



# Ohio Legislative Service Commission

## Bill Analysis

Paul Luzzi

### **S.B. 301**

131st General Assembly  
(As Introduced)

**Sens.** Jones, Cafaro, Manning, Lehner, Tavares, Brown, Williams, Yuko, Schiavoni, Hite, Hackett, Patton

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## **BILL 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 such an employee, requiring the employee to accept unwanted accommodations, requiring the employee to take leave, or taking adverse action against the employee for requesting a reasonable accommodation.
- Allows an employee who believes that an employer has violated the bill to file a lawsuit against that employer.
- States that the bill does not diminish or eliminate any existing law prohibiting discrimination on the basis of pregnancy or sex.

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## **CONTENT AND OPERATION**

### **The Pregnancy Reasonable Accommodation Act**

The bill, titled the "Pregnancy Reasonable Accommodation Act,"<sup>1</sup> requires an employer to make reasonable accommodations for known conditions related to an employee's pregnancy and prohibits an employer from taking certain actions against such an employee. The bill defines "pregnancy" as pregnancy, illness arising out of or occurring during the course of a pregnancy, childbirth, related medical conditions, and

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<sup>1</sup> Section 2.

lactation or the need to express breast milk for a nursing infant.<sup>2</sup> Current law prohibits discrimination on the basis of sex, which includes pregnancy, illness arising out of or occurring during the course of a pregnancy, childbirth, and related medical conditions (see "**Interaction with other laws**," below).<sup>3</sup>

### **Duty to make reasonable accommodations**

The bill prohibits an employer (any private employer with four or more employees or any public employer) from failing or refusing to make reasonable accommodations for conditions related to an employee's pregnancy known to the employer if the employee so requests.<sup>4</sup> The bill's nonexhaustive list of "reasonable accommodations" includes the following:

- More frequent or longer breaks;
- Acquisition or modification of equipment, seating, or uniforms;
- Assistance with manual labor;
- Light duty;
- Modified work schedules;
- Restructuring;
- Temporary transfer of an employee to a less strenuous or hazardous position;
- Break time and a private, nonbathroom space to express breast milk;
- Time off from work duties to recover from childbirth.<sup>5</sup>

Under federal law, an employer may currently be required to provide break time and a private, nonbathroom space to express breast milk.<sup>6</sup>

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<sup>2</sup> R.C. 4113.01(A)(2), by reference to R.C. 4112.01(B), not in the bill.

<sup>3</sup> R.C. 4112.01 and 4112.02, not in the bill.

<sup>4</sup> R.C. 4113.12(B)(1).

<sup>5</sup> R.C. 4113.12(A)(3).

<sup>6</sup> 29 United States Code 207(r).



Under the bill, an employer must 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.<sup>7</sup> However, the bill does not require an employer to create additional employment for a pregnant employee that the employer would not have otherwise created, unless the employer does so or would otherwise do so to make reasonable accommodations for other employees.<sup>8</sup> The bill also does not require an employer to discharge, transfer an employee with more seniority, or promote another employee who is not qualified to provide a reasonable accommodation.<sup>9</sup>

## **Prohibited actions**

Under the bill, an employer is prohibited from knowingly taking any of the following actions:

- Denying employment opportunities to an employee on the basis of pregnancy, if the refusal or denial is based on the employer's need to make a reasonable accommodation;
- Requiring a pregnant employee to accept an accommodation that the employee chooses not to accept;
- Requiring an employee to take leave under any law providing for leave or under the employer's leave policy if the employer can make another reasonable accommodation for the pregnant employee;
- Taking adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation.<sup>10</sup>

## **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.<sup>11</sup> The

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<sup>7</sup> R.C. 4113.12(C).

<sup>8</sup> R.C. 4113.12(D)(2)(a).

<sup>9</sup> R.C. 4113.12(D)(2)(b).

<sup>10</sup> R.C. 4113.12(B).

<sup>11</sup> R.C. 4113.12(B)(1) and (D)(1).

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 employer's overall financial resources;
- The size of the employer's business with respect to the number of employees;
- The number, type, and location of the employer's facilities; and
- The effect on the employer's expenses or resources or the impact the reasonable accommodation would otherwise have on the employer's operations.<sup>12</sup>

If an employer makes or would be required to make an accommodation for another employee, the bill creates a rebuttable presumption on the employer that making the same accommodation for a pregnant employee will not cause an undue hardship.<sup>13</sup>

### **Lawsuit for violation**

The bill allows any employee who believes that an employer has violated the bill to file a lawsuit against the employer in any court of competent jurisdiction.<sup>14</sup>

### **Interaction with other laws**

The bill does not preempt, limit, diminish, eliminate, or otherwise affect any existing law prohibiting discrimination on the basis of pregnancy or sex or in any way diminish or invalidate the remedies, rights, and procedures that provide greater or equal protection for employees affected by pregnancy under any other law.<sup>15</sup> Ohio's Civil Rights Law 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

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<sup>12</sup> R.C. 4113.12.

<sup>13</sup> R.C. 4113.12(D)(3).

<sup>14</sup> R.C. 4113.12(F).

<sup>15</sup> R.C. 4113.12(E).



apprenticeship programs because of sex, and placing advertisements for jobs indicating a preference in hiring based on sex.<sup>16</sup> However, that 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."<sup>17</sup>

Under the Civil Rights 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. The Commission may investigate the charge and may initiate further action in accordance with procedures specified in continuing law. Although the Commission must first attempt to induce compliance with Ohio's Civil Rights Law through informal methods, if the Commission ultimately determines that an unlawful discriminatory practice has occurred, after a hearing the Commission may issue orders to remedy the situation, including cease and desist orders, back pay, reinstatement, or hiring. Additionally, continuing law allows an individual subject to an unlawful discriminatory action to bring a lawsuit for damages, injunctive relief, or any other appropriate relief.<sup>18</sup>

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## HISTORY

| ACTION     | DATE     |
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| Introduced | 03-29-16 |

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<sup>16</sup> R.C. 4112.01 and 4112.02, not in the bill.

<sup>17</sup> R.C. 4112.01(B), not in the bill.

<sup>18</sup> R.C. 4112.05 and 4112.99, not in the bill.

