

Ordinance Supplementing the Pittsburgh City Code, Title One: Administrative; Article VII: Procedure; Chapter 161: Contracts, by adding Section 161.44 Reasonable Accommodations Due To Pregnancy, Childbirth or Related Medical Conditions.

WHEREAS, more than 35 years after the Pregnancy Discrimination Act (PDA) made it illegal to discriminate against a woman because of her pregnancy, women still face discrimination on the job when they become pregnant, especially in physically-demanding jobs; and,

WHEREAS, pregnant women in Pennsylvania and across the nation have been fired for requesting or denied reasonable accommodations—for example: a supermarket cashier in central PA recently lost her job late in pregnancy because she was carrying a water bottle at her cash register on doctor’s orders, and a pregnant security guard in downtown Pittsburgh was denied the reasonable accommodation of sitting down for part of her shift; and,

WHEREAS, Pennsylvania’s Women’s Law Project has provided legal advice or representation to roughly two dozen women with pregnancy accommodation complaints in the past couple of years, including at least one from the Pittsburgh area; and,

WHEREAS, the City recognizes that both the Americans with Disabilities Act (ADA) and the Pregnancy Discrimination Act have helped to make the workplace fairer for pregnant employees, yet neither goes far enough; passing reasonable accommodations legislation will provide a real solution to pregnant workers currently being asked to choose between their health and their livelihood; and,

WHEREAS, the Equal Employment Opportunity Commission (EEOC) recently clarified that discriminatory treatment of pregnant workers is unacceptable, but it is important to codify this guidance through the City’s own personnel policies and contractual agreements.

WHEREAS, providing reasonable accommodations to City employees and those companies contracting with the City will benefit both the workforce and the City; substantial research demonstrates that providing reasonable accommodations for pregnant workers improves recruitment and retention, workplace safety, employee commitment, and productivity, reduces absenteeism, and increases workforce diversity.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. Supplementing the Pittsburgh City Code, Title One: Administrative; Article VII: Procedure; Chapter 161: Contracts, by adding Section 161.44 Reasonable Accommodations Due To Pregnancy, Childbirth or Related Medical Conditions.

§ 161.44 REASONABLE ACCOMMODATIONS DUE TO PREGNANCY, CHILDBIRTH OR RELATED MEDICAL CONDITIONS

(A) Definitions.

(1) Reasonable accommodation is a modification to the work environment to enable a qualified employee to continue performing essential job functions despite limitations due to pregnancy, childbirth or related medical conditions that do not present an undue hardship on the employer. A reasonable accommodation may include, but is not limited to:

(a) Providing a chair, assistance with heavy lifting, and access to drinking water or uncompensated break time.

(b) Temporary 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 and other similar accommodations.

(2) Service contract means a contract for the furnishing of services to or for the City, except where services are incidental to the delivery of goods. The term does not include any contract with another governmental agency.

(3) Contractor means the entity furnishing services under a service contract.

(4) Essential job function For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(a) As job functions may change over the course of employment, any evidence pertaining to these changes in duties would also be considered.

(5) Undue hardship, In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(a) the nature and cost of the accommodation needed under this chapter;

(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;

(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.

(6) *Qualified employee* means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds.

(B) *Provision of reasonable accommodations.*

(1) To be eligible to enter into a service contract with the City of Pittsburgh for an amount payable to two-hundred fifty thousand dollars (\$250,000) or more, a contractor must provide *reasonable accommodations* for a *qualified employee* to continue working despite limitations due to pregnancy, childbirth or related medical conditions. These accommodations must be available to all qualified employees who provide work related to the city contract.

(a) An employer's obligation to provide reasonable accommodations to a pregnant employee would be prompted by a formal request made by the qualified employee.

(i) This provision does not require every employee to reveal their pregnancy status or related medical condition; rather, requires the employer to provide reasonable accommodations upon a formal request by the qualified employee

(b) This provision shall apply to all new qualifying service contracts executed after December 2014.

(C) *Mandatory provisions; certifications.*

(1) In any bid or proposal of \$250,000 or more, for a service contract, the City's purchasing agents must prepare applications that explicitly include this Chapter, "Reasonable Accommodations Due To Pregnancy, Childbirth or Related Medical Conditions," as a necessary provision to qualify in the bidding process.

(2) In any bid or proposal, a bidder or proposer subject to this Chapter will include certification that the business will comply with the provisions of this Chapter if awarded the contract.

(3) Following the award of a contract subject to this Chapter and prior to execution by the City, the contractor will certify that its employees have been notified of

reasonable accommodations available to qualified employees pursuant to this Chapter, and that those reasonable accommodations will actually be available.

(4) Every City contract subject to this Chapter will require the contractor to comply with the requirements of this Chapter. Such contracts will contain the following terms:

(a) The contractor will notify its employees that reasonable accommodations are available to an employee who continues working despite limitations due to pregnancy, childbirth or related medical conditions pursuant to this Chapter.

(b) Non-compliance by the contractor will be a material breach. The contract may further specify liquidated damages.

(c) Discrimination or retaliation by the contractor against any employee on account of having claimed a violation of this Chapter will be a material breach. The contract may further specify liquidated damages.

(D) *Waivers.* The City may waive the requirements of this Chapter in any one (1) of the following circumstances:

(1) Where application of the provisions of this Chapter would result in the loss of federal, state or similar funds or grants, or is otherwise prohibited by federal or state law.

(2) Where the contractor certifies that compliance with the provisions of this Chapter would interfere with a collective bargaining agreement between the contractor and any of its employees.

(3) Where a contractor is the sole supplier of services or materials.

(E) *Enforcement.* Contractors will provide the City with any requested information necessary to verify compliance with the provisions of this Chapter. A contractor subject to this Chapter who fails to comply with its provisions is in material breach of its contract with the City, and may be suspended or debarred from bidding on or participating in City contracts for up to three (3) years.

(F) *Severability.* If any provision of this Chapter or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Chapter which can be given effect without the invalid provision or application, and for this purpose the provisions of this Chapter are declared severable.

Sponsored by Councilman Dan Gilman and Councilwoman Deb Gross