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HOUSE DRH30162-LR-10A (12/03)

Short Title: Pregnant Workers' Fairness Act. (Public)

Sponsors: Representatives Fisher, Glazier, Harrison, and Meyer (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE PREGNANT WORKERS' FAIRNESS ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 95 of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 24.

7 "Pregnant Workers' Fairness Act.

8 **"§ 95-275. Title; definitions.**

9 (a) This Article shall be known and may be cited as the "Pregnant Workers' Fairness
10 Act."

11 (b) The following definitions apply in this Article:

12 (1) Pregnancy. – Pregnancy, childbirth, or a related condition, including, but not
13 limited to, lactation.

14 (2) Reasonable accommodation. – As defined in G.S. 168A-3(10), except that
15 all references to disability or to a disabling condition shall instead be
16 references to known limitations of a person related to pregnancy, childbirth,
17 or a related condition. In addition to the accommodations available in
18 G.S. 168A-3(10), accommodations available under this Article may include,
19 but are not limited to, acquisition of equipment for sitting, more frequent or
20 longer breaks, periodic rest, assistance with manual labor, job restructuring,
21 light duty assignments, modified work schedules, temporary transfers to less
22 strenuous or hazardous work, time off to recover from childbirth, or break
23 time and appropriate facilities for expressing breast milk.

24 (3) Undue hardship. – An action requiring significant difficulty or expense when
25 considered in light of factors such as: the nature and cost of the
26 accommodation; the overall financial resources of the employer; the overall
27 size of the business of the employer with respect to the number of
28 employees, and the number, type, and location of its facilities; and the effect
29 on expenses and resources or the impact otherwise of such accommodation
30 upon the operation of the employer.

31 **"§ 95-276. Unlawful employment practices.**

32 (a) It is an unlawful employment practice for an employer to do any of the following:

33 (1) Fail or refuse to hire or to discharge any individual or otherwise to
34 discriminate against any individual with respect to compensation, terms,
35 conditions, or privileges of employment because of pregnancy.



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- 1 (2) Limit, segregate, or classify employees in any way which would deprive or
2 tend to deprive any individual of employment opportunities or otherwise
3 adversely affect the individual's status as an employee because of pregnancy.
- 4 (b) It is an unlawful employment practice to do any of the following for an
5 employment-related purpose:
- 6 (1) Fail or refuse to treat an employee or applicant for employment that the
7 employer knows or should know is affected by pregnancy as well as the
8 employer treats or would treat any other employee or applicant not so
9 affected but similar in the ability or inability to work, without regard to the
10 source of any condition affecting the other employee's or applicant's ability
11 or inability to work.
- 12 (2) Fail or refuse to make reasonable accommodations to the known limitations
13 related to the pregnancy of an applicant for employment or employee, unless
14 the employer can demonstrate that the accommodation would impose an
15 undue hardship on the operation of the business of such employer.
- 16 (3) Deny employment opportunities to a job applicant or employee, if such
17 denial is based on the need of the employer to make reasonable
18 accommodations to the known limitations related to the pregnancy of an
19 employee or applicant for employment.
- 20 (4) Require an applicant for employment or employee affected by pregnancy to
21 accept an accommodation that such applicant or employee chooses not to
22 accept, if such applicant or employee does not have a known limitation
23 related to pregnancy or if such accommodation is unnecessary for the
24 applicant or employee to perform the essential duties of her job.
- 25 (5) Require an employee to take leave under any leave law or policy of the
26 employer if another reasonable accommodation can be provided to the
27 known limitations related to the pregnancy of the employee.
- 28 (6) Take adverse action against an employee in the terms, conditions, or
29 privileges of employment for requesting or using a reasonable
30 accommodation to the known limitations related to the pregnancy of the
31 employee.
- 32 (c) It is an unlawful employment practice for an employment agency to fail or refuse to
33 refer for employment or otherwise to discriminate against any individual because of pregnancy.
- 34 (d) It is an unlawful employment practice for a labor organization to:
- 35 (1) Exclude or expel from its membership or otherwise to discriminate against
36 any individual because of pregnancy.
- 37 (2) Limit, segregate, or classify its membership or to classify or fail or refuse to
38 refer for employment any individual in any way which would deprive or
39 tend to deprive any individual of employment opportunities or would limit
40 such employment opportunities or otherwise adversely affect the individual's
41 status as an employee or as an applicant for employment because of
42 pregnancy.
- 43 (e) It is an unlawful employment practice for any employer, labor organization, or joint
44 labor-management committee controlling apprenticeship or other training or retraining
45 programs, including on-the-job training programs, to discriminate against any individual
46 because of pregnancy in admission to or employment in any program established to provide
47 apprenticeship or other training.
- 48 (f) It is an unlawful employment practice for any employer, employment agency, labor
49 organization, or joint labor-management committee controlling apprenticeship or other training
50 or retraining programs, including on-the-job training programs, to discharge, refuse to hire, or
51 otherwise discriminate against any individual or applicant for employment or membership on

1 the basis of pregnancy because the person has opposed any practice prohibited by this Article
2 or because the person has testified, assisted, or participated in any manner in an investigation,
3 proceeding, or hearing to enforce the provisions of this Article.

