

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL DRS35214-MG-78

Short Title: Enact NC Healthy Pregnancy Act. (Public)

Sponsors: Senators McKissick, Steinburg, and Waddell (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ADDRESSING PREGNANCY-RELATED DISCRIMINATION AND
3 REASONABLE ACCOMMODATIONS IN THE WORKPLACE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

6 **"Chapter 168B.**

7 **"The North Carolina Healthy Pregnancy Act.**

8 **"§ 168B-1. Short title.**

9 This Chapter shall be known and may be cited as the "North Carolina Healthy Pregnancy
10 Act."

11 **"§ 168B-2. Public policy.**

12 It is the public policy of this State to protect and safeguard the right and opportunity of all
13 persons to seek, obtain, and hold employment without discrimination or abridgement on account
14 of sex, including discrimination on the basis of pregnancy, childbirth, or related medical
15 condition, by employers that regularly employ 15 or more employees.

16 **"§ 168B-3. Definitions.**

17 The following definitions apply in this Chapter:

- 18 (1) Covered governmental entity. – Any State department, institution, agency, or
19 any political subdivision of the State or any person that contracts with a State
20 department, institution, agency, or political subdivision of the State for the
21 delivery of public services, including education, health, social services,
22 recreation, and rehabilitation.
- 23 (2) Discriminatory practice. – Any practice prohibited by this Chapter.
- 24 (3) Employer. – Any person employing 15 or more employees within the State.
- 25 (4) Employment agency. – As defined in G.S. 168A-3.
- 26 (5) Labor organization. – As defined in G.S. 168A-3.
- 27 (6) Person. – As defined in G.S. 168A-3.
- 28 (7) Pregnancy or pregnant. – Includes pregnancy, childbirth, or related medical
29 conditions, including lactation.
- 30 (8) Reasonable accommodations. – All of the following:
- 31 a. With regard to employment, making reasonable physical changes in
32 the workplace, including all of the following:
- 33 1. Making existing facilities used by employees readily
34 accessible to and usable by individuals with medical needs
35 arising from pregnancy.



1 (a) A qualified pregnant person requesting a reasonable accommodation must apprise the
2 employer, employment agency, labor organization, place of public accommodation, or covered
3 governmental entity of her pregnancy, submit any necessary medical documentation, make
4 suggestions for such possible accommodations as are known to such person, and cooperate in
5 any ensuing discussion and evaluation aimed at determining possible or feasible
6 accommodations.

7 (b) Once a qualified pregnant person has requested an accommodation, or if a potential
8 accommodation is obvious in the circumstances, an employer, employment agency, labor
9 organization, place of public accommodation, or covered governmental entity shall investigate
10 whether there are reasonable accommodations that can be made and make reasonable
11 accommodations as defined in G.S. 168A-3(8).

12 **"§ 168B-5. Discriminatory practices prohibited.**

13 (a) A person affected by pregnancy shall be treated the same for all employment-related
14 purposes, including receipt of benefits under fringe benefit programs, as other persons not so
15 affected but similar in their ability or inability to work.

16 (b) It is an unlawful, discriminatory practice to do any of the following:

17 (1) For an employer to fail to hire or consider for employment or promotion, to
18 discharge, or otherwise to discriminate against a pregnant person with respect
19 to compensation or the terms, conditions, or privileges of employment on the
20 basis of a condition related to pregnancy.

21 (2) For an employment agency to fail or refuse to refer for employment, or
22 otherwise to discriminate against a pregnant person on the basis of a condition
23 related to pregnancy.

24 (3) For a person controlling an apprenticeship, on-the-job training, or other
25 training or retraining program, to discriminate against a pregnant person with
26 respect to admission into or employment in the apprenticeship, on-the-job
27 training, or other training or retraining program on the basis of a condition
28 related to pregnancy.

29 (4) For an employer, labor organization, or employment agency to fail to meet the
30 duties imposed by this Chapter.

31 (5) For an employer to fail or refuse to make reasonable accommodations for
32 limitations arising from pregnancy, childbirth, or related medical conditions
33 for an applicant for employment or an employee if the applicant or employee
34 so requests, unless the employer can demonstrate that the accommodation
35 would impose an undue hardship on the operation of the business of the
36 employer.

37 **"§ 168B-6. Retaliation prohibited.**

38 (a) No employer shall discharge, expel, refuse to hire, or otherwise discriminate against
39 any person or applicant for employment, nor shall any employment agency discriminate against
40 any person, nor shall a labor organization discriminate against any member or applicant for
41 membership because the person has opposed any practice made a discriminatory practice by this
42 Chapter or because the person has testified, assisted, or participated in any manner in proceedings
43 under this Chapter. For purposes of this section, examples of retaliation may include denying
44 employment opportunities based on the need for a reasonable accommodation; requiring an
45 employee to take leave if another reasonable accommodation can be provided; counting an
46 absence related to pregnancy under a no-fault attendance policy; and failing to reinstate an
47 employee to the employee's original job or to an equivalent position with equivalent pay and
48 accumulated seniority, retirement, fringe benefits, and other applicable service credits when the
49 employee's need for reasonable accommodations ceases.

1 **(b)** No entity or person covered under this Chapter shall retaliate against or coerce,
2 intimidate, threaten, or interfere with a person who exercises rights under this Chapter or assists
3 a person in exercising the person's rights under this Chapter.

4 **"§ 168B-7. Posting of notices.**

5 **(a)** An employer shall provide notice of the right to be free from discrimination in relation
6 to pregnancy, childbirth, and related conditions, including the right to reasonable accommodation
7 to known limitations related to pregnancy, childbirth, and related conditions, as provided by this
8 Chapter. This notice shall be conspicuously posted at an employer's place of business in an area
9 accessible to employees.

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

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

14 **(2)** Orally or in writing to existing employees within 120 days after the effective
15 date of this Chapter.

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

18 **"§ 168B-8. Civil action.**

19 **(a)** A pregnant person aggrieved by a discriminatory practice prohibited by G.S. 168B-5
20 may bring a civil action to enforce rights granted or protected by this Chapter against any person,
21 covered governmental entity, employer, employment agency, or labor organization that is alleged
22 to have committed such practices or engaged in such conduct. The action shall be commenced in
23 superior court in the county where the alleged discriminatory practice or prohibited conduct
24 occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without
25 a jury.

26 **(b)** In a civil action brought to enforce provisions of this Chapter, the court may award
27 declaratory or injunctive relief, and back pay. Any such back pay liability shall not accrue from
28 a date more than three years prior to the filing of an action under this Chapter.

29 **(c)** In any civil action brought under this Chapter, the court, in its discretion, may award
30 reasonable attorneys' fees to the substantially prevailing party as part of costs.

31 **"§ 168B-9. Statute of limitations.**

32 A civil action brought pursuant to this Chapter shall be commenced within three years after
33 the date on which the aggrieved person became aware of or, with reasonable diligence, should
34 have become aware of the alleged discriminatory practice or prohibited conduct.

35 **"§ 168B-10. Construction of Chapter.**

36 Nothing in this Chapter shall be construed to preempt, limit, diminish, or otherwise affect
37 another provision of federal, State, or local law, or to invalidate or limit the remedies, rights, and
38 procedures of a federal, State, or local law that provides greater or equal protection for an
39 employee affected by pregnancy, childbirth, or a related condition."

40 **SECTION 2.** This act becomes effective October 1, 2019, and applies to acts
41 occurring on or after that date.