

Senate File 2252 - Introduced

SENATE FILE 2252
BY COMMITTEE ON LABOR AND
BUSINESS RELATIONS

(SUCCESSOR TO SF 313)
(SUCCESSOR TO SF 18)

A BILL FOR

1 An Act requiring employers to provide reasonable accommodations
2 to employees based on pregnancy or childbirth and making
3 penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 216.2, Code 2016, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 01. "*Adverse action*" means any action that
4 might dissuade a reasonable worker from engaging in activities
5 protected under this chapter. "*Adverse action*" includes but
6 is not limited to failing to reinstate the employee to the
7 employee's original job or to an equivalent position with
8 equivalent pay and accumulated seniority, retirement, fringe
9 benefits, and other applicable service credits when the
10 employee's need for a reasonable accommodation ceases.

11 NEW SUBSECTION. 14A. "*Undue hardship*" means an action
12 requiring significant difficulty or expense.

13 Sec. 2. Section 216.6, subsection 2, paragraph a, Code 2016,
14 is amended to read as follows:

15 a. A written or unwritten employment policy or practice
16 which excludes from employment applicants or employees because
17 of the employee's pregnancy is a ~~prima facie~~ violation of this
18 chapter.

19 Sec. 3. Section 216.6, subsection 2, Code 2016, is amended
20 by adding the following new paragraphs:

21 NEW PARAGRAPH. f. An employer shall provide to an employee
22 a private, secure, and sanitary space and break time to express
23 breast milk for a nursing child.

24 NEW PARAGRAPH. g. (1) For the purposes of this paragraph,
25 unless the context otherwise requires:

26 (a) "*Reasonable accommodation*" includes but is not limited
27 to more frequent or longer breaks, time off to recover
28 from childbirth, acquisition or modification of equipment,
29 performance of job duties while seated, temporary transfer to a
30 less strenuous or hazardous position, job restructuring, light
31 duty, assistance with manual labor, or modified work schedules.

32 (b) "*Related medical condition*" includes but is not limited
33 to lactation or the need to express breast milk for a nursing
34 child.

35 (2) It shall be an unfair or discriminatory practice for an

1 employer to do any of the following:

2 (a) Deny a reasonable accommodation in the terms,
3 conditions, or privileges of employment to a job applicant or
4 employee based on the employee's or applicant's pregnancy,
5 childbirth, or related medical condition if the employee or
6 applicant requests a reasonable accommodation, unless the
7 employer can demonstrate that providing the accommodation would
8 impose an undue hardship on the employer's program, enterprise,
9 or business.

10 (b) Retaliate or take adverse action against an employee who
11 requests or uses a reasonable accommodation pursuant to this
12 paragraph.

13 (c) Deny employment opportunities to a job applicant or
14 employee if such denial is based on the need of the employer
15 to make a reasonable accommodation to the job applicant or
16 employee pursuant to this paragraph.

17 (d) Require a job applicant or employee affected by
18 pregnancy, childbirth, or a related medical condition to accept
19 an accommodation that the applicant or employee declines to
20 accept.

21 (e) Require an employee to take employment leave if another
22 reasonable accommodation can be provided pursuant to this
23 paragraph without undue hardship to the employer.

24 (f) Make an inquiry prior to employment regarding a
25 job applicant's pregnancy, childbirth, or related medical
26 condition.

27 (3) An employer shall engage in a timely, good-faith, and
28 interactive process with an employee to determine effective
29 reasonable accommodations pursuant to this paragraph.

30 (4) (a) An employer shall have the burden of proving undue
31 hardship under this paragraph. In making a determination of
32 undue hardship, factors to be considered by the commission
33 include but are not limited to:

34 (i) The nature and cost of the accommodation.

35 (ii) The overall financial and other resources of the

1 employer.

2 (iii) The overall size of the business of the employer with
3 respect to the number of employees.

4 (iv) The number, type, and location of the employer's
5 facilities.

6 (b) The fact that an employer provides or would be
7 required to provide a similar accommodation to another class
8 of employees that requires such accommodation shall create a
9 rebuttable presumption that the accommodation does not impose
10 an undue hardship on the employer.

11 (5) An employer shall post written notice in a form
12 prescribed by the commission of the right to be free from
13 discrimination in relation to pregnancy, childbirth, or a
14 related medical condition, including the right to reasonable
15 accommodations based on pregnancy, childbirth, or a related
16 medical condition, pursuant to this paragraph conspicuously
17 at the employer's place of business in an area accessible
18 to employees. The notice shall state the employee's right
19 to a private, secure, and sanitary space and break time to
20 express breast milk for a nursing child and shall include the
21 employer's specific plan to meet this requirement. The notice
22 shall also be provided to the following:

23 (a) New employees at the commencement of employment.

