

By: Calanni

H.B. No. 3847

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

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

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

24 (A) requests or uses a workplace accommodation in

1 accordance with this section; or

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

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

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

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

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

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

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

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

24 (3) acquiring or modifying equipment;

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

27 (5) temporarily transferring the employee to a less

1 strenuous or hazardous position;

2 (6) restructuring the employee's job;

3 (7) assigning the employee to light duty;

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

7 (9) assisting the employee with manual labor; and

8 (10) modifying the employee's work schedule.

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

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

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

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

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

24 (2) the overall financial resources of the employer;

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

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

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

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

8 (2) providing written notice to each employee:

9 (A) on the employee's hire; and

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

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

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

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

27 (b) The change in law made by Section 21.1285(g)(2)(A),

1 Labor Code, as added by this Act, requiring an employer to provide
2 written notice of an employee's rights under Section 21.1285, Labor
3 Code, as added by this Act, at the time the employee is hired,
4 applies to an employee hired on or after the effective date of this
5 Act. For an employee hired before that date, the employer must give
6 the written notice required by that section to the employee before
7 December 1, 2019.

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