

By: Representative Williams-Barnes

To: Workforce Development;
Judiciary A

HOUSE BILL NO. 809

1 AN ACT TO CREATE THE "MISSISSIPPI PREGNANT WORKERS FAIRNESS
2 ACT" TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BASED ON PREGNANCY,
3 CHILDBIRTH, OR A RELATED CONDITION; TO PROVIDE FOR THE DEFINITIONS
4 OF CERTAIN TERMS; TO PROVIDE THAT AN EMPLOYER SHALL PROVIDE
5 WRITTEN NOTICE OF THE RIGHT TO BE FREE FROM DISCRIMINATION IN
6 RELATION TO PREGNANCY, CHILDBIRTH AND RELATED CONDITIONS; TO
7 CREATE AN ACTIONABLE RIGHT FOR ANY PERSON WHO IS AN EMPLOYEE AND
8 WHO BELIEVES HIS OR HER RIGHTS HAVE BEEN VIOLATED; AND FOR RELATED
9 PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** This act shall be known and may be cited as the
12 "Mississippi Pregnant Workers Fairness Act."

13 **SECTION 2.** It is the intent of the Legislature to combat
14 pregnancy discrimination, promote public health and ensure full
15 and equal participation for women in the labor force by requiring
16 employers to provide reasonable accommodations to employees with
17 conditions related to pregnancy, childbirth or a related
18 condition. Mississippi currently has no current workplace laws to
19 protect pregnant women from being forced out or fired when they
20 need a simple, reasonable accommodation in order to stay on the
21 job. Many pregnant women are single mothers or the primary



breadwinners for their families – if they lose their jobs then the whole family will suffer. This is not an outcome that families can afford in today's difficult economy.

SECTION 3. (1) No employer may:

(a) Refuse to make reasonable accommodations for any condition of a job applicant or employee related to pregnancy, childbirth, or a related condition, including, but not limited to, the need to express breast milk for a nursing child, if the employee or applicant so requests, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise, or business;

(b) Take adverse action against an employee who requests or uses an accommodation in terms, conditions or privileges of employment, including, but not limited to, failing to reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when her need for reasonable accommodations ceases;

(c) Deny employment opportunities to an otherwise qualified job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy, childbirth, or related conditions of the applicant or employee; or

(d) Require an employee to take leave if another reasonable accommodation can be provided to the known conditions



related to the pregnancy, childbirth, or related conditions of an employee.

(2) The employer shall engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

(3) The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Reasonable accommodations" shall include, but not be limited to: more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private nonbathroom space for expressing breast milk, assistance with manual labor, or modified work schedules, provided that:

(i) No employer shall be required by this section to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation, and

(ii) The employer shall not be required to 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 it.



71 (b) "Related conditions" includes, but is not limited
72 to, lactation or the need to express breast milk for a nursing
73 child.

74 (c) "Undue hardship" means an action requiring
75 significant difficulty or expense, when considered in light of the
76 factors set forth as follows:

77 (i) The employer shall have the burden of proving
78 undue hardship. In making a determination of undue hardship, the
79 factors that may be considered include but shall not be limited
80 to:

- 81 1. The nature and cost of the accommodation;
- 82 2. The overall financial resources of the
83 employer;
- 84 3. The overall size of the business of the
85 employer with respect to the number of employees;
- 86 4. The number, type, and location of the
87 facilities of the employer; and
- 88 5. The effect on expenses and resources or
89 the impact otherwise of such accommodation upon the operation of
90 the employer.

91 (ii) The fact that the employer provides or would
92 be required to provide a similar accommodation to other classes of
93 employees who need it shall create a rebuttable presumption that
94 the accommodation does not impose an undue hardship on the
95 employer.



SECTION 4.

An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodations for conditions related to pregnancy, childbirth, or related conditions, pursuant to this act to:

(a) New employees at the commencement of employment;

(b) Existing employees within one hundred twenty (120) days after July 1, 2021; and

(c) Any employee who notifies the employer of her pregnancy within ten (10) days of such notification.

Such notice must also be conspicuously posted at an employer's place of business in an area accessible to employees.

SECTION 5.

(1) An actionable right is hereby created for any person who is an employee and who believes that such person's employer has violated the provisions of this section. Any such employee who is aggrieved under this section may file a petition in the proper circuit court in Mississippi.

(2) If an employer is found to have violated the provisions of this act, the employee shall be awarded reasonable remedies, which shall include attorney's fees, prejudgment interest, back pay, liquidated damages and one hundred percent (100%) of the difference of unpaid wages. If the employer is found to have willfully violated the provisions of subsection (1), the employee shall be awarded three hundred percent (300%) of reasonable remedies.



121 **SECTION 6.** This act shall take effect and be in force from
122 and after July 1, 2021.

