

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2013**

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**No. 78**

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Introduced by Council Members Vacca, Lander, Palma, Rose, Lappin, Arroyo, Brewer, Chin, Eugene, Ferreras, Gentile, Jackson, James, Koo, Koppell, Koslowitz, Mendez, Reyna, Rivera, Williams, Rodriguez, Mark-Viverito, Crowley, Gonzalez, Levin, Van Bramer, Weprin, Garodnick, Barron, Gennaro, Greenfield, Mealy and Ulrich.

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to prohibiting discrimination in employment based on pregnancy, childbirth, or a related medical condition.**

*Be it enacted by the Council as follows:*

Section 1. Legislative findings and intent. The Council finds that pregnant women are vulnerable to discrimination in the workplace in New York City. For example, there are reports that women who request an accommodation that will allow them to maintain a healthy pregnancy, or who need a reasonable accommodation while recovering from childbirth, are being removed from their positions, placed on unpaid leave, or fired. It is the intent of the Council to combat this form of discrimination by requiring employers to provide reasonable accommodations to pregnant women and those who suffer medical conditions related to pregnancy and childbirth. Such a reasonable accommodation may include bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor, among other things. It is not the intent of the Council to require such accommodations if their provision would cause an undue hardship in the conduct of an employer's business.

§2. Subdivision 5 of section 8-102 of chapter one of title eight of the administrative code of the city of New York, as amended by local law number 14 for the year 2013, is amended to read as follows:

5. For purposes of subdivisions one, two, three, *twenty-two*, subparagraph one of paragraph a of subdivision twenty-one, and paragraph e of subdivision twenty-one of section 8-107 of this chapter, the term “employer” does not include any employer with fewer than four persons in his or her employ. For purposes of this subdivision, natural persons employed as independent contractors to carry out work in furtherance of an employer’s business enterprise who are not themselves employers shall be counted as persons in the employ of such employer.

§3. Subdivision 18 of section 8-102 of chapter one of title eight of the administrative code of the city of New York, as amended by local law number 54 for the year 2011, is amended to read as follows:

18. The term “reasonable accommodation” means such accommodation that can be made that shall not cause undue hardship in the conduct of the covered entity’s business. The covered entity shall have the burden of proving undue hardship. In making a determination of undue hardship with respect to claims filed under subdivisions one, [or] two, *or twenty-two* of section 8-107, or section 8-107.1 of this chapter, the factors which may be considered include but shall not be limited to:

(a) the nature and cost of the accommodation;

(b) the overall financial resources of the facility or the 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;

(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

(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.

In making a determination of undue hardship with respect to claims for reasonable accommodation to an employee's or prospective employee's religious observance filed under subdivision three of section 8-107 of this chapter, the definition of "undue hardship" set forth in paragraph b of such subdivision shall apply.

§4. Section 8-107 of chapter one of title eight of the administrative code of the city of New York is amended by adding a new subdivision 22 to read as follows:

*(22) Employment; Pregnancy, childbirth, or a related medical condition. (a) It shall be an unlawful discriminatory practice for an employer to refuse to provide a reasonable accommodation, as defined in subdivision eighteen of section 8-102 of this chapter, to the needs of an employee for her pregnancy, childbirth, or related medical condition that will allow the employee to perform the essential requisites of the job, provided that such employee's pregnancy, childbirth, or related medical condition is known or should have been known by the employer. In any case pursuant to this subdivision where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job.*

*(b) Notice of rights. (i) An employer shall provide written notice in a form and manner to be determined by the commission of the right to be free from discrimination in relation to*

*pregnancy, childbirth, and related medical conditions pursuant to this subdivision to: (1) new employees at the commencement of employment; and (2) existing employees within one hundred twenty days after the effective date of the local law that added this subdivision. Such notice may also be conspicuously posted at an employer's place of business in an area accessible to employees. (ii) 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 rights and responsibilities under this subdivision.*

*(c) This subdivision shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other provision of this section.*

§5. This local law shall take effect 120 days after it shall have become a law, except that the commissioner shall, prior to such effective date, take such actions as are necessary to implement the provisions of this law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on September 24, 2013 and approved by the Mayor on October 2, 2013.

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 78 of 2013, Council Int. No. 974-A of 2012) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.