

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

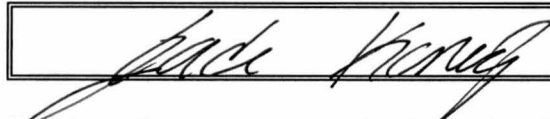
HB 1463

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1463
2/2/2015
23041

- ☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Reasonable accommodations in the workplace for pregnancy.

Minutes:

Attachment #1 #1A #2 #3

Chairman Keiser: Opens the hearing on HB 1463.

Representative Naomi Muscha~District 24: (Attachment 1).

Representative Ruby: Some occupations women do the same physical jobs a lot more than in the past and in some of them it's not possible for them to make some kind of accommodation. Reasonable is used here, but it is a subjective term. I'm wondering if you thought of a way to narrow that down?

Representative Muscha: If you start narrowing it down, it makes it more difficult. As I said in my testimony, in North Dakota we have very few cases that have arisen into actual lawsuits. Not to say they haven't.

Representative Ruby: I understand the struggle. What if she came up with something she thought was reasonable but wasn't. It's pretty subjective the word reasonable, when used toward pregnancy related issues.

Representative Becker: It seems odd to me that an employer would want their employee to go on medical leave instead of making these very inconsequential accommodations. Essentially every employer would say go ahead if you need to sit down sit down instead of saying "no I don't want you to do that, just take unpaid time off. It seems odd to me. My question deals with the aspect of one of the accommodations to be resigned to another job duty, is it going to be an argument between the employers who says we don't need to reassign you because we are making the accommodations that you need, is it going to be set up where the employee says that's fine that you want that but I would rather have this secretarial job or sitting down all the time job, who is to say which is the better accommodation both would according to the definition be reasonable.

Representative Muscha: That's a good one and doing research, there are many cases where there were examples of women who did end up leaving their jobs. These are all in current law suits. None were from North Dakota. One example was I Minnesota and it was the postal service. The woman's doctor had told her she could not deliver mail out in this heat so she had asked to be reassigned to an office job temporarily. The postal service said sorry no, either do the job or leave. I guess I would agree with you, it's not a long term issue. I hope that North Dakota wouldn't end up in law suits.

Representative Kasper: (Attachment 1A) This handout that you gave us, was it written specifically to pertain to HB 1463? On the right hand side on the front page at the end of the first paragraph and then on page 2, where does that paragraph come from? Is it in North Dakota Statute that provides these exemptions or exceptions or is it federal statute under disability statute?

Representative Muscha: Renne Stromme who is here today, is actually the one that brought it.

Representative Louser: On subsection 1 of the bill we define the protected classes of discrimination in our state and they are different state to state. Then in subsection 2, we talk about a reasonable accommodation which for most purposes is for disability, but ADA doesn't say that pregnancy is a disability. We are not creating a new protective class, we aren't really covering a disability and you said that this hasn't happened that you are aware of in North Dakota, but I am wondering if this language on line 18 would place a burden on employer. Would the employees have to tell the employer she's pregnant?

Representative Muscha: I don't expect that most accommodations need to be made until the last trimester for the most part. Gestational diabetes and things like that is covered. We aren't talking about things that aren't ideally recognized as disabilities. Things like hypertension or gestational diabetes those technically are covered under federal law already.

Representative Ruby: If there hasn't been any problems, why the bill?

Representative Muscha: I don't know if I would go so far to say that there haven't been any problems there just haven't been any major lawsuits. Obviously there are issues and in fact I was just told of another one today that was at the UND. The medical building that we are replacing there was a gal that was pregnant and the heat was really bothering her much more so than normal, so the request was to have a window air conditioner put in temporarily. They did put one it and they had to really strongly encourage those in charge to leave it in. So I don't know that it's not ever an issue, but in North Dakota we tend to not sue so terribly much. Reality is that issues can arise.

Chairman Keiser: The paragraph in the handout 1A, would it be unreasonable to put that right in the statute?

Renee Stromme~North Dakota Women's Network: (Attachment 2).

Representative Kasper: Can you answer the question that I had of Representative Muscha about the last paragraph on page 2?

Stromme: It's right out of the ADA. We can look at that more fully and perhaps amend it and but I believe it is part of the fuller section.

Representative Louser: Has someone been fired in North Dakota after asking for accommodations that we are not aware of?

Stromme: It' may not be a true firing but they would quit because accommodations couldn't be made.

Representative Louser: Are we aware of someone being fired for making a reasonable accommodation that wasn't granted?

Stromme: I can find out.

