

HOUSE No. 3659

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act establishing the Massachusetts pregnant workers fairness act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking out, in lines 5 and 6, the words “or ancestry of
3 any individual” and inserting in place thereof the following words:-

4 ancestry of any individual, pregnancy or a condition related to pregnancy, including, but
5 not limited to, the need to express breast milk for a nursing child.

6 SECTION 2. Said section 4, as so appearing, is hereby amended by inserting after
7 subsection 1D the following subsection:-

8 1E. (a) For an employer to deny reasonable accommodations for pregnancy or any
9 condition of an employee related to pregnancy if the employee so requests, unless the employer
10 can demonstrate that the accommodation would impose an undue hardship on the employer’s
11 program, enterprise or business. It shall also be an unlawful practice under this subsection to:

(1) take adverse action against an employee who requests or uses a reasonable accommodation in terms, conditions or privileges of employment, including, but not limited to, failing to reinstate the employee to the original employment status or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when the need for reasonable accommodations ceases;

(2) deny employment opportunities to an employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy;

(3) require an employee affected by pregnancy or a condition related to pregnancy to accept an accommodation that such employee chooses not to accept, if such an accommodation is unnecessary to enable the employee to perform the essential functions of the job;

(4) require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy without undue hardship to the employer;

(5) refuse to hire a person who is affected by pregnancy or a condition related to pregnancy and who is capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business.

(b) For the purposes of this subsection:

(1) The term "reasonable accommodations" may include, but not be limited to: more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay,

33 acquisition or modification of equipment, seating, temporary transfer to a less strenuous or
34 hazardous position, job restructuring, light duty, break time and private non-bathroom space for
35 expressing breast milk, assistance with manual labor, or modified work schedules; provided,
36 however, that no employer shall be required to discharge any employee, transfer any employee
37 with more seniority, or promote any employee who is not able to perform the essential functions
38 of the job, with or without reasonable accommodations.

39 (2) The term “condition related to pregnancy” shall include, but not be limited to,
40 lactation or the need to express breast milk for a nursing child.

41 (3) The term “undue hardship” shall mean an action requiring significant difficulty or
42 expense. The employer shall have the burden of proving undue hardship. In making a
43 determination of undue hardship, factors to be considered include:

44 (i) the nature and cost of the accommodation needed;

45 (ii) the overall financial resources of the employer;

46 (iii) the overall size of the business of the employer with respect to the number of
47 employees, and the number, type and location of its facilities;

48 (iv) the effect on expenses and resources or the impact otherwise of such accommodation
49 upon the operation of the employer.

50 (c) The employer and employee shall engage in a timely, good faith and interactive
51 process to determine effective reasonable accommodations to enable the employee to perform
52 the essential functions of the employee’s job. An employer may require that documentation
53 about the need for a reasonable accommodation come from an appropriate health care or

rehabilitation professional. An employee shall not be required to obtain documentation from an appropriate health care or rehabilitation professional for the following accommodations: (1) more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. Appropriate professionals shall include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, midwives, lactation consultants, and licensed mental health professionals. An employer may require documentation for any extension of the accommodation beyond the originally agreed to accommodation.

(d) Written notice of the right to be free from discrimination in relation to pregnancy or a condition related to pregnancy, including the right to reasonable accommodations for conditions related to pregnancy pursuant to this subsection shall be distributed by employers in a handbook or other means to:

(1) new employees at the commencement of employment;

(2) existing employees on or before January 1, 2018;

(3) any employee who notifies the employer of a pregnancy or a condition related to pregnancy within 10 days of such notification.

(e) Subject to appropriation, the commission shall develop courses of instruction and conduct public education efforts as necessary to inform employers, employees and employment agencies about their rights and responsibilities under this subsection.

(f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish

75 the coverage for pregnancy or a condition related to pregnancy under section 105D of chapter
76 149, or any other special or general law.