

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-0123.03 Kristen Forrestal x4217

HOUSE BILL 16-1438

HOUSE SPONSORSHIP

Winter,

SENATE SPONSORSHIP

Martinez Humenik,

House Committees

Health, Insurance, & Environment

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROVISION OF REASONABLE ACCOMMODATIONS BY**
102 **AN EMPLOYER FOR PERSONS WHO HAVE A CONDITION RELATED**
103 **TO PREGNANCY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

The bill makes it an unfair employment practice if an employer fails to provide reasonable accommodations for an applicant for employment or an employee for conditions related to pregnancy or childbirth. The bill requires each employer to provide a notice of rights regarding the unfair employment practice to his or her employees.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 28, 2016

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Current workplace laws are inadequate to protect pregnant
5 women from being terminated from employment when they need a
6 simple, reasonable accommodation in order to stay employed;

7 (b) Many pregnant women are the primary breadwinners or
8 co-breadwinners for their families, and, if they lose their jobs, their
9 families will suffer;

10 (c) Becoming unemployed due to lack of accommodations in the
11 workplace is an outcome that families cannot afford in today's difficult
12 economy; and

13 (d) By continuing to stay employed, pregnant women are able to
14 generate income that is not only integral to their families' economic
15 security, but that also benefits the larger economy by contributing to the
16 gross national product. Additionally, keeping women in the work force
17 saves taxpayer money in the form of unemployment insurance and other
18 public benefits.

19 (2) Therefore, it is the intent of the general assembly to combat
20 pregnancy discrimination, promote public health, and ensure full and
21 equal protection for women in the labor force by requiring employers to
22 provide reasonable accommodations to employees with conditions related
23 to pregnancy, childbirth, or a related condition.

24 **SECTION 2.** In Colorado Revised Statutes, 24-34-401, **amend**
25 (8) as follows:

26 **24-34-401. Definitions.** As used in this part 4, unless otherwise

1 defined in section 24-34-301 or unless the context otherwise requires:

2 (8) "Unfair employment practice" means those practices specified
3 as discriminatory or unfair in ~~section~~ SECTIONS 24-34-402 AND
4 24-34-402.3.

5 **SECTION 3.** In Colorado Revised Statutes, **add** 24-34-402.3 as
6 follows:

7 **24-34-402.3. Prohibition of discrimination - pregnancy,**
8 **childbirth, and related conditions - reasonable accommodations**
9 **required - notice of rights - definitions.** (1) (a) AN EMPLOYER SHALL:

10 (I) PROVIDE REASONABLE ACCOMMODATIONS TO PERFORM THE
11 ESSENTIAL FUNCTIONS OF THE JOB TO AN APPLICANT FOR EMPLOYMENT OR
12 AN EMPLOYEE FOR HEALTH CONDITIONS RELATED TO PREGNANCY OR THE
13 PHYSICAL RECOVERY FROM CHILDBIRTH, IF THE APPLICANT OR EMPLOYEE
14 REQUESTS THE REASONABLE ACCOMMODATIONS, UNLESS THE
15 ACCOMMODATION WOULD IMPOSE AN UNDUE HARDSHIP ON THE
16 EMPLOYER'S BUSINESS;

17 (II) NOT TAKE ADVERSE ACTION AGAINST AN EMPLOYEE WHO
18 REQUESTS OR USES A REASONABLE ACCOMMODATION RELATED TO
19 PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED
20 CONDITION;

21 (III) NOT DENY EMPLOYMENT OPPORTUNITIES TO AN APPLICANT OR
22 EMPLOYEE BASED ON THE NEED TO MAKE A REASONABLE
23 ACCOMMODATION RELATED TO THE APPLICANT'S OR EMPLOYEE'S
24 PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED
25 CONDITION;

26 (IV) NOT REQUIRE AN APPLICANT OR EMPLOYEE AFFECTED BY
27 PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED

1 CONDITION TO ACCEPT AN ACCOMMODATION THAT THE APPLICANT OR
2 EMPLOYEE HAS NOT REQUESTED OR AN ACCOMMODATION THAT IS
3 UNNECESSARY FOR THE APPLICANT OR EMPLOYEE TO PERFORM THE
4 ESSENTIAL FUNCTIONS OF THE JOB; AND

5 (V) NOT REQUIRE AN EMPLOYEE TO TAKE LEAVE IF THE EMPLOYER
6 CAN PROVIDE ANOTHER REASONABLE ACCOMMODATION FOR THE
7 EMPLOYEE'S PREGNANCY, PHYSICAL RECOVERY FROM CHILDBIRTH, OR
8 RELATED CONDITION.

