86R2977 KSD-D

By:  Calanni H.B. No. 3847

A BILL TO BE ENTITLED

AN ACT

relating to requiring reasonable workplace accommodations for and prohibiting discrimination against employees or applicants for employment with limitations related to pregnancy, childbirth, or a related medical condition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subchapter C, Chapter 21, Labor Code, is amended by adding Section 21.1285 to read as follows:

Sec. 21.1285.  REASONABLE WORKPLACE ACCOMMODATION FOR PERSONS WITH LIMITATIONS RELATED TO PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITION; GOOD FAITH EFFORT. (a) This section applies only to an employee or applicant for employment who has a known limitation related to pregnancy, childbirth, or a related medical condition.

(b)  It is an unlawful employment practice for a respondent covered under this chapter to:

(1)  fail or refuse to make a reasonable workplace accommodation to a known limitation of an individual described by Subsection (a), unless the respondent demonstrates that the workplace accommodation would impose an undue hardship on the operation of the business of the respondent;

(2)  take retaliatory personnel action or otherwise discriminate against an employee because the employee:

(A)  requests or uses a workplace accommodation in accordance with this section; or

(B)  files a complaint with the commission alleging the employer's violation of this section;

(3)  deny an employment opportunity to an individual described by Subsection (a) if the denial is based on the need of the respondent to make a reasonable workplace accommodation to the known limitation of the individual described by that subsection;

(4)  require an individual described by Subsection (a) to accept a workplace accommodation that the individual chooses not to accept; or

(5)  require an individual described by Subsection (a) who is an employee to take leave under leave law or a policy of the respondent if it was possible to provide another reasonable workplace accommodation to the employee.

(c)  An employer shall engage in a timely, good faith, and interactive process with an individual described by Subsection (a) to determine an effective reasonable workplace accommodation.

(d)  For purposes of this section, a reasonable workplace accommodation may include:

(1)  providing the employee more frequent or longer breaks;

(2)  providing the employee time off to recover from childbirth;

(3)  acquiring or modifying equipment;

(4)  allowing the employee to perform job functions while seated;

(5)  temporarily transferring the employee to a less strenuous or hazardous position;

(6)  restructuring the employee's job;

(7)  assigning the employee to light duty;

(8)  providing the employee adequate break time and private space in a location other than a bathroom for expressing breast milk;

(9)  assisting the employee with manual labor; and

(10)  modifying the employee's work schedule.

(e)  This section does not require an employer to:

(1)  create additional employment positions that the employer would not have otherwise created, unless the employer does so or would do so for other classes of employees who need workplace accommodation; or

(2)  discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need workplace accommodation.

(f)  A respondent who raises the defense of undue hardship bears the burden of establishing that an undue hardship exists in relation to:

(1)  the nature and cost of the workplace accommodation;

(2)  the overall financial resources of the employer;

(3)  the effect on expenses and resources or any other impact of the workplace accommodation on the operation of the employer; and

(4)  the overall size of the business of the employer with respect to the number of employees and the number, type, and location of its facilities.

(g)  Each employer shall inform its employees of their rights under this section by:

(1)  posting a conspicuous sign in a prominent location in the employer's workplace; and

(2)  providing written notice to each employee:

(A)  on the employee's hire; and

(B)  not later than the 10th day after the date the employee informs the employer that the employee is pregnant.

(h)  The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, employment agencies, and job applicants about their respective rights and duties under this section.

(i)  This section does not diminish the employment protection for pregnancy, childbirth, or a medical condition related to pregnancy or childbirth provided under any other provision of this chapter or other law.

SECTION 2.  (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to a claim of discrimination based on conduct that occurs on or after the effective date of this Act. A claim of discrimination that is based on conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

(b)  The change in law made by Section 21.1285(g)(2)(A), Labor Code, as added by this Act, requiring an employer to provide written notice of an employee's rights under Section 21.1285, Labor Code, as added by this Act, at the time the employee is hired, applies to an employee hired on or after the effective date of this Act. For an employee hired before that date, the employer must give the written notice required by that section to the employee before December 1, 2019.

SECTION 3.  This Act takes effect September 1, 2019.