

20107553D

HOUSE BILL NO. 827
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by Delegate Carroll Foy
on February 4, 2020)

(Patron Prior to Substitute—Delegate Carroll Foy)

A BILL to amend the Code of Virginia by adding in Chapter 39 of Title 2.2 a section numbered 2.2-3904, relating to the Virginia Human Rights Act; discrimination on the basis of pregnancy, childbirth, or related medical conditions; reasonable accommodation for the known limitations of persons related to pregnancy, childbirth, or related medical conditions.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 39 of Title 2.2 a section numbered 2.2-3904 as follows:

§ 2.2-3904. Causes of action for unlawful discrimination related to pregnancy, childbirth, or related medical conditions.

A. As used in this section:

"Employer" means any person, or agent of such person, employing five or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

"Lactation" means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

"Reasonable accommodation" includes more frequent or longer bathroom breaks, breaks to express breast milk, access to a private location other than a bathroom for the expression of breast milk, acquisition or modification of equipment or access to employee seating, a temporary transfer to a less strenuous or hazardous position, assistance with manual labor, job restructuring, a modified work schedule, light duty assignments, and leave to recover from childbirth.

"Related medical conditions" includes lactation.

B. No employer shall:

1. Fail or refuse to hire, discharge, or otherwise discriminate against any employee with respect to such individual's compensation, terms, conditions, or privileges of employment on the basis of pregnancy, childbirth, or related medical conditions;

2. Refuse to make reasonable accommodation to the known limitations of a person related to pregnancy, childbirth, or related medical conditions, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer.

a. In determining whether an accommodation would constitute an undue hardship on the employer, the following shall be considered:

(1). Hardship on the conduct of the employer's business, considering the nature of the employer's operation, including composition and structure of the employer's workforce;

(2). The size of the facility where employment occurs; and

(3). The nature and cost of the accommodations needed.

b. The fact that the employer provides or would be required to provide a similar accommodation to other classes of employees shall create a rebuttable presumption that the accommodation does not impose an undue hardship on the employer;

3. Take adverse action against an employee who requests or uses a reasonable accommodation pursuant to this section. As used in this subdivision, "adverse action" includes failure to reinstate any such employee to her previous position or an equivalent position with equivalent pay, seniority, and other benefits when her need for a reasonable accommodation ceases;

4. Deny employment or promotion opportunities to an otherwise qualified applicant or employee because such employer will be required to make reasonable accommodation to the known limitations of such applicant or employee related to pregnancy, childbirth, or related medical conditions; or

5. Require an employee to take leave from work if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee.

C. Each employer shall engage in a timely, good faith interactive process with an employee who has requested an accommodation pursuant to this section to determine if the requested accommodation is reasonable and, if such accommodation is determined not to be reasonable, discuss alternative accommodations that may be provided.

D. An employer shall post in a conspicuous location and include in any employee handbook information concerning (i) the prohibition against unlawful discrimination on the basis of pregnancy, childbirth, or related medical conditions and (ii) an employee's rights to reasonable accommodation for known limitations related to pregnancy, childbirth, or related medical conditions. Such information shall

60 also be directly provided to (a) new employees upon commencement of their employment and (b) any
61 employee within 10 days of such employee's providing notice to the employer that she is pregnant.

62 E. An employee or applicant who has been denied any of the rights afforded under subsection B may
63 bring an action in a general district or circuit court having jurisdiction over the employer that allegedly
64 denied such rights. Any such action shall be brought within two years from the date of the unlawful
65 denial of rights, or, if the employee or applicant has filed a complaint with the Division of Human
66 Rights of the Department of Law or a local human rights or human relations agency or commission
67 within two years of the unlawful denial of rights, such action shall be brought within 90 days from the
68 date that the Division or a local human rights or human relations agency or commission has rendered a
69 final disposition on the complaint.

70 If the court or jury finds that an unlawful denial of rights afforded under subsection B has occurred,
71 the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive
72 damages, back pay, and other equitable relief. The court may also award reasonable attorney fees and
73 costs and may grant as relief any permanent or temporary injunction, temporary restraining order, or
74 other order, including an order enjoining the defendant from engaging in such practice, or order such
75 affirmative action as may be appropriate.

76 F. The provisions of this section regarding the provision of reasonable accommodation on the basis
77 of known limitations related to pregnancy, childbirth, and related medical conditions shall not be
78 construed to affect any other provision of law relating to discrimination on the basis of sex or
79 pregnancy.

80 G. Causes of action based upon the public policies reflected in this chapter shall be exclusively
81 limited to those actions, procedures, and remedies, if any, afforded by applicable federal or state civil
82 rights statutes or local ordinances. Nothing in this section shall be deemed to alter, supersede, or
83 otherwise modify the authority of the Division or of any local human rights or human relations
84 commissions established pursuant to § 15.2-853 or 15.2-965.

85 **2. That each employer, as defined by § 2.2-3904 of the Code Virginia, as created by this act, shall**
86 **provide the notice required by subsection D of § 2.2-3904 of the Code of Virginia, as created by**
87 **this act, to all current employees of such employer within 120 days of the effective date of this act.**