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S.B. 177
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Maharath

Kelly Bomba, Attorney

SUMMARY

- Requires an employer to make reasonable accommodations for known conditions related to an employee's pregnancy unless the employer can prove that providing the accommodation would result in significant difficulty or expense.
- Prohibits an employer from denying employment-related opportunities to a pregnant employee, requiring the employee to take leave, or taking adverse action against the employee for requesting or using a reasonable accommodation.
- Allows an employee who believes that an employer has violated the bill to file a charge with the Ohio Civil Rights Commission or sue the employer under certain circumstances.
- States that the bill does not diminish or eliminate any existing law prohibiting discrimination on the basis of pregnancy or sex.

DETAILED ANALYSIS

Ohio Pregnant Workers Fairness Act

The bill, titled the "Ohio Pregnant Workers Fairness Act,"[1] makes it an unlawful discriminatory practice relating to employment under the Ohio Civil Rights Law[2] for an employer to do to either of the following:

- Fail or refuse to make reasonable accommodations for known conditions related to an employee's pregnancy;

[1] Section 3.

[2] R.C. Chapter 4112.

- Take certain actions against a pregnant employee to avoid providing the employee with a reasonable accommodation.[3]

Under the bill, "pregnancy" means pregnancy, illness arising out of or occurring during the course of a pregnancy, childbirth, related medical conditions, and lactation or the need to express breast milk for a nursing infant.[4]

Duty to make reasonable accommodation

The bill makes it an unlawful discriminatory practice relating to employment under the Ohio Civil Rights Law for an employer to fail or refuse to make a reasonable accommodation to the known conditions related to an employee's pregnancy, unless the employer can demonstrate that making the accommodation would impose an undue hardship on the employer's business. Under the bill, a "reasonable accommodation" is a request for a change or modification in work duties.[5]

The bill requires an employer to engage in a timely, good faith, and interactive process with an employee to determine an effective reasonable accommodation to the known conditions related to the employee's pregnancy. However, the bill does not require an employer to do either of the following as a means of providing a reasonable accommodation, unless the employer does so or would do so to make reasonable accommodations for other employees:

- Create additional employment for a pregnant employee that the employer would not have otherwise created;
- Discharge an employee, transfer an employee with more seniority, or promote another employee who is not qualified.[6]

Exception for undue hardship

Under the bill, an employer may refuse or fail to make a reasonable accommodation for a pregnant employee if the employer can prove that making the accommodation would result in an undue hardship to the employer's business. The bill defines "undue hardship" as an action that would result in significant difficulty or expense for the employer in light of factors including:

- The nature and cost of the accommodation;
- The overall financial resources of the facility involved in providing the accommodation;

[3] R.C. 4112.025(B) and 4112.01(A)(8) and (24), with conforming changes in R.C. 4112.052, 4112.07, and 4113.71.

[4] R.C. 4112.025(A)(3), by reference to R.C. 4112.01(B).

[5] R.C. 4112.025(A)(1) and (B)(1).

[6] R.C. 4112.025(C) and (D).

- The number of persons employed at the facility;
- The effect on the employer's expenses or resources or the impact the reasonable accommodation would otherwise have on the facility's operations;
- The employer's overall financial resources and the overall size of the employer's business with respect to the number of its employees;
- The employer's operation, including the composition, structure, and functions of the employer's workforce;
- The geographic separateness, administrative, or fiscal relationship of the facility in question to the employer.[7]

Other prohibited actions

The bill also makes it an unlawful discriminatory practice relating to employment under the Ohio Civil Rights Law for an employer to do any of the following:

- Deny employment opportunities to an employee, on the basis of pregnancy, if the denial is based on the employers need to make a reasonable accommodation to the known conditions related to the employee's pregnancy;
- Require an employee to take leave under any law providing for leave from employment or under the employer's leave policy if the employer can make another reasonable accommodation to the known conditions related to the employee's pregnancy;
- Take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known conditions related to the employee's pregnancy.[8]

Remedies for an unlawful discriminatory practices

Under continuing law, any person may file a charge with Ohio's Civil Rights Commission alleging that another person has engaged or is engaging in an unlawful discriminatory practice relating to employment. The charge must be in writing and under oath and must be filed with the Commission within two years after the alleged unlawful discriminatory practice was committed. The Commission may investigate the charge and may initiate further action in accordance with procedures specified in continuing law. The Commission also may conduct, on its own initiative and independent of the filing of any charge, a preliminary investigation relating to any alleged unlawful discriminatory practice relating to employment. Although the Commission must first attempt to induce compliance with the Civil Rights Law through informal methods, if, after a hearing, the Commission ultimately determines that an unlawful discriminatory practice has occurred, the Commission must issue a cease and desist order to

[7] R.C. 4112.025(A)(2) and (B)(1).

[8] R.C. 4112.025(B).

remedy the situation and order any further action necessary to effectuate the purpose of the Law, which may include requiring back pay, reinstatement, or hiring.[9]

Additionally, continuing law allows a person subject to an unlawful discriminatory practice relating to employment to sue for damages, injunctive relief, or any other appropriate relief, but only after first filing a charge with the Commission and receiving a right to sue notice from the Commission if certain conditions are met. The notice allows the person to instead file a lawsuit and remove the claim from the Commission's jurisdiction. Thus, an employer who refuses to provide a reasonable accommodation to an employee, or an employer who engages in one of the other acts prohibited under the bill, may be subject to a lawsuit.[10]

Interaction with other law

Nothing in the bill pertaining to refusing to make a reasonable accommodation to the known conditions related to an employee's pregnancy preempts, limits, diminishes, or otherwise affects any other law relating to discrimination on the basis of sex, or in any way diminishes or invalidates remedies, rights, and procedures that provide greater or equal protection for an employee affected by pregnancy under any other law.[11] The Civil Rights Law currently makes it an unlawful discriminatory practice for an employer to take certain actions against an employee on the basis of the employee's sex, which includes pregnancy, illness arising out of or occurring during the course of a pregnancy, childbirth, and related medical conditions. This includes prohibiting an employer from discharging or refusing to hire an employee because of sex, denying access to apprenticeship programs because of sex, and placing advertisements for jobs indicating a preference in hiring based on sex. However, the law does not include lactation or the need to express breast milk for a nursing infant in the definition of the "basis of sex" or "because of sex." Under federal law, an employer may be required to provide break time and a private, nonbathroom space to express breast milk.[12]

HISTORY

Action	Date
Introduced	05-11-21

S0177-I-134/ts

[9] R.C. 4112.051, not in the bill.

[10] R.C. 4112.052.

[11] R.C. 4112.025(E).

[12] R.C. 4112.01, R.C. 4112.02, not in the bill, and 29 United States Code 207(r).