

HOUSE BILL No. 1358

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-9-12.

Synopsis: Pregnancy and childbirth accommodation. Requires an employer to provide reasonable employment accommodations for a pregnant employee. Requires the department of labor to investigate complaints and attempt to resolve complaints through the use of an administrative law judge. Allows for appeals.

Effective: July 1, 2021.

Negele, Barrett, Ziemke

January 14, 2021, read first time and referred to Committee on Employment, Labor and Pensions.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1358

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-9-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2021]:
4 **Chapter 12. Pregnancy and Childbirth Accommodation**
5 **Sec. 1. This chapter applies after June 30, 2022.**
6 **Sec. 2. As used in this chapter, "commissioner" refers to the**
7 **commissioner of labor appointed under IC 22-1-1-2.**
8 **Sec. 3. As used in this chapter, "department" refers to the**
9 **department of labor created by IC 22-1-1-1.**
10 **Sec. 4. As used in this chapter, "employee" means any**
11 **individual on the payroll of an employer who is considered an**
12 **employee for Social Security tax purposes, including a permanent**
13 **employee provided by an employment agency for a fee to an**
14 **outside company for which the employment agency handles all**
15 **personnel tasks such as payroll, staffing, benefit payments, and**
16 **compliance reporting. However, the term does not include a**
17 **full-time life insurance sales agent who is subject to the Federal**



1 **Insurance Contributions Act (26 U.S.C. 3121 et seq.).**

2 **Sec. 5. As used in this chapter, "employer" means the state, a**
 3 **political subdivision of the state, or a person that has at least fifteen**
 4 **(15) full-time employees in Indiana. However, the term does not**
 5 **include any of the following:**

6 (1) **A nonprofit corporation or association organized**
 7 **exclusively for fraternal or religious purposes.**

8 (2) **A school, educational, or charitable religious institution**
 9 **owned, conducted by, or affiliated with a church or religious**
 10 **institution.**

11 (3) **An exclusively social club, corporation, or association that**
 12 **is not organized for profit.**

13 **Sec. 6. As used in this chapter, "full-time employee" means an**
 14 **individual who is employed for at least thirty (30) hours of service**
 15 **per week or has one hundred thirty (130) hours of service per**
 16 **month.**

17 **Sec. 7. As used in this chapter, "office" refers to the office of**
 18 **administrative law proceedings established by IC 4-15-10.5-7.**

19 **Sec. 8. As used in this chapter, "pregnancy" or "pregnant"**
 20 **includes pregnancy, childbirth, or related medical conditions.**

21 **Sec. 9. (a) As used in this chapter, "reasonable accommodation"**
 22 **means a modification or adjustment to address medical needs**
 23 **related to pregnancy.**

24 **(b) Reasonable accommodations include the following:**

25 (1) **More frequent or longer breaks.**

26 (2) **Unpaid time off work to recover from childbirth.**

27 (3) **Acquisition or modification of equipment.**

28 (4) **Seating.**

29 (5) **Temporary transfer to a vacant position.**

30 (6) **Job restructuring.**

31 (7) **Light duty.**

32 (8) **Work break time for expressing breast milk.**

33 (9) **A temporary or permanent private nonbathroom space for**
 34 **expressing breast milk.**

35 (10) **Assistance with physical or manual labor.**

36 (11) **Modified work schedules.**

37 (12) **An accommodation prescribed by a health care provider.**

38 **Sec. 10. As used in this chapter, "undue hardship" has the**
 39 **meaning set forth in IC 22-9-5-18.**

40 **Sec. 11. As used in this chapter, "verified complaint" means any**
 41 **written grievance alleging a violation of this chapter that is:**

42 (1) **sufficiently complete (as defined in IC 22-9-1-3(p)); and**



1 (2) filed by an employee with the department.

2 **Sec. 12. It is the policy of the state to require employers to make**
 3 **reasonable accommodations for an employee due to the pregnancy**
 4 **of the employee.**

5 **Sec. 13. An employer must:**

6 (1) make a reasonable accommodation for the known
 7 limitations of an employee related to the pregnancy of the
 8 employee, unless the employer can demonstrate that the
 9 accommodation would impose an undue hardship on the
 10 employer;

11 (2) not take adverse action against an employee because the
 12 employee has requested or used an accommodation for the
 13 employee's pregnancy, including failing to reinstate the
 14 employee to the employee's original job or an equivalent
 15 position with equivalent pay, accumulated seniority,
 16 retirement fringe benefits, and applicable service credits when
 17 the employee's need for a reasonable accommodation ends;

18 (3) not deny an employment opportunity to a qualified
 19 employee if the denial is the result of the employee having
 20 requested a reasonable accommodation or an employer
 21 having made a reasonable accommodation for the pregnancy
 22 of the employee;

23 (4) not require an employee to accept an accommodation the
 24 employee does not want to accept with respect to the
 25 employee's pregnancy, if that accommodation is unnecessary
 26 to enable the employee to perform the employee's job;

27 (5) not require an employee to take leave if another
 28 reasonable accommodation can be provided for the
 29 employee's pregnancy; and

30 (6) engage with good faith in a timely and interactive process
 31 with an employee who the employer knows has limitations
 32 related to pregnancy to determine effective and reasonable
 33 accommodations.

