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SENATE BILL DRS45288-LR-116

Short Title: NC Healthy Pregnancy Act. (Public)

Sponsors: Senators Murdock, Batch, and Marcus (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ADDRESSING PREGNANCY-RELATED DISCRIMINATION AND
3 REASONABLE ACCOMMODATIONS IN THE WORKPLACE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

6 **Chapter 168B.**

7 **North Carolina Healthy Pregnancy Act.**

8 **§ 168B-1. Short title.**

9 This Chapter shall be known and may be cited as the "North Carolina Healthy Pregnancy
10 Act."

11 **§ 168B-2. Public policy.**

12 It is the public policy of this State to protect and safeguard the right and opportunity of all
13 persons to seek, obtain, and hold employment without discrimination or abridgement by
14 employers on the basis of pregnancy, childbirth, or related medical condition.

15 **§ 168B-3. Definitions.**

16 The following definitions apply in this Chapter:

- 17 (1) Covered governmental entity. – Any State department, institution, agency, or
18 any political subdivision of the State or any person that contracts with a State
19 department, institution, agency, or political subdivision of the State for the
20 delivery of public services, including education, health, social services,
21 recreation, and rehabilitation.
- 22 (2) Discriminatory practice. – Any practice prohibited by this Chapter.
- 23 (3) Employer. – Any person employing 15 or more employees within the State.
- 24 (4) Employment agency. – As defined in G.S. 168A-3.
- 25 (5) Labor organization. – As defined in G.S. 168A-3.
- 26 (6) Person. – As defined in G.S. 168A-3.
- 27 (7) Pregnancy or pregnant. – Includes pregnancy, childbirth, or related medical
28 conditions, including lactation.
- 29 (8) Reasonable accommodations. – All of the following:
- 30 a. With regard to employment, making reasonable physical changes in
31 the workplace, including all of the following:
- 32 1. Making existing facilities used by employees readily
33 accessible to and usable by individuals with medical needs
34 arising from pregnancy.
- 35 2. Making reasonable changes in the duties of the job in question
36 that would accommodate the known limitations of a pregnant



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- 1 person who is seeking or performing the job in question by
- 2 enabling the person to satisfactorily perform the duties of that
- 3 job; modifying work assignments; temporarily transferring the
- 4 employee to a less strenuous or hazardous vacant position, if
- 5 qualified; or a combination of these.
- 6 3. Providing more frequent or longer break periods.
- 7 4. Providing a private place, other than a bathroom stall, for the
- 8 purpose of expressing milk.
- 9 5. Modifying food and drink policies to enable access to food and
- 10 drink and to permit meals and beverages at workstations.
- 11 6. Providing seating or allowing the employee to sit more
- 12 frequently if the job requires the employee to stand.
- 13 7. Providing assistance with manual labor and limits on lifting.
- 14 8. Temporarily transferring the employee to a less strenuous or
- 15 hazardous vacant position, if qualified.
- 16 9. Providing job restructuring or light duty, if available.
- 17 10. Acquiring or modifying equipment or devices necessary for
- 18 performing essential job functions.
- 19 11. Modifying work schedules, including the option to work from
- 20 home.
- 21 12. Relocating workplace materials and equipment to make them
- 22 more accessible.
- 23 13. Adjusting uniforms or dress codes.
- 24 14. Providing properly sized safety gear.
- 25 15. Adjusting lighting and noise levels.
- 26 16. Providing access to closer parking.
- 27 17. Providing access to mobile assistance devices.
- 28 b. The term "reasonable accommodation" does not require that an
- 29 employer do any of the following:
- 30 1. Hire one or more employees, other than the pregnant person,
- 31 for the purpose, in whole or in part, of enabling the pregnant
- 32 person to be employed.
- 33 2. Reassign duties of the job in question to other employees
- 34 without assigning to the pregnant employee duties that would
- 35 compensate for those reassigned.
- 36 3. Reassign duties of the job in question to one or more other
- 37 employees where the reassignment would increase the skill,
- 38 effort, or responsibility required of the other employee or
- 39 employees from that required prior to the change in duties.
- 40 4. Alter, modify, change, or deviate from bona fide seniority
- 41 policies or practices.
- 42 5. Provide accommodations of a personal nature, except under
- 43 the same terms and conditions as such accommodations are
- 44 provided to the employer's employees generally and as needed
- 45 for lactation.
- 46 6. Make any changes that would impose on the employer an
- 47 undue hardship.

(9) Undue hardship. – As defined in G.S. 168A-3.

"§ 168B-4. Reasonable accommodation duties.

- (a) A qualified pregnant person requesting a reasonable accommodation must apprise the employer, employment agency, labor organization, place of public accommodation, or covered

1 governmental entity of the person's pregnancy, submit any necessary medical documentation,
2 make suggestions for such possible accommodations as are known to such person, and cooperate
3 in any ensuing discussion and evaluation aimed at determining possible or feasible
4 accommodations.

5 (b) Once a qualified pregnant person has requested an accommodation, or if a potential
6 accommodation is obvious in the circumstances, an employer, employment agency, labor
7 organization, place of public accommodation, or covered governmental entity shall investigate
8 whether there are reasonable accommodations that can be made and make reasonable
9 accommodations as defined in G.S. 168A-3(8).