Chairman Keiser: We do have the commissioner here.

Representative Becker: I think it's important when you make statements saying that something happens with frequency, that it actually happens. Specifically in this state otherwise I feel that perhaps it's a miss representation. I think that expectation would be important in going forward.

Tom Ricker~North Dakota AFL-CIO: We support HB 1463. I think that reasonable accommodation is not too much to ask for and I think it would be good to put into the century code that they support women who are working. I think over the years the number of women working in traditional jobs and more women in the workforces increase greatly and I think a reasonable accommodation isn't too much to ask for.

Representative Kasper: Are you aware of this provision in any of the labor agreements that you have ever bargained for or have been a party too?

Ricker: I am not aware of any specific labor agreements that have condition where they have a provision for reasonable accommodation for pregnant women. But I do know of situations where it has happened where they have made reasonable accommodations and I do know of a situation where they have made a reasonable accommodation and then that didn't work out so well so they told the pregnant individual that was pregnant that you will have to take FMLA (family medical leave act) because we don't have anything else for you?

Representative Kasper: Both of those in North Dakota and if so how long ago did they occur?

Ricker: Yes, they both happened at Bobcat Company and both within the last five years.

Representative Kasper: Those are the only two that you are aware of?

Ricker: Yes.

Representative Amerman: In a labor agreement or a union job, if they are pregnant and they felt they weren't given reasonable accommodations by a supervisor or if they were discriminated in some form or fashion because of their condition, because of labor agreement we do have a grievance procedure that they could go that way. Is that correct?

Ricker: That is correct. One of the incidents I referred to the individual didn't even need to file a grievance they came and spoke to me at the time when I was the president of the local union and it had to do with her working in the paint line and she was concerned about the chemicals and being exposed to those while pregnant and we spoke to human resources and management and agreed on a temporary basis that they moved her out of that department.

Chairman Keiser: Anyone here to testify in support of HB 1463, opposition, neutral.

Troy Seibel~Commissioner for the Department of Labor: (Attachment 3).

Representative Kasper: Currently there is no statute like on proposed in 1463 in the federal law?

Seibel: That's correct.

Representative Louser: We are not delineating between first trimester, second trimester and third trimester we are saying pregnant. So I'm still having a hard time with that burden on the employer where it seems that the employee must notify the employer that they are pregnant, is that the case?

Seibel: Sensually what we would do is take the vast reams of case law and statutes on the issue of reasonable accommodations in the disability world and what the department would do unless there is an amendment or change to the bill as written, we would apply those standards to this bill as well. Under current law the employer doesn't have to make an accommodation if the employer doesn't know that the individual is disabled and needs and accommodation unless it's readily apparent.

Representative Boschee: Your number 40 is an approximation right?

Seibel: Yes.

Representative Boschee: As far as the human rights act violations in the last five years it's been high 40's?

Seibel: We conducted 48 investigations last calendar year 2014, where the bases was sex, which includes pregnancy.

Representative Boschee: The reason I'm asking is I'm trying to figure out, it seems like a larger party or case load has to deal with pregnancy.

Seibel: Of the 48, I do not recall seeing a pregnancy case last year. There may be one in there in that 48 but I can get that number for you.

Representative Boschee: When I served on the human relations commission in Fargo the EOC, what was surprising to many of us commissioners was according to the EOC and their data at that time pregnancy and cancer were the two major reasons that they had complaints of people because people would release employees based on those things. With the best of intentions the employer thought you need to go take care of yourself when in fact the employee needed the job for the insurance or the pay.

Seibel: The majority of cases our cases are not based on pregnancy. The majority of our cases fall around sexual harassment, race and disability. Those are the big three that make up 75 percent of our employment discrimination complaints that we receive.

Representative M Nelson: When you were talking about what an employer wouldn't need to do it was almost word for word about that paragraph that had been questioned on the one hand out about not being required to disrupt or interfere with normal operations and so on, does that come from statute or is that how its developed over time?

Seibel: That does come directly from the North Dakota Human Right Act. It is a little more detailed but the primary inquiry of whether or not an accommodation is reasonable doesn't cause that employer under hardship.

Chairman Keiser: Closes the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1463
2/3/2015
23049

- ☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Reasonable accommodations in the workplace for pregnancy.

Minutes:

Chairman Keiser: The only thing is suggest is that in that handout that we received there is a paragraph in there that is current law so we don't need to put it in the bill but we certainly could. Place it in the bill as an amendment. Brian was purposing that at the end of subsection 2 on page 1 it would read : because the individual is pregnant or because that individuals religion and then something to ensure that an employer would not be required to provide an accommodation that would disrupt or interfere with the employers normal operations, threatens anyone's health or safety, etc. It is law, it doesn't need to be put in but it does clarify it.

