

**South Carolina General Assembly**  
122nd Session, 2017-2018

**A244, R244, H3865**

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA PREGNANCY ACCOMMODATIONS ACT”; TO AMEND SECTION 1-13-30, RELATING TO DEFINITIONS UNDER THE SOUTH CAROLINA HUMAN AFFAIRS LAW, SO AS TO REVISE THE TERMS “BECAUSE OF SEX” OR “ON THE BASIS OF SEX” USED IN THE CONTEXT OF EQUAL TREATMENT FOR WOMEN AFFECTED BY PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS, AND TO REVISE THE TERM “REASONABLE ACCOMMODATION” PERTAINING TO WHAT THIS TERM MAY INCLUDE; TO AMEND SECTION 1-13-80, AS AMENDED, RELATING TO UNLAWFUL EMPLOYMENT PRACTICES OF AN EMPLOYER, SO AS TO ADD CERTAIN OTHER UNLAWFUL EMPLOYMENT PRACTICES IN REGARD TO AN APPLICANT FOR EMPLOYMENT OR AN EMPLOYEE WITH LIMITATIONS BECAUSE OF PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS, TO PROVIDE FOR NOTICE AND APPLICABILITY TO NEW AND CURRENT EMPLOYEES TO WHOM SPECIFIC PROVISIONS APPLY, AND TO PROVIDE FOR CERTAIN PUBLIC EDUCATION EFFORTS BY THE HUMAN AFFAIRS COMMISSION; AND TO PROVIDE THAT THE HUMAN AFFAIRS COMMISSION WITH STATED LIMITATIONS MAY PROMULGATE REGULATIONS TO CARRY OUT THIS ACT.**

Be it enacted by the General Assembly of the State of South Carolina:

**Citation**

SECTION 1. This act is known and may be cited as the “South Carolina Pregnancy Accommodations Act”.

**Intent**

SECTION 2. It is the intent of the General Assembly by this act to combat pregnancy discrimination, promote public health, and ensure full and equal participation for women in the labor force by requiring

employers to provide reasonable accommodations to employees for medical needs arising from pregnancy, childbirth, or related medical conditions. Current workplace laws are inadequate to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job. Many pregnant women are single mothers or the primary breadwinners for their families; if they lose their jobs then the whole family will suffer. This is not an outcome that families can afford in today's difficult economy.

### **Definitions revised**

SECTION 3.A. Section 1-13-30(1) of the 1976 Code is amended to read:

“(1) The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, including, but not limited to, lactation, and women affected by pregnancy, childbirth, or related medical conditions must be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in item (3) of subsection (h) of Section 1-13-80 must be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion. However, nothing in this subsection shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. This subsection shall not apply to any fringe benefit fund or insurance program which was in effect on October 31, 1978, until April 30, 1979. Until after October 31, 1979 or, if there was an applicable collective bargaining agreement in effect on October 31, 1978, until the termination of that agreement, no person who, on October 31, 1978, was providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation of the provisions of this chapter relating to sex discrimination in employment shall, in order to come into compliance with such provisions, reduce the benefits or the compensation provided any employee on October 31, 1978, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program, except that where the costs of such benefits on October 31, 1978 are apportioned between employers and employees, the payments or contributions required to comply with the provisions of this chapter relating to sex discrimination in employment

may be made by employers and employees in the same proportion. Nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with the provisions of this chapter relating to sex discrimination in employment.”

B. Section 1-13-30(T) of the 1976 Code, is amended to read:

“(T) ‘Reasonable accommodation’ may include:

(1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities and individuals with medical needs arising from pregnancy, childbirth, or related medical conditions provided the employer shall not be required to construct a permanent, dedicated space for expressing milk; however, nothing in this section exempts an employer from providing other reasonable accommodations; and

(2)(a) for individuals with disabilities: job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations; or

(b) for individuals with medical needs arising from pregnancy, childbirth, or related medical conditions providing more frequent or longer break periods; providing more frequent bathroom breaks; providing a private place, other than a bathroom stall for the purpose of expressing milk; modifying food or drink policy; providing seating or allowing the employee to sit more frequently if the job requires the employee to stand; providing assistance with manual labor and limits on lifting; temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified; providing job restructuring or light duty, if available; acquiring or modifying equipment or devices necessary for performing essential job functions; modifying work schedules; however, the employer is not required to do the following, unless the employer does or would do so for other employees or classes of employees that need a reasonable accommodation:

(i) hire new employees that the employer would not have otherwise hired;

(ii) discharge an employee, transfer another employee with more seniority, or promote another employee who is not qualified to perform the new job;

(iii) create a new position, including a light duty position for the employee, unless a light duty position would be provided for another equivalent employee; or

(iv) compensate an employee for more frequent or longer break periods, unless the employee uses a break period which would otherwise be compensated.”

### **Unlawful employment practices added, notice and public education required**

SECTION 4. Section 1-13-80(A) of the 1976 Code is amended to read:

“(A) It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire, bar, discharge from employment, or otherwise discriminate against an individual with respect to the individual’s compensation or terms, conditions, or privileges of employment because of the individual’s race, religion, color, sex, age, national origin, or disability;

(2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual’s status as an employee, because of the individual’s race, color, religion, sex, age, national origin, or disability;

(3) to reduce the wage rate of an employee in order to comply with the provisions of this chapter relating to age;

(4)(a) to fail or refuse to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant for employment or an employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;

(b) to deny employment opportunities to a job applicant or employee, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant for employment or an employee;

(c) to require an applicant for employment or an employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that the applicant or employee chooses not to accept, if the applicant or employee does not have a known limitation related to pregnancy, or if the accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;

(d) to require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions; or

(e) to take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions.

For the purposes of this item:

(i) An employer shall provide written notice of the right to be free from discrimination for medical needs arising from pregnancy, childbirth, or related medical conditions, pursuant to this item to new employees at the commencement of employment, and existing employees within one hundred twenty days after the effective date of this item.

(ii) The notice required by subsubitem (i) also must be conspicuously posted at an employer's place of business in an area accessible to employees.

The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, employment agencies, and applicants for employment about their rights and responsibilities under this item.”

### **Regulations authorized**

SECTION 5. The South Carolina Human Affairs Commission may promulgate regulations to carry out this act, provided the regulations do not exceed the definition of “reasonable accommodation” requirements for employers under federal or state law. These regulations may identify some reasonable accommodations addressing medical needs arising from pregnancy, childbirth, or related medical conditions that must be provided to a job applicant or employee affected by these known limitations, unless the employer can demonstrate that doing so would impose an undue hardship.

### **Construction of act**

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

**Time effective**

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 14<sup>th</sup> day of May, 2018.

Approved the 17<sup>th</sup> day of May, 2018.

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