9 (b) AN EMPLOYER MAY REQUIRE AN EMPLOYEE OR APPLICANT TO
10 PROVIDE A NOTE STATING THE NECESSITY OF A REASONABLE
11 ACCOMMODATION FROM A LICENSED HEALTH CARE PROVIDER BEFORE
12 PROVIDING A REASONABLE ACCOMMODATION.

13 (2) IF AN APPLICANT OR AN EMPLOYEE REQUESTS AN
14 ACCOMMODATION, THE EMPLOYER AND APPLICANT OR EMPLOYEE SHALL
15 ENGAGE IN A TIMELY, GOOD-FAITH, AND INTERACTIVE PROCESS TO
16 DETERMINE EFFECTIVE, REASONABLE ACCOMMODATIONS FOR THE
17 APPLICANT OR EMPLOYEE FOR CONDITIONS RELATED TO PREGNANCY,
18 PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED CONDITION.

19 (3) (a) THE EMPLOYER SHALL PROVIDE WRITTEN NOTICE OF THE
20 RIGHT TO BE FREE FROM DISCRIMINATORY OR UNFAIR EMPLOYMENT
21 PRACTICES PURSUANT TO THIS SECTION TO:

22 (I) NEW EMPLOYEES AT THE START OF EMPLOYMENT; AND

23 (II) EXISTING EMPLOYEES WITHIN ONE HUNDRED TWENTY DAYS
24 AFTER THE EFFECTIVE DATE OF THIS SECTION.

25 (b) THE EMPLOYER SHALL POST THE REQUIRED NOTICE IN A
26 CONSPICUOUS PLACE IN THE EMPLOYER'S PLACE OF BUSINESS IN AN AREA
27 ACCESSIBLE TO EMPLOYEES.

1 (4) AS USED IN THIS SECTION:

2 (a) "ADVERSE ACTION" MEANS AN ACTION WHERE A REASONABLE
3 EMPLOYEE WOULD HAVE FOUND THE ACTION MATERIALLY ADVERSE, SUCH
4 THAT IT MIGHT HAVE DISSUADED A REASONABLE WORKER FROM MAKING
5 OR SUPPORTING A CHARGE OF DISCRIMINATION.

6 (b) "REASONABLE ACCOMMODATIONS" MAY INCLUDE, BUT IS NOT
7 LIMITED TO, THE PROVISION OF MORE FREQUENT OR LONGER BREAK
8 PERIODS; MORE FREQUENT RESTROOM, FOOD, AND WATER BREAKS;
9 ACQUISITION OR MODIFICATION OF EQUIPMENT OR SEATING; LIMITATIONS
10 ON LIFTING; TEMPORARY TRANSFER TO A LESS STRENUOUS OR HAZARDOUS
11 POSITION IF AVAILABLE, WITH RETURN TO THE CURRENT POSITION AFTER
12 PREGNANCY; JOB RESTRUCTURING; LIGHT DUTY, IF AVAILABLE;
13 ASSISTANCE WITH MANUAL LABOR; OR MODIFIED WORK SCHEDULES AS
14 LONG AS THE EMPLOYER IS NOT REQUIRED TO DO ANY OF THE FOLLOWING:

15 (I) HIRE NEW EMPLOYEES THAT THE EMPLOYER WOULD NOT
16 OTHERWISE HAVE HIRED;

17 (II) DISCHARGE AN EMPLOYEE, TRANSFER ANOTHER EMPLOYEE
18 WITH MORE SENIORITY, OR PROMOTE ANOTHER EMPLOYEE WHO IS NOT
19 QUALIFIED TO PERFORM THE NEW JOB;

20 (III) CREATE A NEW POSITION, INCLUDING A LIGHT DUTY POSITION
21 FOR THE EMPLOYEE, UNLESS A LIGHT DUTY POSITION WOULD BE PROVIDED
22 FOR ANOTHER EQUIVALENT EMPLOYEE; OR

23 (IV) PROVIDE THE EMPLOYEE PAID LEAVE BEYOND THAT WHICH IS
24 PROVIDED TO SIMILARLY SITUATED EMPLOYEES.