Representative M Nelson: If you put it into law twice and if we revise that we might miss one or the other. Since it is currently law I don't really see that it adds to it to put it in place, I think it just increases the chances for error down the road.

Chairman Keiser: It wouldn't be in this particular bill twice but whatever the committee thinks. I'm just raising it as an issue not a concern that we had talked somewhat about. Do we have a motion on HB 1463?

Representative Boschee: I move a Do Pass.

Representative Amerman: I second.

Chairman Keiser: Further discussion?

Motion made for a Do Pass

Motion made by Representative Boschee.

Seconded by Representative Amerman.

Total yes 11. No 3. Absent 1.

Motion for a Do Pass carries.

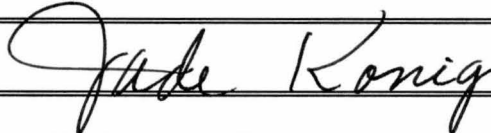
Floor assignment Representative Nelson.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1463
2/4/2015
23210

☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Reasonable accommodations in the workplace for pregnancy.

Minutes:

Representative Louser: We are now defining pregnancy as a disability that would require reasonable accommodation and the coverage that we have in ADA or other parts of code are not in the North Dakota code they are federal law and they are issues that result from pregnancy not pregnancy its self. We have just taken this a step further in my opinion and called pregnancy a disability for which an employer must provide a reasonable accommodation at any stage of the pregnancy. There is coverage under ADA and I don't have the example that the presenter gave us that actual wording I think would be appropriate as an amendment to this bill unless it is further defined somewhere else in century code the only reference that we have in other law is federal law. We had testimony from an out of state entity that couldn't give us as single example of what they testified where someone had been fired or even a lack of an accommodation even being made. The part of code that we are putting pregnancy in now at any stage is part of code that has mental for physical disability or a religious accommodation. I guess in general it seems like day after day in both committees that I sit in we are witnessing solutions to problems where there's not evidence a problem existed and it almost feels like some political gamesmanship and I guess if that's what we have to play when we are here we will do it, but we continue to count North Dakota as the common sense regulation and a business friendly state and this just doesn't seem to be an example of what our values are.

Representative M Nelson: I'm going to resist the motion. Talking to the labor commissioner, he said that today he handles cases with pregnancy as a sex discrimination case so. I don't think we are changing anything we are just making it plan to people. I don't think we are actually changing anything just making it more plan in the code.

Representative Becker: I don't believe he is currently working with anyone. What he said was that he has X number of cases that include such and such and they would also include any relating to pregnancy and when inquired further he was not aware of any cases, with that group that were about pregnancy. I don't think he is dealing with it now he's dealing with the category which if one comes up would fall into and add to that number and unless

I'm mistaking he has no cases at this point in time that he is looking at in regards to pregnancy.

Chairman Keiser: We do have a motion to reconsider and the rational given was to add the language and that paragraph on the one handout that was given that would say that an employer would not be required to provide accommodations that would disrupt or interfere with the employers normal operations, threaten anyone's health or safety etc. You have copies of that. That is what the concern was that that should be added as a clarification. Further discussion on the motion to reconsider?

Motion made to reconsider the motion
Motion made by Representative Louser.
Seconded by Representative Ruby.
Total Yes 11. No 3. Absent 1.
Motion To Reconsider Approved.

Chairman Keiser: We now have HB 1463 in front of us what are the wishes of the committee?

Representative Boschee: I move to amend the language that is in the testimony.

Representative Kasper: I second

Representative Lefor: The wording that is in the amendment is that already in federal statue?

Chairman Keiser: Yes.

Representative Louser: I went through this recently, both at my work where I was hiring someone who had just learned that they were in their third trimester. They didn't know they were pregnant and I have had a recent pregnancy in my house so I don't want there to be any misconstrued feelings that I'm not supporting making a reasonable accommodation for somebody pregnant in the workplace. I support this but I think there needs to be some common sense opportunities here for the employer.

Motion to Adopt Amendment.
Motion made by Representative Boschee.
Seconded by Representative Kasper.
Total Yes 14. No 0. Absent 1.

Representative Devlin: I move a Do Pass on HB 1463 as Amended.

Representative Boschee: I second.

