

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1635

By: Inman

AS INTRODUCED

An Act relating to labor; creating the Pregnant Workers Fairness Act; providing for certain accommodations for certain employees; defining terms; requiring certain written notice; requiring Department of Labor to develop courses of instruction; making certain actions unlawful; providing for cause of action; providing construing provision regarding certain discrimination; providing for codification; providing for noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Pregnant Workers Fairness Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 436 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. An employer shall 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

1 accommodation would impose an undue hardship on the operation of the
2 business of the employer.

3 B. An employer shall not deny employment opportunities to a job
4 applicant or employee, if the denial is based on the need of the
5 employer to make reasonable accommodations to the known limitations
6 related to the pregnancy of an employee or applicant for employment.

7 C. An employer shall not require an applicant for employment or
8 employee affected by pregnancy to accept an accommodation that the
9 applicant or employee chooses not to accept, if the applicant or
10 employee does not have a known limitation related to pregnancy or if
11 the accommodation is unnecessary for the applicant or employee to
12 perform the essential duties of her job.

13 D. An employer shall not require an employee to take leave
14 under any leave law or policy of the employer if another reasonable
15 accommodation can be provided to the known limitations related to
16 the pregnancy of the employee.

17 E. An employer shall not take adverse action against an
18 employee in the terms, conditions or privileges of employment for
19 requesting or using a reasonable accommodation to the known
20 limitations related to the pregnancy of the employee.

21 F. As used in this section:

22 1. The term "employer" means a person engaged in business who
23 has one or more employees, including the state and any political
24 subdivision of the state;

1 2. The term "employee" means any person engaged in service to
2 an employer in the business of the employer;

3 3. The term "pregnancy" means pregnancy, childbirth or a
4 related condition, including, but not limited to, lactation;

5 4. The term "reasonable accommodations" shall include, but not
6 be limited to: acquisition of equipment for sitting, more frequent
7 or longer breaks, periodic rest, assistance with manual labor, job
8 restructuring, light duty assignments, modified work schedules,
9 temporary transfers to less strenuous or hazardous work, time off to
10 recover from childbirth or break time and appropriate facilities for
11 expressing breast milk; and

12 5. The term "undue hardship" means an action requiring
13 significant difficulty or expense when considered in light of
14 factors such as: the nature and cost of the accommodation, the
15 overall financial resources of the employer, the overall size of the
16 business of the employer with respect to the number of employees and
17 the number, type and location of its facilities, and the effect on
18 expenses and resources or the impact otherwise of such accommodation
19 upon the operation of the employer. The fact that the employer
20 provides or would be required to provide a similar accommodation to
21 another employee or employees shall create a rebuttable presumption
22 that the accommodation does not impose an undue hardship on the
23 employer.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 437 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Written notice of the right to be free from discrimination
5 in relation to pregnancy, childbirth and related conditions,
6 including the right to reasonable accommodation to known limitations
7 related to pregnancy, childbirth and related conditions, pursuant to
8 Section 2 of this act shall also be conspicuously posted at an
9 employer's place of business in an area accessible to employees.

10 B. The Department of Labor shall develop courses of instruction
11 and conduct ongoing public education efforts as necessary to inform
12 employers, employees, employment agencies and applicants for
13 employment about their rights and responsibilities under Section 2
14 of this act.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 438 of Title 40, unless there is
17 created a duplication in numbering, reads as follows:

18 A. No person shall discriminate against any individual because
19 the individual has opposed any act or practice made unlawful by this
20 act or because the individual made a charge, testified, assisted or
21 participated in any manner in an investigation, proceeding or
22 hearing under this act.

23 B. It shall be unlawful to coerce, intimidate, threaten or
24 interfere with any individual in the exercise or enjoyment of, or on

1 account of the individual having exercised or enjoyed, or on account
2 of the individual having aided or encouraged any other individual in
3 the exercise or enjoyment of, any right granted or protected by this
4 act.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 439 of Title 40, unless there is
7 created a duplication in numbering, reads as follows:

8 A. A cause of action for a violation of Section 2 or Section 4
9 of this act is hereby created.

10 B. In order to have standing in a court of law to allege a
11 violation of Section 2 or 4 of this act, an aggrieved party shall,
12 within one hundred eighty (180) days from the date of the alleged
13 violation, file a charge with the Commissioner of Labor.

14 C. Should a charge of discrimination be filed with the
15 Commissioner and not be resolved to the satisfaction of the charging
16 party within one hundred eighty (180) days from the date of filing
17 the charge, the Commissioner, upon request of any party shall issue
18 a Notice of a Right to Sue, which shall be first obtained in order
19 to commence a civil action under this section.

20 D. All civil actions brought pursuant to a Notice of a Right to
21 Sue from the Commissioner for redress against any person who is
22 alleged to have violated Section 2 or 4 of this act in the charge
23 shall be commenced in the district court of this state for the
24 county in which the violation is alleged to have been committed.

1 E. If it is determined in such action that the defendant or
2 defendants in the action have violated Section 2 or 4 as charged in
3 the petition, the court may enjoin the defendant or defendants from
4 engaging in the unlawful employment practice charged in the
5 petition. The court may enjoin respondent from engaging in the
6 unlawful practice and order the affirmative action, including, but
7 not limited to, reinstatement or hiring of employees. A prevailing
8 aggrieved party shall also be entitled to back pay, an additional
9 amount as liquidated damages, compensatory damages and, where the
10 employee demonstrates that the employer acted with malice or
11 reckless indifference, punitive damages as may be appropriate.
12 Interim earnings or amounts earnable with reasonable diligence by
13 the person aggrieved shall operate to reduce the back pay otherwise
14 allowable.

15 F. In any action or proceeding pursuant to this section, the
16 court may allow a prevailing plaintiff a reasonable attorney fee and
17 costs.

18 G. No action shall be filed in district court as provided in
19 this section more than ninety (90) days after receiving a Notice of
20 a Right to Sue from the Commissioner.

21 H. The Commissioner shall also have the authority to bring a
22 civil action for injunctive relief and damages to enforce the
23 provisions of this act.
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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 440 of Title 40, unless there is
3 created a duplication in numbering, reads as follows:

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

11 SECTION 7. This act shall become effective November 1, 2017.

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