25 (c) (I) "UNDUE HARDSHIP", IN CONNECTION WITH A REQUESTED
26 ACCOMMODATION, MEANS AN ACTION REQUIRING SIGNIFICANT DIFFICULTY
27 OR EXPENSE TO THE EMPLOYER. IN DETERMINING UNDUE HARDSHIP, THE

1 FOLLOWING FACTORS MAY BE CONSIDERED:

2 (A) THE NATURE AND COST OF THE ACCOMMODATION;

3 (B) THE OVERALL FINANCIAL RESOURCES OF THE EMPLOYER;

4 (C) THE OVERALL SIZE OF THE EMPLOYER'S BUSINESS WITH
5 RESPECT TO THE NUMBER OF EMPLOYEES AND THE NUMBER, TYPE, AND
6 LOCATION OF THE AVAILABLE FACILITIES; AND

7 (D) THE ACCOMMODATION'S EFFECT ON EXPENSES AND RESOURCES
8 OR ITS EFFECT UPON THE OPERATIONS OF THE EMPLOYER.

9 (II) THE EMPLOYER'S PROVISION OF, OR A REQUIREMENT THAT THE
10 EMPLOYER PROVIDE, A SIMILAR ACCOMMODATION TO OTHER CLASSES OF
11 EMPLOYEES CREATES A REBUTTABLE PRESUMPTION THAT THE
12 ACCOMMODATION DOES NOT IMPOSE AN UNDUE HARDSHIP.

13 (5) IT IS A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE
14 FOR AN EMPLOYER TO VIOLATE THIS SECTION; EXCEPT THAT A VIOLATION
15 OF SUBSECTION (3) OF THIS SECTION IS NOT A DISCRIMINATORY OR
16 UNFAIR EMPLOYMENT PRACTICE.

17 (6) (a) THIS SECTION DOES NOT PREEMPT OR LIMIT ANY OTHER
18 PROVISION OF LAW RELATING TO SEX DISCRIMINATION OR TO PREGNANCY,
19 PHYSICAL RECOVERY FROM CHILDBIRTH, OR A RELATED CONDITION.

20 (b) THIS SECTION NEITHER INCREASES NOR DECREASES AN
21 EMPLOYEE'S RIGHTS, UNDER ANY OTHER LAW, TO PAID OR UNPAID LEAVE
22 IN CONNECTION WITH THE EMPLOYEE'S PREGNANCY.

23 (7) NOTWITHSTANDING SECTION 24-34-405, A COURT SHALL NOT
24 AWARD PUNITIVE DAMAGES IN A CIVIL ACTION INVOLVING A CLAIM OF
25 FAILURE TO MAKE A REASONABLE ACCOMMODATION FOR AN EMPLOYEE
26 FOR CONDITIONS RELATED TO PREGNANCY OR THE PHYSICAL RECOVERY
27 FROM CHILDBIRTH IF THE DEFENDANT DEMONSTRATES GOOD-FAITH

1 EFFORTS TO IDENTIFY AND MAKE A REASONABLE ACCOMMODATION THAT
2 WOULD PROVIDE AN EMPLOYEE WHO HAS A HEALTH CONDITION RELATED
3 TO PREGNANCY OR THE PHYSICAL RECOVERY FROM CHILDBIRTH WITH AN
4 EQUALLY EFFECTIVE OPPORTUNITY AND WOULD NOT CAUSE AN UNDUE
5 HARDSHIP ON THE OPERATION OF THE DEFENDANT'S BUSINESS.

6 **SECTION 4. Act subject to petition - effective date.** This act
7 takes effect at 12:01 a.m. on the day following the expiration of the
8 ninety-day period after final adjournment of the general assembly (August
9 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
10 referendum petition is filed pursuant to section 1 (3) of article V of the
11 state constitution against this act or an item, section, or part of this act
12 within such period, then the act, item, section, or part will not take effect
13 unless approved by the people at the general election to be held in
14 November 2016 and, in such case, will take effect on the date of the
15 official declaration of the vote thereon by the governor.