Motion to Do Pass As Amended.
Motion made by Representative Devlin.
Seconded by Representative Boschee.
Total Yes 13. No 1. Absent 1.
Motion for a Do Pass As Amended carries.
Floor assignment Representative Nelson.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1463
2/9/2015
23462

- ☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Reasonable accommodations in the workplace for pregnancy.

Minutes:

Brian Johnson: We ended up going back to the definition section 1402.4 and what we were going to add was language that was already part of the definition for reasonable accommodation. We were going to through in language that was going to define what a reasonable obligation was but it is already in the language. We were going to add unduly disrupt or interfere with the employers normal operations, threaten health or safety of the individual with a disability or other, contradict a business necessity of the employer or impose undue hardship on the employer based on the size of the employers business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation. That's the language that we were going to add. That's the language that I just read from the reasonable accommodations from the section. So from legislative council's point of view to amend it and put it in there would not be necessary.

Chairman Keiser: Just to remind the committee Representative Nelson said we don't need to put that in there because it is already in there and as you might recall there was recommendation to not have language in there twice in a section of the code because if they go back and correct it they may discover one and forget the other and then we have a conflict. I liked it being in there. We did bring it back and put that language in and now legislative council is saying that Representative Nelson really was correct and we shouldn't put that in. It doesn't hurt anything and doesn't change anything it's already in the code. So the committee is being asked to think about its actions and bring it back and taking out that last amendment. We will send it through the way it is, the Do Pass As Amended. We will restate it.

February 9, 2015

82
26/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1463

Page 1, line 19, after the period insert "An employer is not required to provide an accommodation that would disrupt or interfere with the employer's normal business operations; threaten an individual's health or safety; contradict a business necessity of the employer; or impose an undue hardship on the employer, taking into consideration the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation."

Renumber accordingly

Date: Feb 3, 2015Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1463**

House Industry, Business & Labor Committee
☐ Subcommittee

 ☐ Conference Committee

Amendment LC# or Description: _____

 Recommendation: ☐ Adopt Amendment
 ☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
 ☐ As Amended ☐ Rerefer to Appropriations

 Other Actions: ☐ Reconsider ☐ _____

 Motion Made By Rep Boschee Seconded By Rep Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser		X
Representative Beadle	X		Representative Ruby		X
Representative Becker		X	Representative Amerman	X	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 11 No 3Absent 1Floor Assignment Rep Nelson

If the vote is on an amendment, briefly indicate intent:

Date: Feb 4, 2015Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1463**

House Industry, Business & Labor Committee☐ Subcommittee☐ Conference CommitteeAmendment LC# or Description: To ReconsiderRecommendation: ☐ Adopt Amendment☐ Do Pass☐ Do Not Pass☐ Without Committee Recommendation☐ As Amended☐ Rerefer to AppropriationsOther Actions: ☒ Reconsider☐Motion Made By Rep Louser Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman		X
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson		X
Representative Kasper	X		Representative M Nelson		Y
Representative Laning	X				

Total (Yes) 11 No 3Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

reconsider the motion - passed

Date: Feb 4, 2015Roll Call Vote: 2

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1463**

House Industry, Business & Labor Committee☐ Subcommittee☐ Conference CommitteeAmendment LC# or Description: 15.0946.01002Recommendation: ☒ Adopt Amendment☐ Do Pass☐ Do Not Pass☐ Without Committee Recommendation☐ As Amended☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider☐Motion Made By Rep Boschee Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 14 No 0Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

continue

Date: Feb 4

Roll Call Vote: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1463

House Industry, Business & Labor Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: 15.0946.01002

Recommendation: ☐ Adopt Amendment

☒ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider

☐

Motion Made By Rep Devlin Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker		x	Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 13 No 1

Absent 1

Floor Assignment Rep Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1463: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1463 was placed on the Sixth order on the calendar.

Page 1, line 19, after the period insert "An employer is not required to provide an accommodation that would disrupt or interfere with the employer's normal business operations; threaten an individual's health or safety; contradict a business necessity of the employer; or impose an undue hardship on the employer, taking into consideration the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation."

Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1463

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1463
3/18/2015
Job Number 25046

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to reasonable accommodations in the workplace for pregnancy

Minutes:

Attachment

Chairman Klein: Called the committee back to order.

Representative Muscha: Written Testimony Attached (1). (:29-7:22)

Chairman Klein: This isn't a result of something that happened in your district? This is a national trend that we need to get on board with?

Representative Muscha: Said it does happen in North Dakota but no it was not a constituent from her district. She said she had an amendment with some possible wordings for a possible amendment. Amendment Attached (2).

