

1 AN ACT relating to accommodations for pregnant employees.

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

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

4 For the purposes of KRS 344.030 to 344.110:

5 (1) "Qualified individual with a disability" means an individual with a disability as
6 defined in KRS 344.010 who, with or without reasonable accommodation, can
7 perform the essential functions of the employment position that the individual holds
8 or desires unless an employer demonstrates that he is unable to reasonably
9 accommodate an employee's or prospective employee's disability without undue
10 hardship on the conduct of the employers' business. Consideration shall be given to
11 the employer's judgment as to what functions of a job are essential, and if an
12 employer has prepared a written description before advertising or interviewing
13 applicants for the job, this description shall be considered evidence of the essential
14 functions of the job.

15 (2) "Employer" means a person who has eight (8) or more employees within the state in
16 each of twenty (20) or more calendar weeks in the current or preceding calendar
17 year and an agent of such a person, except for purposes of determining
18 discrimination based on disability, employer means a person engaged in an industry
19 affecting commerce who has fifteen (15) or more employees for each working day
20 in each of twenty (20) or more calendar weeks in the current or preceding calendar
21 year, and any agent of that person, except that, for two (2) years following July 14,
22 1992, an employer means a person engaged in an industry affecting commerce who
23 has twenty-five (25) or more employees for each working day in each of twenty (20)
24 or more calendar weeks in the current or preceding year, and any agent of that
25 person. For the purposes of determining discrimination based on disability,
26 employer shall not include:

27 (a) The United States, a corporation wholly owned by the government of the

1 United States, or an Indian tribe; or

2 (b) A bona fide private membership club (other than a labor organization) that is
3 exempt from taxation under Section 501(c) of the Internal Revenue Service
4 Code of 1986.

5 (3) "Employment agency" means a person regularly undertaking with or without
6 compensation to procure employees for an employer or to procure for employees
7 opportunities to work for an employer and includes an agent of such person.

8 (4) "Labor organization" means a labor organization and an agent of such an
9 organization, and includes an organization of any kind, an agency or employee
10 representation committee, group, association, or plan so engaged in which
11 employees participate and which exists for the purpose, in whole or in part, of
12 dealing with employers concerning grievances, labor disputes, wages, rates of pay,
13 hours, or other terms or conditions of employment, and a conference, general
14 committee, joint or system board, or joint council so engaged which is subordinate
15 to a national or international labor organization.

16 (5) (a) "Employee" means an individual employed by an employer, but does not
17 include an individual employed by his parents, spouse, or child, or an
18 individual employed to render services as a domestic in the home of the
19 employer.

20 (b) Notwithstanding any voluntary agreement entered into between the United
21 States Department of Labor and a franchisee, neither a franchisee nor a
22 franchisee's employee shall be deemed to be an employee of the franchisor for
23 any purpose under this chapter.

24 (c) Notwithstanding any voluntary agreement entered into between the United
25 States Department of Labor and a franchisor, neither a franchisor nor a
26 franchisor's employee shall be deemed to be an employee of the franchisee for
27 any purpose under this chapter.

1 (d) For purposes of this subsection, "franchisee" and "franchisor" have the same
2 meanings as in 16 C.F.R. sec. 436.1.

3 (6) "Reasonable accommodation" means:

4 (a) Making existing facilities used by employees readily accessible to and usable
5 by individuals with disabilities, job restructuring, part-time or modified work
6 schedules, reassignment to a vacant position, acquisition or modification of
7 equipment or devices, appropriate adjustment or modifications of
8 examinations, training materials or policies, the provision of qualified readers
9 or interpreters, and other similar accommodations for individuals with
10 disabilities; or

11 (b) For employees affected by pregnancy, childbirth, or related medical
12 conditions, more frequent or longer breaks, time off to recover from
13 childbirth, acquisition or modification of equipment, appropriate seating,
14 temporary transfer to a less strenuous or less hazardous position, job
15 restructuring, light duty, modified work schedule, and private space other
16 than a bathroom for expressing breast milk.

17 (7) "Religion" means all aspects of religious observance and practice, as well as belief,
18 unless an employer demonstrates that he is unable to reasonably accommodate to an
19 employee's or prospective employee's religious observance or practice without
20 undue hardship on the conduct of the employer's business.