34 **Sec. 14. This chapter does not require an employer to:**

35 (1) hire new employees that the employer would not have
 36 otherwise hired;

37 (2) discharge an employee, transfer another employee with
 38 more seniority, or promote another employee who is not
 39 qualified to perform the job;

40 (3) create a new position, including a light duty position for
 41 the employee; or

42 (4) compensate an employee for more frequent or longer



1 break periods;
2 unless the employer would otherwise provide the same
3 accommodation for other employees or classes of employees.

4 **Sec. 15. (a) An employer shall provide written notice to:**

5 (1) a new employee, at the commencement of employment;
6 and

7 (2) an existing employee, before November 1, 2022;
8 that the employee has the right to request reasonable
9 accommodations based on the employee's pregnancy, and that the
10 employer must make reasonable accommodations for the
11 employee's pregnancy unless doing so would impose an undue
12 hardship on the employer.

13 (b) Notice under this section must be conspicuously posted at the
14 employer's place of business in an area accessible to employees.

15 (c) The department shall develop educational materials and
16 make public education efforts to inform employers, employees,
17 employment agencies, and job applicants of:

18 (1) employee rights; and

19 (2) duties of employers;

20 under this chapter.

21 **Sec. 16. If an employee requests a reasonable accommodation**
22 **from the employer for the employee's pregnancy:**

23 (1) the employer may request that an employee provide proof
24 of pregnancy from the employee's health provider; and

25 (2) the employee shall provide the employer with the proof of
26 pregnancy requested under subdivision (1).

27 **Sec. 17. An employee may file a verified complaint with the**
28 **department not later than one hundred eighty (180) days after the**
29 **date of the alleged incident or denial of accommodation.**

30 **Sec. 18. (a) The department shall investigate each verified**
31 **complaint and conduct proceedings in accordance with this**
32 **chapter.**

33 (b) Upon receipt of a verified complaint, the department shall
34 refer the matter to the office. The office shall assign an
35 administrative law judge and conduct an initial hearing in front of
36 the administrative law judge not later than fifteen (15) days from
37 receipt of the verified complaint by the office for the purpose of
38 determining the appropriateness of temporary relief. The
39 department may not advocate for either party during the initial
40 hearing.

41 (c) The administrative law judge may order appropriate
42 temporary or preliminary relief, including ordering that an



1 employer immediately provide the requested reasonable
 2 accommodation, pending final disposition of the verified complaint.
 3 The administrative law judge shall issue an order not later than
 4 fifteen (15) days after the initial hearing is held.

5 (d) A party may appeal the administrative law judge's decision
 6 under subsection (c) to the commissioner. A party may appeal any
 7 decision made by the commissioner under this subsection to the
 8 local circuit or superior court.

9 (e) At the conclusion of the department's investigation, the
 10 department shall determine if a violation of this chapter exists. The
 11 department shall issue a written order describing the department's
 12 determination under this subsection.

13 Sec. 19. (a) If the department finds that an employer has
 14 violated this chapter, the department may order that the employer
 15 provide for any or all of the following:

16 (1) The reasonable accommodation.

17 (2) A payment of an amount to restore the employee's losses
 18 incurred as a result of the employer's failure to provide a
 19 reasonable accommodation.

20 (3) Proof of compliance at periodic intervals.

21 (b) In calculating the amount of losses under subsection (a)(2),
 22 the department may consider only the following:

23 (1) An employee's wages.

24 (2) An employee's salary.

25 (3) Any sales commission that may be paid to an employee.

26 Sec. 20. A party may appeal the department's determination not
 27 more than thirty (30) days after the order has been issued. An
 28 appeal under this section is subject to IC 4-21.5.

29 Sec. 21. The department shall refer this matter to the attorney
 30 general for enforcement if:

31 (1) an employer fails to comply with the department's order;
 32 and

33 (2) an employer has exhausted all appeals or the time frame
 34 for an appeal has expired.

35 Sec. 22. (a) Except as provided in subsection (b), IC 4-21.5
 36 governs a hearing under section 18 of this chapter.

37 (b) A proceeding under section 18 of this chapter may not
 38 continue regarding an alleged violation after the filing of a civil
 39 action.

40 Sec. 23. An employer may not retaliate against any person
 41 because the person assisted with a request for accommodation or
 42 a complaint under this chapter, including participating in the



1 department's investigation or a hearing under section 18 of this
2 chapter.

3 **Sec. 24. This chapter does not preempt, limit, diminish, or affect**
4 **other state or federal laws concerning sex discrimination,**
5 **pregnancy discrimination, or childbirth discrimination.**

6 **Sec. 25. The department may adopt rules under IC 4-22-2 to**
7 **carry out this chapter.**