Chairman Klein: Said he saw that the bill was amended in the House.

Representative Muscha: These are just possible suggestions, not that they have to be changed.

Chairman Klein: Do you want to go through the suggested amendment?

Representative Muscha: She went over the amendment. (9:28-10:05)

Chairman Klein: Asked if that is because? I am looking to see why we need the amendment.

Representative Muscha: Because those things have happened.

Chairman Klein: This would add to the ability to read it more clearly?

Representative Muscha: Right, more clarity.

Lindzie McDonald: Written Testimony Attached (3). (11:15-14:56)

Senator Poolman: Asked if she filed a claim with the Department of Labor and what were the results of that.

Lindzie McDonald: Said yes she did and that there were no findings because it was shift work and because it was shift work they didn't have to accommodate her. She said she took it as far as she could and she tried to get lawyers to take it but because she was going up against McKenzie County she had a hard time finding a lawyer that would take her case.

Courtney Koebele, Executive Director for the North Dakota Medical Association: Written Testimony Attached (4). (15:58-17:28)

Renee Stromme, Representing the North Dakota Women's Network: Written Testimony Attached (5) and Article Attached (6) and Fact Sheet (7). (17:44-19:57)

Senator Burckhard: Asked if it was a fact that pregnant women work more than ever before outside of the home.

Renee Stromme: Women are increasingly present in the workforce and so therefore when pregnant, they continue to work at a greater rate than previous generations.

Senator Burckhard: Handed out a letter from **Karin Roseland, Director of the March of Dimes:** She is in support of the bill. Letter Attached (8).

Tom Ricker, President of the North Dakota AFL-CIO: Written Testimony Attached (9). (21:24-23:11)

Chairman Klein: Asked the Commissioner to come forward.

Troy Seibel, Labor Commissioner with the North Dakota Department of Labor and Human Rights: Said under current human rights act, it requires an employer to provide a reasonable accommodation for individuals with a disability or a sincerely held religious belief. What this bill would do is it would add a third category where an employer is required to provide a reasonable accommodation and that would be for a pregnant employee. (23:40-27:16)

Senator Poolman: Asked if in Lindzie's case because it was shift work does it fall under the category of being an unreasonable accommodation based on the size of the employer?

Troy Seibel: I don't know the specific facts of Lindzie's case but it could be. If the employer needs people there both nights and days it may be unreasonable for an employer to take an employee and only put them on day shift. It may depend on the size of the employer and how long the period of time we are looking at. (27:38-28:17)

Chairman Klein: Said looking at the employer exemptions, it does give that opportunity for you to make a reasonable judgment on whether or not it is reasonable and that is why it is clearly stated here?

Troy Seibel: That's correct. That was actually added in an amendment on the House side but I would point out that exact language is found elsewhere in the human rights act where it specifically says, an accommodation is considered reasonable provided it does not and then we go through the list. The bill basically states it a second time.

Senator Sinner: What happens if the parties don't agree after you have made a determination is there an appeal process?

Troy Seibel: Yes essentially in the human rights act if we make a finding that there was probable cause to believe the human rights act was violated then the charging party has the option to have an administrative hearing or they can go to district court. If we make a finding that the statute was not violated at that point for the charging party is to go to district court.

Senator Poolman: In this case because it was unreasonable for her employer, in Lindzie's case, this bill doesn't help someone like Lindzie who is working for a small employer who needs to have those shifts correct?

Troy Seibel: That's right. If the accommodation request is unreasonable, this bill does not require employers to provide unreasonable accommodations.

Chairman Klein: This is mirroring the human rights law that we have somewhere else in code. He closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1463
3/23/2015
Job Number 25265

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Era Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to reasonable accommodations in the workplace for pregnancy

Minutes:

No Attachment

Chairman Klein: We heard that bill last week. Any other discussion on this, I think it is pretty well laid out and does provide some reasonable accommodations.

Senator Miller: Moved a do pass.

Senator Poolman: Seconded the bill.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Burckhard will carry the bill.

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1463**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Miller Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Burckhard

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1463, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1463 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1463

HB 1463 # 1
2-2-15

Industry, Business & Labor Committee
February 2, 2015
HB 1463

Mr. Chairman and members of the Industry, Business & Labor Committee, I am Representative Naomi Muscha and I represent District 24. District 24 is in the southeastern corner of the state, encompassing all of Barnes County and parts of Ransom and Cass Counties. I am here today to present to you HB 1463.

