

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 216**

BY SENATOR MAYNARD

[Originating in the Committee on the Judiciary;

reported on January 26, 2016.]



1 A BILL to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as  
2 amended, relating to authorizing the Human Rights Commission to promulgate a  
3 legislative rule relating to the Pregnant Workers' Fairness Act.

*Be it enacted by the Legislature of West Virginia:*

1 That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended  
2 and reenacted to read as follows:

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

**§64-5-1. Human Rights Commission.**

1 The legislative rule filed in the State Register on July 31, 2015, authorized under the  
2 authority of section four, article eleven-b, chapter five of this code, modified by the Human Rights  
3 Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled  
4 in the State Register on December 8, 2015, relating to the Human Rights Commission (Pregnant  
5 Workers' Fairness Act, 77 CSR 10), is authorized with the amendments set forth below:

6 On pages 1 through 3, sections 1 through 5, by striking out all of sections 1 through 5 and  
7 inserting in lieu thereof the following:

8 **§77-10-1. General.**

9 1.1. Scope. The following legislative rule series, filed pursuant to the West Virginia  
10 Pregnant Workers' Fairness Act (PWFA), W. Va. Code §5-11B-1 et seq., sets forth definitions  
11 and identifies some reasonable accommodations addressing known limitations related to  
12 pregnancy, childbirth, or related medical conditions.

13 1.2. Authority. – W. Va. Code §5-11B-4.

14 1.3. Filing date. – July 31, 2015.

15 1.4. Effective Date. –

16 **§77-10-2. Definitions.**

17 2.1. “Affected by pregnancy” means a woman who is pregnant or is experiencing medical  
18 conditions related to her pregnancy which has ended.

19 2.2. “Undue hardship” – In general, the term “undue hardship” means an action requiring  
20 significant difficulty or expense, when considered in light of the factors set forth in subdivision

21 2.2.1.

22 2.2.1. Factors to be considered. In determining whether an accommodation would  
23 impose an undue hardship on a covered entity, factors to be considered include:

24 2.2.1.a. The nature and cost of the accommodation needed under this article;

25 2.2.1.b. The overall financial resources of the facility or facilities involved in the provision  
26 of the reasonable accommodation; the number of persons employed at such facility; the effect on  
27 expenses and resources, or the impact otherwise of such accommodation upon the operation of  
28 the facility;

29 2.2.1.c. The overall financial resources of the covered entity; the overall size of the  
30 business of a covered entity with respect to the number of its employees; the number, type, and  
31 location of its facilities; and

32 2.2.1.d. The type of operation or operations of the covered entity, including the  
33 composition, structure, and functions of the workforce of such entity; the geographic  
34 separateness, administrative, or fiscal relationship of the facility or facilities in question to the  
35 covered entity.

36 2.3. “Reasonable accommodation” – The term “reasonable accommodation” may include:

37 2.3.1. Making existing facilities used by employees readily accessible to and usable by  
38 individuals with disabilities; and

39 2.3.2. Job restructuring, part-time or modified work schedules, reassignment to a vacant  
40 position, acquisition or modification of equipment or devices, appropriate adjustment or  
41 modifications of examinations, training materials or policies, the provision of qualified readers or  
42 interpreters, and other similar accommodations for individuals with disabilities.

43 2.4. "Related medical conditions" means physical and mental symptoms or limitations  
44 relating to or caused by a pregnancy, including but not limited to, miscarriage, complications of  
45 pregnancy or childbirth, gestational diabetes, pregnancy-induced hypertension, after-effects of  
46 delivery, post-partum depression, and lactation: *Provided*, That an elective abortion shall not be  
47 considered a related medical condition.

48 2.5. "Covered Entity" means the state, or any political subdivision thereof, and any person  
49 employing twelve or more persons within the state for twenty or more calendar weeks in the  
50 calendar year in which the act of discrimination allegedly took place or the preceding calendar  
51 year: *Provided*, That such terms shall not be taken, understood or construed to include a private  
52 club.

53 2.6. "Person" means one or more individuals, partnerships, associations, organizations,  
54 corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in  
55 bankruptcy, receivers and other organized groups of persons.

56 **§77-10-3. Examples of Reasonable Accommodations.**

57 3.1. Reasonable accommodations that may be made by a covered entity include, but are  
58 not limited to:

59 3.1.1. Bathroom breaks;

60 3.1.2. Breaks for increased water intake;

61 3.1.3. Periodic rest;

62 3.1.4. Assistance with manual labor;

63 3.1.5. Providing time off for prenatal medical appointments;

64 3.1.6. Modified work policies or procedures;

65 3.1.7. Temporary transfers to less strenuous or less hazardous work;

66 3.1.8. Allowing for more time or more frequent eating;

67 3.1.9. Allowing time for taking prescribed medications; and

68 3.1.10. Providing access to existing facilities that are more convenient and usable by a  
69 woman affected by pregnancy.

NOTE: The purpose of this bill is to authorize the Human Rights Commission to promulgate a legislative rule relating to the Pregnant Workers' Fairness Act.

This section is new; therefore, strike-throughs and underscoring have been omitted.