

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 evidence or documentation of an employee's sincerely held religious

1 *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.*

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

- 7 *1. Enjoin further violations;*
- 8 *2. Recover the actual damages sustained, including reasonable*
9 *attorney's fees, together with the costs of the action; and*
- 10 *3. Recover punitive damages.*

11 *(b) Notwithstanding the provisions of KRS 342.690, an employee who suffers*
12 *an adverse reaction to an immunization required as a condition of his or*
13 *her employment may claim compensation under KRS Chapter 342 and may*
14 *maintain a civil cause of action as provided under paragraph (a) of this*
15 *section, provided:*

- 16 *1. The amount of compensation paid under KRS Chapter 342 shall be*
17 *credited against the amount received in the civil action; and*
- 18 *2. If the amount of compensation paid under KRS Chapter 342 is larger*
19 *than the amount received in the civil action, the amount of damages*
20 *less the employee's legal fees, costs, and expenses in the civil action*
21 *shall be credited against the amount of compensation.*

22 ➔Section 2. KRS 344.030 is amended to read as follows:

23 *As used in* [For the purposes of] KRS 344.030 to 344.110:

- 24 *(1) "Because of sex" and "on the basis of sex" includes but is not limited to because*
25 *of or on the basis of pregnancy, childbirth, or related medical conditions, and*
26 *women affected by pregnancy, childbirth, or related medical conditions shall be*
27 *treated the same for all employment-related purposes, including receipt of*

1 benefits under fringe benefit programs, as other persons not so affected but
2 similar in their ability or inability to work["Qualified individual with a disability"
3 means an individual with a disability as defined in KRS 344.010 who, with or
4 without reasonable accommodation, can perform the essential functions of the
5 employment position that the individual holds or desires unless an employer
6 demonstrates that he is unable to reasonably accommodate an employee's or
7 prospective employee's disability without undue hardship on the conduct of the
8 employers' business. Consideration shall be given to the employer's judgment as to
9 what functions of a job are essential, and if an employer has prepared a written
10 description before advertising or interviewing applicants for the job, this description
11 shall be considered evidence of the essential functions of the job];

12 (2) (a) "Employee" means an individual employed by an employer, but does not
13 include an individual employed by his parents, spouse, or child, or an
14 individual employed to render services as a domestic in the home of the
15 employer.

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

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

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

26 (3) "Employer" means a person who has eight (8) or more employees within the state in
27 each of twenty (20) or more calendar weeks in the current or preceding calendar

1 year and an agent of such a person, except for purposes of determining
2 accommodations for an employee's own limitations related to her pregnancy,
3 childbirth, or related medical conditions, employer means a person who has fifteen
4 (15) or more employees within the state in each of twenty (20) or more calendar
5 weeks in the current or preceding calendar year and any agent of the person, and,
6 except for purposes of determining discrimination based on disability, employer
7 means a person engaged in an industry affecting commerce who has fifteen (15) or
8 more employees for each working day in each of twenty (20) or more calendar
9 weeks in the current or preceding calendar year, and any agent of that person,
10 except that, for two (2) years following July 14, 1992, an employer means a person
11 engaged in an industry affecting commerce who has twenty-five (25) or more
12 employees for each working day in each of twenty (20) or more calendar weeks in
13 the current or preceding year, and any agent of that person. For the purposes of
14 determining discrimination based on disability, employer shall not include:

15 (a) The United States, a corporation wholly owned by the government of the
16 United States, or an Indian tribe; or
17 (b) A bona fide private membership club (other than a labor organization) that is
18 exempt from taxation under Section 501(c) of the Internal Revenue Service
19 Code of 1986;

20 ~~(4)~~⁽³⁾ "Employment agency" means a person regularly undertaking with or without
21 compensation to procure employees for an employer or to procure for employees
22 opportunities to work for an employer and includes an agent of such person;

23 **(5) "Health care provider" means:**

24 (a) **An advanced practice registered nurse licensed under KRS Chapter 314;**
25 (b) **A pharmacist licensed under KRS Chapter 315;**
26 (c) **A physician or osteopath licensed under KRS Chapter 311; or**
27 (d) **A physician assistant licensed under KRS 311.840 to 311.862;**

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

9 (5) (a) ~~"Employee" means an individual employed by an employer, but does
10 not include an individual employed by his parents, spouse, or child, or an
11 individual employed to render services as a domestic in the home of the
12 employer.~~

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

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

21 (d) ~~For purposes of this subsection, "franchisee" and "franchisor" have the same
22 meanings as in 16 C.F.R. sec. 436.1;]~~

23 (7) *(6) "Qualified individual with a disability" means an individual with a
24 disability as defined in KRS 344.010 who, with or without reasonable
25 accommodation, can perform the essential functions of the employment position
26 that the individual holds or desires unless an employer demonstrates that he is
27 unable to reasonably accommodate an employee's or prospective employee's*

1 disability without undue hardship on the conduct of the employers' business.
2 Consideration shall be given to the employer's judgment as to what functions of a
3 job are essential, and if an employer has prepared a written description before
4 advertising or interviewing applicants for the job, this description shall be
5 considered evidence of the essential functions of the job;

6 (8) "Reasonable accommodation":