As we often hear fellow legislators state, "It's a simple bill with only slight changes." I too make that claim for this bill. As stated on line one – it is to amend a current section of North Dakota's Century Code- with those changes of "a person" to "an individual" on lines 7 – 9 and lines 17 – 18.

The new addition to the Century Code- which is the "meat of the bill" is in subsection 2 starting on line 16. "It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified individual with a physical or mental disability, because that individual is pregnant, or because of that individual's religion.

Now, as I can imagine your thoughts ramping up to – "Don't we already have laws concerning this issue?" I can answer "yes, we do" BUT – only to a certain extent.

There are three federal laws that offer protection for pregnant workers. Those laws are The Americans with Disabilities Act, The Pregnancy Discrimination Act, and The Family and Medical Leave Act.

Quoting the National Women's Law Center (NWLC), "The Americans with Disabilities Act, ADA, requires employers to make reasonable accommodations for employees with disabilities if the accommodations can be made without undue hardship to the employer. Pregnancy itself is not a disability under the ADA – but "pregnancy-related impairments" can be disabilities, if they substantially limit a major life activity such as walking, lifting or digesting." In 2008 the ADA Amendments Act, (ADAAA) which I'll call AD triple A, and again I quote the NWLC, "the ADAAA expanded the ADA's definition of disability to include temporary impairments and less severe impairments. As a result, individuals with pregnancy-related impairments such as hypertension, severe nausea, sciatica, or gestational diabetes should now be protected by the ADA, and entitled to reasonable accommodations under the ADA." Although, as we all know, pregnancy-related impairments are temporary so often they are not viewed in courts as disabilities. Consequently the new ADAAA standards have seldom been applied.

The second federal law, The Pregnancy Discrimination Act of 1978, (quoting NWLC) "prohibits discrimination on the basis of pregnancy and requires employers to treat pregnant women as well as they treat other employees who are similar in the ability or inability to work." Such treatment or accommodations – are things such as allowing a pregnant worker to sit instead of stand for lengthy periods of time, take more frequent restroom breaks, eat or drink more frequently than regularly done, receive assistance if the job requires heavier lifting, or even be temporarily reassigned to a different duty.

The third federal law, "The Family and Medical Leave Act (FMLA) provides eligible employees with the right to take up to 12 weeks of job-protected, unpaid leave to care for a new child. The FMLA also entitles employees to take unpaid medical leave if "a serious health condition...makes the employee unable to perform the functions of the position of such employee." "Serious health condition" includes an inability to work arising out of pregnancy or for prenatal care." (NWLC) This law is often used against women when an employer doesn't want to make accommodations for a pregnancy, but rather insists the worker utilize the FMLA time, even though the worker is perfectly capable of working –and desires to work – if just given slightly needed accommodations.

Statistics show that the majority of pregnant workers who need some slight accommodations are low-wage earners or in nontraditional occupations. Very frequently the women are primary breadwinners in the family or even the sole-breadwinner. If they are forced to leave work unpaid, it's not just the woman who suffers, but rather the whole family.

I think common sense tells us that treating employees well results in good bottom lines for businesses. High employee morale contributes to raising other aspects of a business such as recruitment and retention of employees, safety, productivity, and reduced absenteeism. Quality businesses are needed in order to have a quality North Dakota. Also, we can acknowledge that we do have many conscientious employers in North Dakota who are and will continue to grant reasonable accommodations to pregnant workers. Passing

this bill will only ensure that more employers will follow high North Dakota standards.

Before closing, I would like to add my reason for being interested in this bill because it's obvious I'm not going to personally benefit from the successful passage of this bill. Years ago when I was experiencing my third pregnancy I would have needed slight job accommodations of sitting or taking more frequent breaks in order to get off my feet, or possibly a temporary reassignment had I worked outside the home in a job that required extensive periods of standing or walking. I also would have needed more frequent restroom breaks. Thankfully, I was not working outside my home so even with two preschoolers, I was able to sit and "take a break" when so needed.

As we all know though, the economics of North Dakota in 1977 are not the same as today. Statistics state that North Dakota is one of the highest ranking states in having mothers that work outside the home. I encourage you to vote – Do Pass – to help give our working mothers-to-be a safe, healthy work environment for themselves and their families. Thank you.



EMPLOYMENT

FACT SHEET

H.B. 1463: Making Room for Pregnancy on the Job

February 2015

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H.B. 1463

2/2/15

Pregnant and Pushed Out of Work

Although many women can continue working throughout their pregnancies without any changes at work, some women find that at some point during pregnancy some job activities—such as lifting, bending, or standing for long periods—begin to pose a challenge. Many of these women could continue to work without risk to themselves or their pregnancies with slight job modifications. But in the absence of such a modification, they may face a choice between their jobs and the health of their pregnancies—and that's a choice no one should have to make.