24 (b) Existing employees by January 1, 2017.

25 (c) Any employee who notifies the employer of the employee's
26 pregnancy within ten days of such notification.

27 (6) The commission shall develop courses of instruction
28 and conduct ongoing public education efforts as necessary to
29 inform employers, employees, employment agencies, and job
30 applicants regarding their rights and responsibilities under
31 this paragraph.

32 (7) This paragraph shall not be construed to narrow
33 or restrict any other provision of law relating to sex
34 discrimination or pregnancy, or to diminish any right or
35 responsibility thereunder.

1 childbirth, or related medical condition.

2 The bill defines "reasonable accommodation" to include but
3 not be limited to more frequent or longer breaks, time off
4 to recover from childbirth, acquisition or modification of
5 equipment, performance of job duties while seated, temporary
6 transfer to a less strenuous or hazardous position, job
7 restructuring, light duty, break time and private non-bathroom
8 space for expressing breast milk, assistance with manual labor,
9 or modified work schedules.

10 The bill defines "related medical condition" to include but
11 not be limited to lactation or the need to express breast milk
12 for a nursing child.

13 The bill defines "adverse action" as any action that might
14 dissuade a reasonable worker from engaging in activities
15 protected under Code chapter 216 and specifies that "adverse
16 action" includes but is not limited to failing to reinstate the
17 employee to the employee's original job or to an equivalent
18 position with equivalent pay and accumulated seniority,
19 retirement, fringe benefits, and other applicable service
20 credits when the employee's need for a reasonable accommodation
21 ceases.

22 The bill defines "undue hardship" as an action requiring
23 significant difficulty or expense.

24 The bill requires an employer to engage in a timely,
25 good-faith, and interactive process with an employee to
26 determine effective reasonable accommodations pursuant to the
27 bill.

28 The bill specifies that an employer shall have the burden
29 of proving undue hardship under the bill. The bill provides
30 a nonexclusive list of factors to be considered by the civil
31 rights commission in making such a determination. The bill
32 specifies that an employer who provides or would be required to
33 provide a similar accommodation to another class of employees
34 that requires such accommodation shall create a rebuttable
35 presumption that the accommodation does not impose an undue

1 hardship on the employer.

2 The bill requires an employer to post written notice of the
3 right to be free from discrimination in relation to pregnancy,
4 childbirth, or a related medical condition, including the
5 right to reasonable accommodations and a private, secure,
6 and sanitary space and break time to express breast milk for
7 a nursing child, conspicuously at the employer's place of
8 business in an area accessible to employees. The bill also
9 requires such notice to be provided to new employees, existing
10 employees by January 1, 2017, and any employee who notifies the
11 employer of the employee's pregnancy.

12 The bill requires the commission to develop courses of
13 instruction and conduct ongoing public education efforts as
14 necessary to inform employers, employees, employment agencies,
15 and job applicants regarding their rights and responsibilities
16 under the bill.

17 The preceding provisions of the bill shall not be construed
18 to narrow or restrict any other provision of law relating to
19 sex discrimination or pregnancy, or to diminish any right or
20 responsibility thereunder.

21 The bill requires an employer to provide to an employee a
22 private, secure, and sanitary space and break time to express
23 breast milk for a nursing child.

24 Under current law, a written or unwritten employment policy
25 or practice which excludes from employment applicants or
26 employees because of the employee's pregnancy is a prima facie
27 violation of Code chapter 216. The bill removes the phrase
28 "prima facie," so that such employment policies or practices
29 are violations of Code chapter 216.

30 The bill states that it is the intent of the general
31 assembly that a violation of Code section 216.6, subsection 2,
32 which governs employment policies relating to pregnancy and
33 childbirth, constitutes an unfair or discriminatory practice
34 in violation of Code chapter 216, subject to the processes
35 and remedies set forth in Code chapter 216, and further, that

1 the burden-shifting analysis articulated by the United States
2 supreme court in McDonnell Douglas Corp. v. Green, 411 U.S. 792
3 (1973), shall not be applicable to the proper construction of
4 Code section 216.6, subsection 2.

5 Penalty provisions for discriminatory employment practices
6 are applicable to the requirements established in the bill.