10 **"§ 168B-5. Discriminatory practices prohibited.**

11 (a) A person affected by pregnancy shall be treated the same for all employment-related
12 purposes, including receipt of benefits under fringe benefit programs, as other persons not so
13 affected but similar in their ability or inability to work.

14 (b) It is an unlawful, discriminatory practice to do any of the following:

15 (1) For an employer to fail to hire or consider for employment or promotion, to
16 discharge, or otherwise to discriminate against a pregnant person with respect
17 to compensation or the terms, conditions, or privileges of employment on the
18 basis of a condition related to pregnancy.

19 (2) For an employment agency to fail or refuse to refer for employment, or
20 otherwise to discriminate against a pregnant person on the basis of a condition
21 related to pregnancy.

22 (3) For a person controlling an apprenticeship, on-the-job training, or other
23 training or retraining program, to discriminate against a pregnant person with
24 respect to admission into or employment in the apprenticeship, on-the-job
25 training, or other training or retraining program on the basis of a condition
26 related to pregnancy.

27 (4) For an employer, labor organization, or employment agency to fail to meet the
28 duties imposed by this Chapter.

29 (5) For an employer to fail or refuse to make reasonable accommodations for
30 limitations arising from pregnancy, childbirth, or related medical conditions
31 for an applicant for employment or an employee if the applicant or employee
32 so requests, unless the employer can demonstrate that the accommodation
33 would impose an undue hardship on the operation of the business of the
34 employer.

35 **"§ 168B-6. Retaliation prohibited.**

36 (a) No employer shall discharge, expel, refuse to hire, or otherwise discriminate against
37 any person or applicant for employment, nor shall any employment agency discriminate against
38 any person, nor shall a labor organization discriminate against any member or applicant for
39 membership because the person has opposed any practice made a discriminatory practice by this
40 Chapter or because the person has testified, assisted, or participated in any manner in proceedings
41 under this Chapter. For purposes of this section, examples of retaliation may include denying
42 employment opportunities based on the need for a reasonable accommodation, requiring an
43 employee to take leave if another reasonable accommodation can be provided, counting an
44 absence related to pregnancy under a no-fault attendance policy, and failing to reinstate an
45 employee to the employee's original job or to an equivalent position with equivalent pay and
46 accumulated seniority, retirement, fringe benefits, and other applicable service credits when the
47 employee's need for reasonable accommodations ceases.

48 (b) No entity or person covered under this Chapter shall retaliate against or coerce,
49 intimidate, threaten, or interfere with a person who exercises rights under this Chapter or assists
50 a person in exercising the person's rights under this Chapter.

51 **"§ 168B-7. Posting of notices.**

1 (a) An employer shall provide notice of the right to be free from discrimination in relation
2 to pregnancy, childbirth, and related conditions, including the right to reasonable accommodation
3 to known limitations related to pregnancy, childbirth, and related conditions, as provided by this
4 Chapter. This notice shall be conspicuously posted at an employer's place of business in an area
5 accessible to employees.

6 (b) In addition to the posted notice required by subsection (a) of this section, notice of
7 the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions
8 shall be provided to employees individually as follows:

9 (1) In writing to new employees at the commencement of employment.

10 (2) Orally or in writing to existing employees within 120 days after the effective
11 date of this Chapter.

12 (3) Orally or in writing to any employee who notifies the employer of her
13 pregnancy within 10 days of such notification.

14 **"§ 168B-8. Civil action.**

15 (a) A pregnant person aggrieved by a discriminatory practice prohibited by G.S. 168B-5
16 may bring a civil action to enforce rights granted or protected by this Chapter against any person,
17 covered governmental entity, employer, employment agency, or labor organization that is alleged
18 to have committed such practices or engaged in such conduct. The action shall be commenced in
19 superior court in the county where the alleged discriminatory practice or prohibited conduct
20 occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without
21 a jury.

22 (b) In a civil action brought to enforce provisions of this Chapter, the court may award
23 declaratory or injunctive relief and back pay. Any such back pay liability shall not accrue from a
24 date more than three years prior to the filing of an action under this Chapter.

25 (c) In any civil action brought under this Chapter, the court, in its discretion, may award
26 reasonable attorneys' fees to the substantially prevailing party as part of costs.

27 **"§ 168B-9. Statute of limitations.**

28 A civil action brought pursuant to this Chapter shall be commenced within three years after
29 the date on which the aggrieved person became aware of or, with reasonable diligence, should
30 have become aware of the alleged discriminatory practice or prohibited conduct.

31 **"§ 168B-10. Construction of Chapter.**

32 Nothing in this Chapter shall be construed to preempt, limit, diminish, or otherwise affect
33 another provision of federal, State, or local law, or to invalidate or limit the remedies, rights, and
34 procedures of a federal, State, or local law that provides greater or equal protection for an
35 employee affected by pregnancy, childbirth, or a related condition."

36 **SECTION 2.** This act becomes effective October 1, 2021, and applies to any act or
37 omission occurring on or after that date.