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

14 (b) For an employee's own limitations related to her pregnancy, childbirth, or
15 related medical conditions, may include more frequent or longer breaks, time
16 off to recover from childbirth, acquisition or modification of equipment,
17 appropriate seating, temporary transfer to a less strenuous or less hazardous
18 position, job restructuring, light duty, modified work schedule, and private
19 space that is not a bathroom for expressing breast milk;

20 (9) "Related medical condition" includes but is not limited to lactation or the need to
21 express breast milk for a nursing child and has the same meaning as that term is
22 referenced in the Pregnancy Discrimination Act, 42 U.S.C. sec. 2000e(k), and
23 shall be construed as that term has been construed under that Act;

24 (10) {7} "Religion" means all aspects of religious observance and practice, as well as
25 belief, unless an employer demonstrates that he is unable to reasonably
26 accommodate to an employee's or prospective employee's religious observance or
27 practice without undue hardship on the conduct of the employer's business{;

1 (8) (a) The terms "because of sex" and "on the basis of sex" include but are not
2 limited to because of or on the basis of pregnancy, childbirth, or related
3 medical conditions, and women affected by pregnancy, childbirth, or related
4 medical conditions shall be treated the same for all employment related
5 purposes, including receipt of benefits under fringe benefit programs, as other
6 persons not so affected but similar in their ability or inability to work.

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

11 **(11)[(9)]** "Undue hardship," for purposes of disability discrimination or limitations due
12 to pregnancy, childbirth, or related medical conditions as described in KRS
13 344.040(1)(c), means an action requiring significant difficulty or expense, when
14 considered in light of the following factors:

15 (a) The nature and cost of the accommodation needed;

16 (b) The overall financial resources of the facility or facilities involved in the

17 provision of the reasonable accommodation; the number of persons employed

18 at the facility; the effect on expenses and resources; or the impact otherwise of

19 such accommodation upon the operation of the facility;

20 (c) The overall financial resources of the covered entity; the overall size of the

21 business of a covered entity with respect to the number of its employees; and

22 the number, type, and location of its facilities;

23 (d) The type of operation or operations of the covered entity, including the

24 composition, structure, and functions of the workforce of such entity; the

25 geographic separateness, administrative, or fiscal relationship of the facility or

26 facilities in question to the covered entity; and

27 (e) In addition to paragraphs (a) to (d) of this subsection, for pregnancy,

1 childbirth, and related medical conditions, the following factors:

2 1. The duration of the requested accommodation; and

3 2. Whether similar accommodations are required by policy to be made,

4 have been made, or are being made for other employees due to any

5 reason.

6 ➔Section 3. KRS 344.040 is amended to read as follows:

7 (1) It is an unlawful practice for an employer:

8 (a) To fail or refuse to hire, or to discharge any individual, or otherwise to

9 discriminate against an individual with respect to compensation, terms,

10 conditions, or privileges of employment, because of the individual's race,

11 color, religion, national origin, sex, age forty (40) and over, because the

12 person is a qualified individual with a disability, or because the individual is a

13 smoker or nonsmoker, as long as the person complies with any workplace

14 policy concerning smoking;

15 (b) To limit, segregate, or classify employees in any way which would deprive or

16 tend to deprive an individual of employment opportunities or otherwise

17 adversely affect status as an employee, because of the individual's race, color,

18 religion, national origin, sex, or age forty (40) and over, because the person is

19 a qualified individual with a disability, or because the individual is a smoker

20 or nonsmoker, as long as the person complies with any workplace policy

21 concerning smoking;

22 (c) To fail to make reasonable accommodations for any employee with

23 limitations related to pregnancy, childbirth, or a related medical condition

24 who requests an accommodation, including but not limited to the need to

25 express breast milk, unless the employer can demonstrate the accommodation

26 would impose an undue hardship on the employer's program, enterprise, or

27 business. The following shall be required as to reasonable accommodations:

1. An employee shall not be required to take leave from work if another
2 reasonable accommodation can be provided;
3. The employer and employee shall engage in a timely, good faith, and
4 interactive process to determine effective reasonable accommodations;
5 and
6. If the employer has a policy to provide, would be required to provide, is
7 currently providing, or has provided a similar accommodation to other
8 classes of employees, then a rebuttable presumption is created that the
9 accommodation does not impose an undue hardship on the employer; ~~or~~
10. ~~or~~

11 (d) To require as a condition of employment that any employee or applicant for
12 employment abstain from smoking or using tobacco products outside the
13 course of employment, as long as the person complies with any workplace
14 policy concerning smoking; or

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

17 1. A sincerely held religious belief against immunization; or

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

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

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

26 (3) (a) An employer shall provide written notice of the right to be free from
27 discrimination in relation to pregnancy, childbirth, and related medical

1 conditions, including the right to reasonable accommodations, to ~~the~~
2 1. ~~new employees at the commencement of employment; and~~
3 2. ~~Existing employees not later than thirty (30) days after June 27, 2019.~~
4 (b) An employer shall conspicuously post a written notice of the right to be free
5 from discrimination in relation to pregnancy, childbirth, and related medical
6 conditions, including the right to reasonable accommodations, at the
7 employer's place of business in an area accessible to employees.