Today, more women are continuing to work while they are pregnant, and through later stages of pregnancy. For example, two-thirds of women who had their first child between 2006 and 2008 worked during pregnancy, and 88 percent of these first-time mothers worked into their last trimester.¹ Approximately 3 out of 4 women who give birth in North Dakota in any given year are working women.²

Women's wages are absolutely critical to the wellbeing of their families: in 2010, nearly two thirds of mothers were primary or co-breadwinners for their families.³ Because a new baby means increased expenses, a woman's wages will often be particularly important to her family when preparing for the birth of a child. But too many employers refuse to provide even simple, temporary accommodations when a pregnant worker has a medical need for them, like a stool that would allow a cashier to sit instead of stand during a long shift, reassignment of job

duties to allow a pregnant worker to avoid heavy lifting, or an exception from a rule against drinking water while working. Indeed, too often employers respond to a request for an accommodation by flatly refusing, firing a pregnant worker, or pushing her out onto unpaid leave. As a result, pregnant women's health is put at risk, or they are forced out of their jobs at the moment they and their families can least afford it.

H.B. 1462

H.B. 1463 would ensure that pregnant women can continue to do their jobs and support their families by making it unmistakably clear that employers must grant the same sorts of accommodations for medical needs arising out of pregnancy, childbirth, and disabilities related to pregnancy and childbirth that they already must make for other disabilities under North Dakota law. The bill would:

- Require employers to make reasonable accommodations for employees who have limitations in their ability to work stemming from pregnancy, childbirth, or disabilities related to pregnancy or childbirth. These accommodations might include:
 - o Providing a stool to a pregnant employee experiencing swelling of the legs as a result of standing for an entire shift;
 - o Modifying a no-food-or-drink policy so that an employee can drink water to prevent painful and potentially dangerous uterine contractions;



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NATIONAL WOMEN'S LAW CENTER
nwlc.org/fairpay

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- o Shifting an employee's work schedule if she regularly experiences severe nausea early in the morning;
 - o Modifying a policy that limits an employee's ability to take restroom breaks if the employee has an increased need for restroom breaks as a result of pregnancy and faces an increased risk of urinary tract infections in the absence of these breaks.
 - o Reassigning occasional heavy lifting duties for a pregnant employee who has been advised not to lift more than 20 pounds by her health care provider; or
 - o Allowing a pregnant worker to fill an alternative, available position for which she is qualified if her current position imposes particular medical risks to her pregnancy.
- Ensure that an employer would not be required to provide an accommodation that would disrupt or interfere with the employer's normal operations; threaten anyone's health or safety; contradict a business necessity of the employer; or impose an undue hardship on the employer, taking into account the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.

Good for Workers, Good for Business

Only 1.9 percent of workers in North Dakota give birth each year, and only a fraction of those workers would require accommodations. Employer experience with disability accommodations and workplace flexibility policies show that the costs of providing temporary accommodations for pregnant workers are likely to be small—and that providing accommodations can be expected to reduce workforce turnover, increase employee satisfaction and productivity, and save workers' compensation and other insurance costs.⁵

A Commonsense Solution

H.B. 1463 provides a commonsense solution for pregnant workers in North Dakota who are being asked to choose between their health and their livelihood. States and cities around the country have acted in a bipartisan fashion to pass similar protections. It is now up to North Dakota to ensure that pregnant workers can continue to do their jobs and contribute to the state's economic success.

¹ U.S. Census Bureau, *Maternity Leave and Employment Patterns of First-Time Mothers 1961-2008*, 4, 6 (Oct. 2011).

² See National Partnership for Women and Families, *Pregnant Workers Need the Pregnant Workers Fairness Act* (May 2013), <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/pregnant-workers-need-pregnant-workers-fairness-act.pdf>.

³ Center for American Progress, *The New Breadwinners: 2010 Update* (April 2012), http://www.americanprogress.org/issues/2012/04/epd_breadwinners.html.

⁴ See National Women's Law Center, *Pregnant Workers Make Up a Small Share of the Workforce and Can Be Readily Accommodated: A State-by-State Analysis* (2013), http://www.nwlc.org/sites/default/files/pdfs/state_by_state_analysis.pdf.

⁵ See National Women's Law Center, *The Business Case for Accommodating Pregnant Workers* (2012), http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers_business_case_12.04.12.pdf.

