant for damages and equitable  
17 relief, including employment, reinstatement and promotion.  
18 Damages shall be calculated on the basis of:

- 19                   (1) an affected employee's unpaid wages and
- 20 the damages from retaliation;
- 21                   (2) all other actual damages; and
- 22                   (3) treble damages.

23           B. The court may, in its discretion, not award  
24 treble damages or award any amount thereof not to exceed the  
25 amount specified in this section if the employer found to have

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1 violated the Pregnant Worker Accommodation Act shows to the  
2 satisfaction of the court that the act or omission giving rise  
3 to such action was in good faith and that the employer had  
4 reasonable grounds for believing that the employer's act or  
5 omission was not a violation of the Pregnant Worker  
6 Accommodation Act.

7 C. An employer that violates a provision of the  
8 Pregnant Worker Accommodation Act may be liable to an employee  
9 or job applicant for punitive damages."

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