

HOUSE No. 3680

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 8, 2017.

The committee on Ways and Means, to whom was referred the Bill establishing the Massachusetts pregnant workers fairness act (House, No. 3659), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 3680).

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act establishing the Massachusetts pregnant workers fairness act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 151B of the General Laws, as amended by section 22
2 of chapter 141 of the acts of 2016, is hereby amended by striking out, in line 6, the word “to”,
3 the first time it appears, and inserting in place thereof the following words:-

4 , or pregnancy or a condition related to said pregnancy, including, but not limited to,
5 lactation, or the need to express breast milk for a nursing child, to.

6 SECTION 2. Said section 4 of said chapter 151B, as appearing in the 2014 Official
7 Edition, is hereby amended by inserting after subsection 1D the following subsection:-

8 1E. (a) For an employer to deny a reasonable accommodation for an employee’s
9 pregnancy or any condition related to the employee’s pregnancy, including, but not limited to,
10 lactation, or the need to express breast milk for a nursing child, if the employee so requests,
11 unless the employer can demonstrate that the accommodation would impose an undue hardship
12 on the employer’s program, enterprise or business. It shall also be an unlawful practice under this
13 subsection to:

14 (1) take adverse action against an employee who requests or uses a reasonable
15 accommodation in terms, conditions or privileges of employment, including, but not limited to,
16 failing to reinstate the employee to the original employment status or to an equivalent position
17 with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable
18 service credits when the need for reasonable accommodations ceases;

19 (2) deny an employment opportunity to an employee, if such denial is based on the need
20 of the employer to make a reasonable accommodation to the known conditions related to the
21 employee's pregnancy including, but not limited to, lactation, or the need to express breast milk
22 for a nursing child;

23 (3) require an employee affected by pregnancy or require said employee affected by a
24 condition related to the pregnancy including, but not limited to, lactation, or the need to express
25 breast milk for a nursing child, to accept an accommodation that such employee chooses not to
26 accept, if such an accommodation is unnecessary to enable the employee to perform the essential
27 functions of the job;

28 (4) require an employee to take leave of absence if another reasonable accommodation
29 may be provided to the known conditions related to the employee's pregnancy including, but not
30 limited to, lactation, or the need to express breast milk for a nursing child, without undue
31 hardship to the employer;

32 (5) knowingly refuse to hire a person who is pregnant because of the pregnancy or
33 because of a condition related to the person's pregnancy which shall include, but shall not be
34 limited to, lactation or the need to express breast milk for a nursing child; provided, that such
35 person is capable of performing the essential functions of the position involved with a reasonable

36 accommodation, unless the employer is able to demonstrate that the accommodation would
37 impose an undue hardship on the employer's program, enterprise or business.

38 (b) For the purposes of this subsection:

39 (1) The term "reasonable accommodation" may include, but shall not be limited to: (i)
40 more frequent or longer paid or unpaid breaks; (ii) time off to recover from childbirth with or
41 without pay; (iii) acquisition or modification of equipment or seating; (iv) temporary transfer to a
42 less strenuous or hazardous position; (v) job restructuring; (vi) light duty; (vii) private non-
43 bathroom space for expressing breast milk; (viii) assistance with manual labor; or (ix) modified
44 work schedules; provided, however, that no employer shall be required to discharge any
45 employee, transfer any employee with more seniority, or promote any employee who is not able
46 to perform the essential functions of the job, with or without a reasonable accommodation.

47 (2) The term "undue hardship" shall mean an action requiring significant difficulty or
48 expense. The employer shall have the burden of proving undue hardship. In making a
49 determination of undue hardship, the following factors shall be considered:

50 (i) the nature and cost of the accommodation needed;

51 (ii) the overall financial resources of the employer;

52 (iii) the overall size of the business of the employer with respect to the number of
53 employees;

54 (iv) the number, type and location of its facilities; and;

55 (v) the effect on expenses and resources or the impact otherwise of such accommodation
56 upon the operation of the employer.

57 (c) The employer and employee shall engage in a timely, good faith and interactive
58 process to determine effective reasonable accommodations to enable the employee to perform
59 the essential functions of the employee’s job. An employer may require that documentation
60 about the need for a reasonable accommodation come from an appropriate health care or
61 rehabilitation professional; provided, however that an employer may not require, and an
62 employee shall not be required to obtain, documentation from an appropriate health care or
63 rehabilitation professional for the following accommodations: (1) more frequent restroom, food
64 and water breaks; (2) seating; and (3) limits on lifting over 20 pounds. An “appropriate health
65 care or rehabilitation professional” shall include, but shall not be limited to, a medical doctor,
66 including a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric
67 clinical nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a
68 vocational rehabilitation specialist, a midwife, a lactation consultant, or another licensed mental
69 health professional authorized to perform specified mental health services consistent with law.
70 An employer may require documentation for an extension of the accommodation beyond the
71 originally agreed to accommodation.

72 (d) Written notice of the right to be free from discrimination in relation to pregnancy or a
73 condition related to the employee’s pregnancy including, but not limited to, lactation, or the need
74 to express breast milk for a nursing child, including the right to reasonable accommodations for
75 conditions related to pregnancy pursuant to this subsection shall be distributed by an employer in
76 a handbook or other means to:

77 (1) new employees at the commencement of employment;

78 (2) existing employees on or before January 1, 2018;

79 (3) an employee who notifies the employer of a pregnancy or an employee who notifies
80 the employer of a condition related to the employee's pregnancy including, but not limited to,
81 lactation, or the need to express breast milk for a nursing child, within 10 days of such
82 notification.

83 (e) Subject to appropriation, the commission shall develop courses of instruction and
84 conduct public education efforts as necessary to inform employers, employees and employment
85 agencies about their rights and responsibilities under this subsection.

86 (f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect
87 any other provision of law relating to sex discrimination or pregnancy, or to in any way diminish
88 the coverage for pregnancy or a condition related to pregnancy including, but not limited to,
89 lactation, or the need to express breast milk for a nursing child, under section 105D of chapter
90 149, or any other general or special law.