

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

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2016 APR 21 P 2:59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Human Rights Commission TITLE NUMBER: 77

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 10

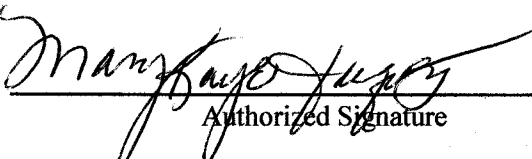
TITLE OF RULE BEING PROPOSED: Pregnant Workers' Fairness Act

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 195

SECTION 64-5-3, PASSED ON March 11, 2016

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: July 20, 2016

  
Authorized Signature

TITLE 77  
LEGISLATIVE RULE  
HUMAN RIGHTS COMMISSION  
SERIES 10  
PREGNANT WORKERS' FAIRNESS ACT

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**§77-10-1. General.**

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

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

1.3. Filing Date. -- July 31, 2015

1.4. Effective Date. -- July 20, 2016

**§77-10-2. Definitions.**

2.1. "Affected by Pregnancy" means a woman who is pregnant or is experiencing medical conditions related to her pregnancy which has ended.

2.2. "Undue hardship" -- In general, the term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subdivision 2.2.1.

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

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

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

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

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

2.3. "Reasonable accommodation" -- The term "reasonable accommodation" may include:

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

2.3.2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment

or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

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

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

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

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

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

- 3.1.1. Bathroom breaks;
- 3.1.2. Breaks for increased water intake;
- 3.1.3. Periodic rest;
- 3.1.4. Assistance with manual labor;
- 3.1.5. Providing time off for prenatal medical appointments;
- 3.1.6. Modified work policies or procedures;
- 3.1.7. Temporary transfers to less strenuous or less hazardous work;
- 3.1.8. Allowing for more time or more frequent eating;
- 3.1.9. Allowing time for taking prescribed medications; and

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