4 **"§ 95-277. Exceptions; bona fide occupational qualifications.**

5 Notwithstanding any other provision of this Article, it is not an unlawful employment
6 practice:

7 (1) For an employer to hire and employ employees, for an employment agency
8 to classify or refer for employment any individual, for a labor organization
9 to classify its membership or to classify or refer for employment any
10 individual or for an employer, labor organization, or joint labor-management
11 committee controlling apprenticeship or other training or retraining
12 programs to admit or employ any individual in any such program on the
13 basis of pregnancy in those certain instances where not being pregnant is a
14 bona fide occupational qualification reasonably necessary to the normal
15 operation of that particular business or enterprise.

16 (2) For an employer to apply different standards of compensation or different
17 terms, conditions, or privileges of employment pursuant to a bona fide
18 seniority or merit system or a system which measures earnings by quantity
19 or quality of production or to employees who work in different locations,
20 provided that such differences are not the result of an intention to
21 discriminate because of pregnancy, nor shall it be an unlawful employment
22 practice for an employer to give and to act upon the results of any
23 professionally developed ability test provided that such test, its
24 administration, or action upon the results is not designed, intended, or used
25 to discriminate because of pregnancy.

26 **"§ 95-278. Posting of notices.**

27 (a) An employer shall provide notice of the right to be free from discrimination in
28 relation to pregnancy, childbirth, and related conditions, including the right to reasonable
29 accommodation to known limitations related to pregnancy, childbirth, and related conditions, as
30 provided by this Article. This notice shall be conspicuously posted at an employer's place of
31 business in an area accessible to employees.

32 (b) In addition to the posted notice required by subsection (a) of this section, notice of
33 the right to be free from discrimination in relation to pregnancy, childbirth, and related
34 conditions shall be provided to employees individually as follows:

35 (1) In writing to new employees at the commencement of employment.

36 (2) Orally or in writing to existing employees within 120 days after the effective
37 date of this Article.

38 (3) Orally or in writing to any employee who notifies the employer of her
39 pregnancy within 10 days of such notification.

40 **"§ 95-279. Civil action.**

41 (a) An employee who is discharged or otherwise discriminated against, or a prospective
42 employee who is denied employment in violation of this Article, may bring a civil action within
43 one year from the date of the alleged violation against the employer who violates the provisions
44 of this Article and obtain any of the following:

45 (1) Any wages or benefits lost as a result of the violation.

46 (2) An order of reinstatement without loss of position, seniority, or benefits.

47 (3) An order directing the employer to offer employment to the prospective
48 employee.

49 (b) An employee who is damaged by a labor organization's or employment agency's
50 violation of this Article may bring a civil action within one year from the date of the alleged

1 violation against the labor organization or employment agency to recover damages arising from
2 the violation.

3 (c) The court may award reasonable costs, including court costs and attorneys' fees, to
4 the prevailing party in an action brought pursuant to this section."

5 **SECTION 2.** G.S. 95-241(a)(1) reads as rewritten:

6 "(a) No person shall discriminate or take any retaliatory action against an employee
7 because the employee in good faith does or threatens to do any of the following:

8 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
9 proceeding or other action, or testify or provide information to any person
10 with respect to any of the following:

- 11 a. Chapter 97 of the General Statutes.
- 12 b. ~~Article 2A or Article 16~~ Article 2A, Article 16, or Article 24 of this
13 Chapter.
- 14 c. Article 2A of Chapter 74 of the General Statutes.
- 15 d. G.S. 95-28.1.
- 16 e. Article 16 of Chapter 127A of the General Statutes.
- 17 f. G.S. 95-28.1A.
- 18 g. Article 52 of Chapter 143 of the General Statutes.
- 19 h. Article 5F of Chapter 90 of the General Statutes.

20"

21 **SECTION 3.(a).** Nothing in this act shall be construed to preempt, limit, diminish,
22 or otherwise affect any other provision of federal, State, or local law relating to discrimination
23 based on sex or pregnancy, or to invalidate or limit the remedies, rights, and procedures of any
24 federal, State, or local law that provides greater or equal protection for employees affected by
25 pregnancy, childbirth, or related conditions.

26 **SECTION 3.(b).** The provisions of Article 24 of Chapter 95 of the General
27 Statutes (Pregnant Workers' Fairness Act), as enacted by this act, shall prevail if any provisions
28 of that article conflict with the provisions of Chapter 168A of the General Statutes (North
29 Carolina Persons With Disabilities Protection Act).

30 **SECTION 4.** This act is effective when it becomes law.