

Senate Bill 417

By: Senators Orrock of the 36th, Butler of the 55th, Tate of the 38th, Seay of the 34th, Davenport of the 44th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to enact the Georgia Pregnant Workers Fairness Act; to provide for a short
3 title; to provide for intent; to provide for definitions; to provide for notice of rights; to
4 provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
8 is amended by adding a new chapter to read as follows:

9 "CHAPTER 5A

10 34-5A-1.

11 This chapter shall be known and may be cited as the 'Georgia Pregnant Workers Fairness
12 Act.'

13 34-5A-2.

14 It is the intent of the General Assembly to combat pregnancy discrimination, promote
15 public health, and ensure full and equal participation for women in the labor force by
16 requiring employers to provide reasonable accommodations to employees with conditions
17 related to pregnancy, childbirth, or a related condition. Current workplace laws are
18 inadequate to protect pregnant women from being forced out or fired when they need a
19 simple, reasonable accommodation in order to stay on the job. Many pregnant women are
20 single mothers or the primary breadwinners for their families—if they lose their jobs then
21 the whole family will suffer. This is not an outcome that families can afford in today's
22 difficult economy.

23 34-5A-3.24 As used in this chapter, the term:

25 (1) 'Reasonable accommodations' shall include, but not be limited, to more frequent or
 26 longer breaks, time off to recover from childbirth, acquisition or modification of
 27 equipment, seating, temporary transfer to a less strenuous or hazardous position, job
 28 restructuring, light duty, break time and private nonbathroom space for expressing breast
 29 milk, assistance with manual labor, or modified work schedules, provided that:

30 (A) No employer shall be required by this Code section to create additional
 31 employment that the employer would not otherwise have created, unless the employer
 32 does so or would do so for other classes of employees who need accommodation; and

33 (B) The employer shall not be required to discharge any employee, transfer any
 34 employee with more seniority, or promote any employee who is not qualified to
 35 perform the job, unless the employer does so or would do so to accommodate other
 36 classes of employees who need it.

37 (2) 'Related conditions' includes, but is not limited to, lactation or the need to express
 38 breast milk for a nursing child.

39 (3) 'Undue hardship' means an action requiring significant difficulty or expense, when
 40 considered in light of the factors set forth in this Code section:

41 (A) The employer shall have the burden of proving undue hardship. In making a
 42 determination of undue hardship, the factors that may be considered include but shall
 43 not be limited to:

44 (i) The nature and cost of the accommodation;

45 (ii) The overall financial resources of the employer, the overall size of the business
 46 of the employer with respect to the number of employees, and the number, type, and
 47 location of its facilities; and

48 (iii) The effect on expenses and resources or the impact otherwise of such
 49 accommodation upon the operation of the employer; and

50 (B) The fact that the employer provides or would be required to provide a similar
 51 accommodation to other classes of employees who need it shall create a rebuttable
 52 presumption that the accommodation does not impose an undue hardship on the
 53 employer.

54 34-5A-4.

55 (a) In addition to the provisions of Chapter 5 of this title, it shall be unlawful sex
 56 discrimination for an employer:

57 (1) Not to make reasonable accommodations for any condition of a job applicant or
 58 employee related to pregnancy, childbirth, or a related condition, including, but not

59 limited to, the need to express breast milk for a nursing child, if the employee or applicant
60 so requests, unless the employer can demonstrate that the accommodation would impose
61 an undue hardship on the employer's program, enterprise, or business;

62 (2) To take adverse action against an employee who requests or uses an accommodation
63 in terms, conditions, or privileges of employment, including, but not limited to, failing
64 to reinstate the employee to her original job or to an equivalent position with equivalent
65 pay and accumulated seniority, retirement, fringe benefits, and other applicable service
66 credits when her need for reasonable accommodations ceases;

67 (3) To deny employment opportunities to an otherwise qualified job applicant or
68 employee, if such denial is based on the need of the employer to make reasonable
69 accommodations to the known conditions related to the pregnancy, childbirth, or related
70 conditions of the applicant or employee;

71 (4) To require a job applicant or employee affected by pregnancy, childbirth, or related
72 conditions to accept an accommodation that such applicant or employee chooses not to
73 accept; or

74 (5) To require an employee to take leave if another reasonable accommodation can be
75 provided to the known conditions related to the pregnancy, childbirth, or related
76 conditions of an employee.

77 (b) The employer shall engage in a timely, good faith, and interactive process with the
78 employee to determine effective reasonable accommodations.

79 (c)(1) An employer shall provide written notice of the right to be free from
80 discrimination in relation to pregnancy, childbirth, and related conditions, including the
81 right to reasonable accommodations for conditions related to pregnancy, childbirth, or
82 related conditions, pursuant to this chapter to:

83 (A) New employees at the commencement of employment;

84 (B) Existing employees within 120 days after the effective date of this chapter; and

85 (C) Any employee who notifies the employer of her pregnancy within ten days of such
86 notification.

87 (2) Such notice must also be conspicuously posted at an employer's place of business in
88 an area accessible to employees.

89 (3) The Department of Labor shall develop courses of instruction and conduct ongoing
90 public education efforts as necessary to inform employers, employees, employment
91 agencies, and job applicants about their rights and responsibilities under this chapter.

92 (d) This chapter shall not be construed to preempt, limit, diminish, or otherwise affect any
93 other provision of law relating to sex discrimination or pregnancy, or in any way to
94 diminish the coverage for pregnancy, childbirth, or a condition related to pregnancy or
95 childbirth under any other provision of this title."

96

SECTION 2.

97 All laws and parts of laws in conflict with this Act are repealed.