



SPONSOR: Sen. Hall-Long & Rep. Barbieri, & Sen. Bonini
Sens. Blevins, Peterson, Townsend, Poore, Cloutier; Reps.
Baumbach, Bolden, Heffernan, Kowalko

DELAWARE STATE SENATE

147th GENERAL ASSEMBLY

SENATE BILL NO. 212
AS AMENDED BY
SENATE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO PREGNANCY AND EMPLOYMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and placing each insertion where it belongs and redesignating accordingly:

§ 710 Definitions.

"Pregnancy" means pregnancy, childbirth, or a related condition, including, but not limited to, lactation.

"Reasonable accommodation" has the meaning given this term in § 722 of this title, except that all references to disability shall instead be references to known limitations of a person related to pregnancy, childbirth, or a related condition. Accommodations available under this subchapter may include, but are not limited to, acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.

"Undue hardship" means an action requiring significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation; the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

§ 711 Unlawful employment practices; employer practices.

(a) It shall be an unlawful employment practice for an employer to:

(1) Fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin; or

(2) Limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(3) a. For any employment-related purpose, fail or refuse to treat an employee or applicant for employment that the employer knows or should know is affected by pregnancy as well as the employer treats or would treat any other employee or applicant not so affected but similar in the ability or inability to work, without regard to the source of any condition affecting the other employee's or applicant's ability or inability to work;

b. Fail or refuse to 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 accommodation would impose an undue hardship on the operation of the business of such employer;

c. Deny employment opportunities to a job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to the pregnancy of an employee or applicant for employment;

d. Require an applicant for employment or employee affected by pregnancy to accept an accommodation that such applicant or employee chooses not to accept, if such applicant or employee does not have a known limitation related to pregnancy or if such accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;

e. 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 related to the pregnancy of the employee; or

f. 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 related to the pregnancy of the employee.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of race, marital status, genetic information, color,

age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin or to classify or refer for employment any individual on the basis of race, marital status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or national origin.

(c) It shall be an unlawful employment practice for a labor organization to:

(1) Exclude or expel from its membership or otherwise to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin;

(2) Limit, segregate or classify its membership or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of such individual's race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin; or

(d) It shall be an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin in admission to or employment in any program established to provide apprenticeship or other training.

(f) It shall be an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discharge, refuse to hire or otherwise discriminate against any individual or applicant for employment or membership on the basis of such person's race, marital status, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin, because such person has opposed any practice prohibited by this subchapter or because such person has testified, assisted or participated in any manner in an investigation, proceeding, or hearing to enforce the provisions of this subchapter.

(g) Notwithstanding any other provision of this subchapter:

(1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or

employ any individual in any such program on the basis of religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin in those certain instances where religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, marital status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or national origin.

§ 716 Posting of notices; penalties.

(b)(1) An employer shall provide notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodation to known limitations related to pregnancy, childbirth, and related conditions, pursuant to § 711 (a)(3) of this title as follows:

a. In writing to new employees at the commencement of employment;

b. Orally or in writing to existing employees within one hundred twenty days after the effective date of §711 (a)(3); and

c. Orally or in writing to any employee who notifies the employer of her pregnancy within 10 days of such notification.

(2) The notice required by paragraph (b) (1) of this section shall also be conspicuously posted at an employer's place of business in an area accessible to employees.

Section 2. 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.