21 (8) (a) The terms "because of sex" ~~and~~ "on the basis of sex" include but are not
22 limited to because of or on the basis of pregnancy, childbirth, or related
23 medical conditions; and women affected by pregnancy, childbirth, or related
24 medical conditions shall be treated the same for all employment-related
25 purposes, including receipt of benefits under fringe benefit programs, as other
26 persons not so affected but similar in their ability or inability to work, ~~and~~
27 ~~nothing in this section shall be interpreted to permit otherwise.~~

1 **(b) "Related medical condition" includes but is not limited to lactation or the**
 2 **need to express milk for a nursing child and has the same meaning as in the**
 3 **Pregnancy Discrimination Act, 42 U.S.C. sec. 2000e(k) and shall be**
 4 **construed as that term has been construed under that Act.**

5 (9) "Undue hardship," for purposes of disability discrimination **or limitations due to**
 6 **pregnancy, childbirth, or related medical conditions as described in subsection**
 7 **(1)(c) of Section 2 of this Act**, means an action requiring significant difficulty or
 8 expense, when considered in light of the following factors:

- 9 (a) The nature and cost of the accommodation needed;
- 10 (b) The overall financial resources of the facility or facilities involved in the
 11 provision of the reasonable accommodation; the number of persons employed
 12 at the facility; the effect on expenses and resources; or the impact otherwise of
 13 such accommodation upon the operation of the facility;
- 14 (c) The overall financial resources of the covered entity; the overall size of the
 15 business of a covered entity with respect to the number of its employees; and
 16 the number, type, and location of its facilities;~~and~~
- 17 (d) The type of operation or operations of the covered entity, including the
 18 composition, structure, and functions of the workforce of such entity; the
 19 geographic separateness, administrative, or fiscal relationship of the facility or
 20 facilities in question to the covered entity; **and**

21 **(e) In addition to paragraphs (a) to (d) of this subsection, for pregnancy,**
 22 **childbirth, and related medical conditions, the following factors:**

- 23 **1. The duration of the requested accommodation; and**
- 24 **2. Whether similar accommodations are required by policy to be made,**
 25 **have been made, or are being made for other employees due to any**
 26 **reason.**

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

- 1 (1) It is an unlawful practice for an employer:
- 2 (a) To fail or refuse to hire, or to discharge any individual, or otherwise to
- 3 discriminate against an individual with respect to compensation, terms,
- 4 conditions, or privileges of employment, because of the individual's race,
- 5 color, religion, national origin, sex, age forty (40) and over, because the
- 6 person is a qualified individual with a disability, or because the individual is a
- 7 smoker or nonsmoker, as long as the person complies with any workplace
- 8 policy concerning smoking;
- 9 (b) To limit, segregate, or classify employees in any way which would deprive or
- 10 tend to deprive an individual of employment opportunities or otherwise
- 11 adversely affect status as an employee, because of the individual's race, color,
- 12 religion, national origin, sex, or age forty (40) and over, because the person is
- 13 a qualified individual with a disability, or because the individual is a smoker
- 14 or nonsmoker, as long as the person complies with any workplace policy
- 15 concerning smoking; ~~{or}~~
- 16 (c) To fail to make reasonable accommodations for any employee with
- 17 limitations related to pregnancy, childbirth, or a related medical condition
- 18 who requests an accommodation, including but not limited to the need to
- 19 express breast milk, unless the employer can demonstrate that the
- 20 accommodation would impose an undue hardship on the employer's
- 21 program, enterprise, or business. The following shall be required as to
- 22 reasonable accommodations:
- 23 1. An employee shall not be required to accept an accommodation or to
- 24 take leave from work if another reasonable accommodation can be
- 25 provided;
- 26 2. The employer and employee shall engage in a timely, good faith, and
- 27 interactive process to determine effective reasonable accommodations;

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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;

2. Existing employees not later than thirty (30) days after the effective date of this Act; and

3. An employee within ten (10) days of notification of pregnancy by that employee.

(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

1 *the employer's place of business in an area accessible to employees.*
2 *(c) The Kentucky Commission on Human Rights shall develop courses of*
3 *instruction and conduct ongoing public education efforts as necessary to*
4 *inform employers, employees, employment agencies, and prospective*
5 *employees about their rights and responsibilities under this section.*

6 ➔Section 3. This Act shall be cited as the "Kentucky Pregnant Workers' Fairness
7 Act."