

1 AN ACT relating to conditions of employment.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 344.030 TO 344.110 IS CREATED
4 TO READ AS FOLLOWS:

5 *(1) An employer that requires an employee, as a condition of employment, to be*
6 *immunized against disease shall:*

7 *(a) Grant an exception to any employee for a sincerely held religious belief*
8 *against immunization;*

9 *(b) Grant an exception to any employee for whom, in the written opinion of a*
10 *health care provider, the required immunization would be injurious to his*
11 *or her health; and*

12 *(c) Provide notice of the required immunization to each employee in a written*
13 *document that:*

14 *1. Advises in plain language the available exemptions from the required*
15 *immunization for a sincerely held religious belief or medical*
16 *contraindication; and*

17 *2. Requires each employee to acknowledge, in writing, receipt of the*
18 *requirement and receipt of the available exemptions.*

19 *(2) An employer may require an employee to swear or affirm the claimed exemption*
20 *on a form that substantially complies with the following:*

21 *"I, [employee name], swear or affirm, by my signature below, that I:*
22 *.....Hold a sincere religious belief against receiving immunization*
23 *against disease.*

24 *.....Object to the immunization as the required immunization would*
25 *be injurious to my health.*

26 *[Employee signature] [Date]....."*

27 *(3) Additional substantiation or documentation of an employee's sincerely held*

1 religious belief shall not be required.

2 (4) A written opinion from a health care provider that the required immunization
3 would be injurious to the employee's health shall be the only documentation
4 required for an employee's claimed health exemption. As used in this subsection,
5 "health care provider" means:

6 (a) An advanced practice registered nurse licensed under KRS Chapter 314;

7 (b) A pharmacist licensed under KRS Chapter 315;

8 (c) A physician or osteopath licensed under KRS Chapter 311; or

9 (d) A physician assistant licensed under KRS 311.840 to 311.862.

10 (5) (a) Any person injured by any act in violation of this section shall have a civil
11 cause of action in Circuit Court to:

12 1. Enjoin further violations;

13 2. Recover the actual damages sustained, including reasonable
14 attorney's fees, together with the costs of the action; and

15 3. Recover punitive damages.

16 (b) Notwithstanding the provisions of KRS 342.690, an employee who suffers
17 an adverse reaction to an immunization required as a condition of his or
18 her employment may claim compensation under KRS Chapter 342 and may
19 maintain a civil cause of action as provided under paragraph (a) of this
20 section, provided:

21 1. The amount of compensation paid under KRS Chapter 342 shall be
22 credited against the amount received in the civil action; and

23 2. If the amount of compensation paid under KRS Chapter 342 is larger
24 than the amount received in the civil action, the amount of damages
25 less the employee's legal fees, costs, and expenses in the civil action
26 shall be credited against the amount of compensation.

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;
- 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 the accommodation
- 20 would impose an undue hardship on the employer's program, enterprise, or
- 21 business. The following shall be required as to reasonable accommodations:
- 22 1. An employee shall not be required to take leave from work if another
- 23 reasonable accommodation can be provided;
- 24 2. The employer and employee shall engage in a timely, good faith, and
- 25 interactive process to determine effective reasonable accommodations;
- 26 and
- 27 3. If the employer has a policy to provide, would be required to provide, is

1 currently providing, or has provided a similar accommodation to other
 2 classes of employees, then a rebuttable presumption is created that the
 3 accommodation does not impose an undue hardship on the employer;{
 4 ~~or~~

5 (d) To require as a condition of employment that any employee or applicant for
 6 employment abstain from smoking or using tobacco products outside the
 7 course of employment, as long as the person complies with any workplace
 8 policy concerning smoking; **or**

9 **(e) To require as a condition of employment that any employee be immunized**
 10 **against disease if that employee has:**

11 **1. A sincerely held religious belief against immunization; or**

12 **2. Received the written opinion of a health care provider that the**
 13 **required immunization would be injurious to his or her health.**

14 (2) (a) A difference in employee contribution rates for smokers and nonsmokers in
 15 relation to an employer-sponsored health plan shall not be deemed to be an
 16 unlawful practice in violation of this section.

17 (b) The offering of incentives or benefits offered by an employer to employees
 18 who participate in a smoking cessation program shall not be deemed to be an
 19 unlawful practice in violation of this section.

20 (3) (a) An employer shall provide written notice of the right to be free from
 21 discrimination in relation to pregnancy, childbirth, and related medical
 22 conditions, including the right to reasonable accommodations, to {

23 ~~1. —}new employees at the commencement of employment{; and~~

24 ~~2. — Existing employees not later than thirty (30) days after June 27, 2019}.~~

25 (b) An employer shall conspicuously post a written notice of the right to be free
 26 from discrimination in relation to pregnancy, childbirth, and related medical
 27 conditions, including the right to reasonable accommodations, at the

1 employer's place of business in an area accessible to employees.