

344.040 Unlawful discrimination by employers -- Difference in health plan contribution rates for smokers and nonsmokers and benefits for smoking cessation program participants excepted.

- (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;
 - (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 June 27, 2019.
- (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.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 200, sec. 2, effective June 27, 2019. -- Amended 2010 Ky. Acts ch. 126, sec. 3, effective July 15, 2010. -- Amended 1994 Ky. Acts ch. 378, sec. 4, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 282, sec. 5, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 388, sec. 2, effective July 13, 1990. -- Amended 1980 Ky. Acts ch. 245, sec. 4, effective July 15, 1980. -- Amended 1972 Ky. Acts ch. 255, sec. 3. -- Created 1966 Ky. Acts ch. 2, Art. 3, sec. 302.

Legislative Research Commission Note (6/27/2019). 2019 Ky. Acts ch. 200, sec. 3, provides that 2019 Ky. Acts ch. 200 may be cited as the Kentucky Pregnant Workers Act. This statute was amended in Section 2 of that Act.

Legislative Research Commission Note (10/19/2004). 2004 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 4, sets forth different employee contribution rates to the state health insurance plan for the period January 1, 2005, through December 31, 2005, for smokers and nonsmokers and provides, "A difference in employee contribution rates for smokers and nonsmokers under this plan shall not be deemed to be an unlawful practice in violation of KRS 344.040."