

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 3028

By: Virgin

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5  
6 AS INTRODUCED

7 An Act relating to labor; creating the Pregnant  
8 Workers Fairness Act; providing for certain  
9 accommodations for certain employees; defining terms;  
10 requiring certain written notice; requiring  
11 Department of Labor to develop courses of  
12 instruction; making certain actions unlawful;  
13 providing for cause of action; providing construing  
14 provision regarding certain discrimination; providing  
15 for codification; providing for noncodification; and  
16 providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law not to be  
19 codified in the Oklahoma Statutes reads as follows:

20 This act shall be known and may be cited as the "Pregnant  
21 Workers Fairness Act".

22 SECTION 2. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 436 of Title 40, unless there is  
24 created a duplication in numbering, reads as follows:

A. An employer shall make reasonable accommodations to the  
known limitations related to the pregnancy of an applicant for  
employment or employee, unless the employer can demonstrate that the

1 accommodation would impose an undue hardship on the operation of the  
2 business of the employer.

3 B. An employer shall not deny employment opportunities to a job  
4 applicant or employee, if the denial is based on the need of the  
5 employer to make reasonable accommodations to the known limitations  
6 related to the pregnancy of an employee or applicant for employment.

7 C. An employer shall not require an applicant for employment or  
8 employee affected by pregnancy to accept an accommodation that the  
9 applicant or employee chooses not to accept, if the applicant or  
10 employee does not have a known limitation related to pregnancy or if  
11 the accommodation is unnecessary for the applicant or employee to  
12 perform the essential duties of her job.

13 D. An employer shall not require an employee to take leave  
14 under any leave law or policy of the employer if another reasonable  
15 accommodation can be provided to the known limitations related to  
16 the pregnancy of the employee.

17 E. An employer shall not take adverse action against an  
18 employee in the terms, conditions or privileges of employment for  
19 requesting or using a reasonable accommodation to the known  
20 limitations related to the pregnancy of the employee.

21 F. As used in this section:

22 1. The term "employer" means a person engaged in business who  
23 has one or more employees, including the state and any political  
24 subdivision of the state;

1           2. The term "employee" means any person engaged in service to  
2 an employer in the business of the employer;

3           3. The term "pregnancy" means pregnancy, childbirth or a  
4 related condition, including, but not limited to, lactation;

5           4. The term "reasonable accommodations" shall include, but not  
6 be limited to: acquisition of equipment for sitting, more frequent  
7 or longer breaks, periodic rest, assistance with manual labor, job  
8 restructuring, light duty assignments, modified work schedules,  
9 temporary transfers to less strenuous or hazardous work, time off to  
10 recover from childbirth or break time and appropriate facilities for  
11 expressing breast milk; and

12           5. The term "undue hardship" means an action requiring  
13 significant difficulty or expense when considered in light of  
14 factors such as: the nature and cost of the accommodation, the  
15 overall financial resources of the employer, the overall size of the  
16 business of the employer with respect to the number of employees and  
17 the number, type and location of its facilities, and the effect on  
18 expenses and resources or the impact otherwise of such accommodation  
19 upon the operation of the employer. The fact that the employer  
20 provides or would be required to provide a similar accommodation to  
21 another employee or employees shall create a rebuttable presumption  
22 that the accommodation does not impose an undue hardship on the  
23 employer.

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1 SECTION 3. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 437 of Title 40, unless there is  
3 created a duplication in numbering, reads as follows:

4 A. Written notice of the right to be free from discrimination  
5 in relation to pregnancy, childbirth and related conditions,  
6 including the right to reasonable accommodation to known limitations  
7 related to pregnancy, childbirth and related conditions, pursuant to  
8 Section 2 of this act, shall be conspicuously posted at an  
9 employer's place of business in an area accessible to employees.

10 B. The Department of Labor shall develop courses of instruction  
11 and conduct ongoing public education efforts as necessary to inform  
12 employers, employees, employment agencies and applicants for  
13 employment about their rights and responsibilities under Section 2  
14 of this act.

15 SECTION 4. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 438 of Title 40, unless there is  
17 created a duplication in numbering, reads as follows:

18 A. No person shall discriminate against any individual because  
19 the individual has opposed any act or practice made unlawful by this  
20 act or because the individual made a charge, testified, assisted or  
21 participated in any manner in an investigation, proceeding or  
22 hearing under this act.

23 B. It shall be unlawful to coerce, intimidate, threaten or  
24 interfere with any individual in the exercise or enjoyment of, or on

1 account of the individual having exercised or enjoyed, or on account  
2 of the individual having aided or encouraged any other individual in  
3 the exercise or enjoyment of, any right granted or protected by this  
4 act.

5 SECTION 5. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 439 of Title 40, unless there is  
7 created a duplication in numbering, reads as follows:

8 A. A cause of action for a violation of Section 2 or Section 4  
9 of this act is hereby created.

10 B. In order to have standing in a court of law to allege a  
11 violation of Section 2 or 4 of this act, an aggrieved party shall,  
12 within one hundred eighty (180) days from the date of the alleged  
13 violation, file a charge with the Commissioner of Labor.

14 C. Should a charge of discrimination be filed with the  
15 Commissioner and not be resolved to the satisfaction of the charging  
16 party within one hundred eighty (180) days from the date of filing  
17 the charge, the Commissioner, upon request of any party, shall issue  
18 a Notice of a Right to Sue, which shall be first obtained in order  
19 to commence a civil action under this section.

20 D. All civil actions brought pursuant to a Notice of a Right to  
21 Sue from the Commissioner for redress against any person who is  
22 alleged to have violated Section 2 or 4 of this act in the charge  
23 shall be commenced in the district court of this state for the  
24 county in which the violation is alleged to have been committed.

1 E. If it is determined in such action that the defendant or  
2 defendants in the action have violated Section 2 or 4 as charged in  
3 the petition, the court may enjoin the defendant or defendants from  
4 engaging in the unlawful employment practice charged in the  
5 petition. The court may enjoin respondent from engaging in the  
6 unlawful practice and order the affirmative action, including, but  
7 not limited to, reinstatement or hiring of employees. A prevailing  
8 aggrieved party shall also be entitled to back pay, an additional  
9 amount as liquidated damages, compensatory damages and, where the  
10 employee demonstrates that the employer acted with malice or  
11 reckless indifference, punitive damages as may be appropriate.  
12 Interim earnings or amounts earnable with reasonable diligence by  
13 the person aggrieved shall operate to reduce the back pay otherwise  
14 allowable.

15 F. In any action or proceeding pursuant to this section, the  
16 court may allow a prevailing plaintiff a reasonable attorney fee and  
17 costs.

18 G. No action shall be filed in district court as provided in  
19 this section more than ninety (90) days after receiving a Notice of  
20 a Right to Sue from the Commissioner.

21 H. The Commissioner shall also have the authority to bring a  
22 civil action for injunctive relief and damages to enforce the  
23 provisions of this act.

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1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 440 of Title 40, unless there is  
3 created a duplication in numbering, reads as follows:

4 Nothing in this act shall be construed to preempt, limit,  
5 diminish or otherwise affect any other provision of federal, state  
6 or local law relating to discrimination based on sex or pregnancy,  
7 or to invalidate or limit the remedies, rights and procedures of any  
8 federal, state or local law that provides greater or equal  
9 protection for employees affected by pregnancy, childbirth or  
10 related conditions.

11 SECTION 7. This act shall become effective November 1, 2018.

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56-2-8990 LRB 01/05/18