

CHAPTER 200**(SB 18)**

AN ACT relating to pregnancy-related accommodations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 344.030 is amended to read as follows:

For the purposes of KRS 344.030 to 344.110:

- (1) "Qualified individual with a disability" means an individual with a disability as defined in KRS 344.010 who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's disability without undue hardship on the conduct of the employers' business. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;{+}
- (2) "Employer" means a person who has eight (8) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person, *except for purposes of determining accommodations for an employee's own limitations related to her pregnancy, childbirth or related medical conditions, employer means a person who has fifteen (15) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and any agent of the person, and* except for purposes of determining discrimination based on disability, employer means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of that person, except that, for two (2) years following July 14, 1992, an employer means a person engaged in an industry affecting commerce who has twenty-five (25) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding year, and any agent of that person. For the purposes of determining discrimination based on disability, employer shall not include:
 - (a) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
 - (b) A bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Service Code of 1986;{+}
- (3) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person;{+}
- (4) "Labor organization" means a labor organization and an agent of such an organization, and includes an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization;{+}
- (5)
 - (a) "Employee" means an individual employed by an employer, but does not include an individual employed by his parents, spouse, or child, or an individual employed to render services as a domestic in the home of the employer.
 - (b) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter.
 - (c) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisor, neither a franchisor nor a franchisor's employee shall be deemed to be an employee of the franchisee for any purpose under this chapter.
 - (d) For purposes of this subsection, "franchisee" and "franchisor" have the same meanings as in 16 C.F.R. sec. 436.1;{+}

- (6) "Reasonable accommodation"
- (a) Means making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities; **and**
 - (b) *For an employee's own limitations related to her pregnancy, childbirth, or related medical conditions, may include more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, appropriate seating, temporary transfer to a less strenuous or less hazardous position, job restructuring, light duty, modified work schedule, and private space that is not a bathroom for expressing breast milk;*~~;~~
- (7) "Religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business;~~;~~
- (8) (a) The terms "because of sex" ~~and~~~~or~~ "on the basis of sex" include~~;~~ but are not limited to~~;~~ because of or on the basis of pregnancy, childbirth, or related medical conditions,~~;~~ and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work~~;~~ ~~and nothing in this section shall be interpreted to permit otherwise.~~
- (b) *"Related medical condition" includes but is not limited to lactation or the need to express breast milk for a nursing child and has the same meaning as in the Pregnancy Discrimination Act, 42 U.S.C. sec. 2000e(k), and shall be construed as that term has been construed under that Act; and*
- (9) "Undue hardship," for purposes of disability discrimination **or limitations due to pregnancy, childbirth, or related medical conditions as described in subsection (1)(c) of Section 2 of this Act**, means an action requiring significant difficulty or expense, when considered in light of the following factors:
- (a) The nature and cost of the accommodation needed;
 - (b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at the facility; the effect on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;
 - (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; and the number, type, and location of its facilities;~~and~~
 - (d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity; **and**
 - (e) ***In addition to paragraphs (a) to (d) of this subsection, for pregnancy, childbirth, and related medical conditions, the following factors:***
 - 1. ***The duration of the requested accommodation; and***
 - 2. ***Whether similar accommodations are required by policy to be made, have been made, or are being made for other employees due to any reason.***

➔Section 2. KRS 344.040 is amended to read as follows:

- (1) It is an unlawful practice for an employer:
- (a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, national origin, sex, age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;
 - (b) To limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect status as an employee, because of the individual's race, color, religion, national origin, sex, or age forty (40) and over, because the person

is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;~~[-or]~~

- (c) ***To fail to make reasonable accommodations for any employee with limitations related to pregnancy, childbirth, or a related medical condition who requests an accommodation, including but not limited to the need to express breast milk, unless the employer can demonstrate the accommodation would impose an undue hardship on the employer's program, enterprise, or business. The following shall be required as to reasonable accommodations:***
 - 1. ***An employee shall not be required to take leave from work if another reasonable accommodation can be provided;***
 - 2. ***The employer and employee shall engage in a timely, good faith, and interactive process to determine effective reasonable accommodations; and***
 - 3. ***If the employer has a policy to provide, would be required to provide, is currently providing, or has provided a similar accommodation to other classes of employees, then a rebuttable presumption is created that the accommodation does not impose an undue hardship on the employer; or***
- (d) To require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning smoking.
- (2) (a) A difference in employee contribution rates for smokers and nonsmokers in relation to an employer-sponsored health plan shall not be deemed to be an unlawful practice in violation of this section.
- (b) The offering of incentives or benefits offered by an employer to employees who participate in a smoking cessation program shall not be deemed to be an unlawful practice in violation of this section.
- (3) (a) ***An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, including the right to reasonable accommodations, to:***
 - 1. ***New employees at the commencement of employment; and***
 - 2. ***Existing employees not later than thirty (30) days after the effective date of this Act.***
- (b) ***An employer shall conspicuously post a written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, including the right to reasonable accommodations, at the employer's place of business in an area accessible to employees.***

➔Section 3. This Act may be cited as the Kentucky Pregnant Workers Act.

Signed by Governor April 9, 2019.