

HOUSE BILL 196

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Gail Chasey

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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.

.212185.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

underscoring material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

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"."

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

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

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

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

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

- (1) the nature and cost of the accommodation;
- (2) the financial resources of the employer

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

involved in the provision of the reasonable accommodation;

(3) the number of persons the employer employs;

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

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

(6) the overall financial resources of the employer;

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

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

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

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

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

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

(1) refuse a request for reasonable accommodation or fail to make reasonable accommodation for an

.212185.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

employee or job applicant with a need arising from pregnancy or childbirth or a related condition, unless the employer demonstrates that the accommodation constitutes an undue hardship;

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

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

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

B. It is an unlawful discriminatory practice for an

.212185.1

underscoring material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

employer to refuse to list, properly classify for employment or refer a person for employment in a known available job for which the person is otherwise qualified on the basis of a need arising from the person's pregnancy or childbirth or a related condition, unless the employer's action is based on a bona fide occupational qualification.

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

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

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

"[NEW MATERIAL] PREGNANCY ACCOMMODATION NOTICE.--

A. An employer shall provide written notice of an employee's rights pursuant to the Pregnant Worker Accommodation

.212185.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Act to be free from discrimination related to pregnancy or childbirth or a related condition, including the right to reasonable accommodation for a need arising from pregnancy or childbirth or a related condition, to:

- (1) job applicants;
- (2) new employees at the commencement of employment;
- (3) existing employees within one hundred twenty days after the effective date of the Pregnant Worker Accommodation Act; and
- (4) within ten days of an employee giving an employer notice of pregnancy or childbirth or a related condition.

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

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

"[NEW MATERIAL] RETALIATION PROHIBITED.--It is a violation of the Pregnant Worker Accommodation Act for an employer or any other person to refuse to hire, discharge, refuse to promote, demote or discriminate against a person in matters of compensation or leave or terms, conditions or privileges of employment in retaliation for the person having a need arising from pregnancy, childbirth or a related condition, for

.212185.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

asserting a claim or right pursuant to the Pregnant Worker Accommodation Act, for assisting another person to assert a claim or right pursuant to the Pregnant Worker Accommodation Act or for informing another person about employment rights or other rights provided by law."

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

"[NEW MATERIAL] GRIEVANCE PROCEDURE.--

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

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

- (1) in its discretion, treble damages;
- (2) appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer, as determined by the court or a copy of a cease and desist order applicable to the employer;
- (3) appropriate equitable relief, including employment reinstatement or promotion; or
- (4) in its discretion, punitive damages to an

.212185.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

employee or job applicant."

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

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