

SENATE No. 2093

The Commonwealth of Massachusetts

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

SENATE, Thursday, May 18, 2017

The committee on Ways and Means to whom was referred the House Bill establishing the Massachusetts pregnant workers fairness act (House, No. 3680),-- reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2093

For the committee,
Karen E. Spilka

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

1 SECTION 1. Section 4 of chapter 151B of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the word “ancestry”, in lines 5 and 6 and
3 line 89, each time it appears, the following words:- , pregnancy or a condition related to said
4 pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing
5 child.

6 SECTION 2. Said section 4 of said chapter 151B, as so appearing , is hereby further
7 amended by inserting after subsection 1D the following subsection:-

8 1E. (a) For an employer to deny a reasonable accommodation for an employee’s
9 pregnancy or any condition related to the employee’s pregnancy including, but not limited to,
10 lactation or the need to express breast milk for a nursing child if the employee requests such an
11 accommodation; provided, however, that an employer may deny such an accommodation if the
12 employer can demonstrate that the accommodation would impose an undue hardship on the
13 employer’s program, enterprise or business. It shall also be an unlawful practice under this
14 subsection to:

15 (i) take adverse action against an employee who requests or uses a reasonable
16 accommodation in terms, conditions or privileges of employment including, but not limited to,

17 failing to reinstate the employee to the original employment status or to an equivalent position
18 with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable
19 service credits when the need for a reasonable accommodation ceases;

20 (ii) deny an employment opportunity to an employee if the denial is based on the need of
21 the employer to make a reasonable accommodation to the known conditions related to the
22 employee's pregnancy including, but not limited to, lactation or the need to express breast milk
23 for a nursing child;

24 (iii) require an employee affected by pregnancy or by a condition related to a pregnancy
25 including, but not limited to, lactation or the need to express breast milk for a nursing child to
26 accept an accommodation that the employee chooses not to accept, if that accommodation is
27 unnecessary to enable the employee to perform the essential functions of the job;

28 (iv) require an employee to take a leave if another reasonable accommodation may be
29 provided to the known conditions related to the employee's pregnancy including, but not limited
30 to, lactation or the need to express breast milk for a nursing child without undue hardship on the
31 employer's program, enterprise or business;

32 (v) refuse to hire a person who is pregnant because of the pregnancy or because of a
33 condition related to the person's pregnancy which shall include, but shall not be limited to,
34 lactation or the need to express breast milk for a nursing child; provided, however, that the
35 person is capable of performing the essential functions of the position with a reasonable
36 accommodation and that reasonable accommodation would not impose an undue hardship,
37 demonstrated by the employer, on the employer's program, enterprise or business.

38 (b) As used in this subsection, the following words shall have the following meanings
39 unless the context clearly requires otherwise:

40 “Reasonable accommodation”, may include, but shall not be limited to: (i) more frequent
41 or longer paid or unpaid breaks; (ii) time off to recover from childbirth with or without pay; (iii)
42 acquisition or modification of equipment or seating; (iv) temporary transfer to a less strenuous or
43 hazardous position; (v) job restructuring; (vi) light duty; (vii) private non-bathroom space for
44 expressing breast milk; (viii) assistance with manual labor; or (ix) a modified work schedule;
45 provided, however, that an employer shall not be required to discharge or transfer an employee
46 with more seniority or promote an employee who is not able to perform the essential functions of
47 the job with or without a reasonable accommodation.

48 “Undue hardship”, an action requiring significant difficulty or expense; provided,
49 however, that the employer shall have the burden of proving undue hardship; provided further,
50 that in making a determination of undue hardship, the following factors shall be considered:(i)
51 the nature and cost of the needed accommodation; (ii) the overall financial resources of the
52 employer; (iii) the overall size of the business of the employer with respect to the number of
53 employees and the number, type and location of its facilities; and (iv) the effect on expenses and
54 resources or any other impact of the accommodation on the employer’s program, enterprise or
55 business.

56 (c) Upon request for an accommodation from the employee or prospective employee
57 capable of performing the essential functions of the position involved, the employee or
58 prospective employee and the employer shall engage in a timely, good faith and interactive
59 process to determine an effective, reasonable accommodations to enable such employee or

60 prospective employee to perform the essential functions of the employee’s job or the position to
61 which the prospective employee has applied. An employer may require that documentation about
62 the need for a reasonable accommodation come from an appropriate health care or rehabilitation
63 professional; provided, however, that an employer shall not require documentation from an
64 appropriate health care or rehabilitation professional for the following accommodations: (i) more
65 frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting over 20 pounds; and
66 (iv) private non-bathroom space for expressing breast milk. An “appropriate health care or
67 rehabilitation professional” shall include, but shall not be limited to, a medical doctor, including
68 a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical
69 nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational
70 rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health
71 professional authorized to perform specified mental health services. An employer may require
72 documentation for an extension of the accommodation beyond the originally agreed to
73 accommodation, unless it is an accommodation listed above not requiring documentation.

74 (d) Written notice of the right to be free from discrimination in relation to pregnancy or a
75 condition related to the employee’s pregnancy including, but not limited to, lactation or the need
76 to express breast milk for a nursing child, including the right to reasonable accommodations for
77 conditions related to pregnancy pursuant to this subsection, shall be distributed by an employer
78 to its employees. The notice shall be provided in a handbook or other means of notice to all
79 employees including, but not limited to: (i) new employees at or prior to the commencement of
80 employment; and (ii) an employee who notifies their employer of a pregnancy or an employee
81 who notifies their employer of a condition related to the employee’s pregnancy including, but not

82 limited to, lactation or the need to express breast milk for a nursing child within 10 days of such
83 notification.

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

87 (f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect
88 any other law relating to sex discrimination or pregnancy or in any way diminish the coverage
89 for pregnancy or a condition related to pregnancy including, but not limited to, lactation or the
90 need to express breast milk for a nursing child under section 105D of chapter 149.

91 SECTION 3. Said section 4 of said chapter 151B, as so appearing, is hereby further
92 amended by inserting after the word “ancestry”, in line 94, the following words:- , pregnancy or
93 a condition related to said pregnancy including, but not limited to, lactation or the need to
94 express breast milk for a nursing child.

95 SECTION 4. An employer shall provide written notice to its employees of the right to be
96 free from discrimination in relation to pregnancy or a condition related to pregnancy including,
97 but not limited to, lactation or the need to express breast milk for a nursing child, including the
98 right to reasonable accommodations for conditions related to pregnancy, pursuant to subsection
99 1E of section 4 of chapter 151B of the General Laws by April 1, 2018.

100 SECTION 5. This act shall take effect on April 1, 2018.