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#2



House Industry, Business and Labor
House Bills 1463
February 2, 2015

Good morning Chairman Keiser and members of the House Industry, Business, and Labor committee. I am Renee Stromme representing the North Dakota Women's Network. We are a statewide advocacy organization working to improve the lives of women. We stand in support of House Bill 1463.

More women work during pregnancy, through later stages of pregnancy, than ever before. Many women can work through their pregnancies without needing any changes in their jobs. However, too often when pregnant workers ask for modest accommodations recommended by their doctors, like a stool to sit on or the right to drink water during a shift, they are instead forced onto unpaid leave or even fired. This is a particular problem for women who work in physically demanding jobs that have been traditionally held by men, and for women in low-wage occupations where work rules can be especially inflexible.ⁱ

When pregnant workers who have medical needs for accommodation are forced off the job, their families suffer what may be a devastating loss of income at the very moment their financial needs are increasing. And women's earnings are crucial to most families' financial security and wellbeing.

And while the section of code being amended in this bill requires employers to make reasonable accommodations for employees with disabilities, ordinary pregnancy is not considered a disability. As a result, the needs of pregnant women in the workplace are not met and some lose their job because they need to avoid heavy lifting or stay off ladders, when the medical need for these accommodations arises out of a normally progressing pregnancy.

What pregnant workers need is the clear, unambiguous rule that HB 1463 would provide. The bill simply would require employers to extend the same reasonable accommodations they are already required to provide workers with disabilities to those pregnant employees who have a medical need for them.

When employers provide reasonable accommodations, pregnant workers can work under safe conditions and provide for their families. And employers retain their trained workforce and avoid the costs of high turnover. This is a win-win proposition for working women and business. The North Dakota Women's Network supports House Bill 1463 and asks the committee give favorable approval to the bills.

ⁱ For stories of women pushed out of work because they were denied the temporary accommodations that they sought during pregnancy, see generally NATIONAL WOMEN'S LAW CENTER AND A BETTER BALANCE, IT SHOULDN'T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS (2013), available at http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf.

Jack Dalrymple
Governor

Troy T. Seibel
Commissioner



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www.nd.gov/labor
www.nd.gov/humanrights

Testimony on HB 1463
Prepared for the
House Industry, Business and Labor Committee

February 2, 2015

Good afternoon Chairman Keiser and members of the Industry, Business and Labor Committee, my name is Troy Seibel, and I am the Commissioner of Labor. I appear before you today neutral on HB 1463 and would like to provide an overview of current law, how HB 1463 would change that law, and how the Department of Labor and Human Rights would interpret and implement HB 1463.

Current Law Regarding Reasonable Accommodations

Currently, the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) requires an employer to provide a reasonable accommodation to an individual with a disability or a sincerely held religious belief. An accommodation is considered reasonable provided it does not: 1) unduly disrupt or interfere with the employer's normal operations; 2) threaten the health or safety of the individual with a disability or others; 3) contradict a business necessity of the employer; or 4) impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.

The Department routinely investigates cases brought by individuals with disabilities or sincerely held religious beliefs that their employers failed to provide a reasonable accommodation. There have been numerous court decisions regarding what constitutes a reasonable accommodation, which provide guidance to the Department. The Department must weigh the particular facts of each case to make that determination.

HB 1463

HB 1463 would add pregnancy to the list of circumstances where an employer must provide a reasonable accommodation. The Department would interpret HB 1463 to require the same type of accommodations that an employer must provide to an individual with a disability or sincerely held religious belief. Therefore, the Department would use the same analysis and factors to complaints from a pregnant employee that it currently uses for complaints from individuals with disabilities or sincerely held religious beliefs.

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It is difficult to estimate how many additional cases HB 1463 would add to the Department's workload. The majority of the pregnancy complaints we receive involve a termination from employment.

Developments in Federal Law

Federal law provides protections to pregnant employees under the Pregnancy Discrimination Act of 1978. Currently, there is an open question under the Pregnancy Discrimination Act whether an employer must provide reasonable accommodations to a pregnant employee solely because she is pregnant. In fact, there is a pending case before the United States Supreme Court, Young v. United Parcel Service, Inc., 12-1226, which seeks to provide guidance on this question. Oral arguments were heard in the case on December 3, 2014. The Court has not yet issued a decision. The Department is monitoring that case for further guidance in this area.

Thank you and I'd be happy to answer any questions you may have.

Industry, Business & Labor Senate Committee**March 18, 2015****HB 1463**

Mr. Chairman and members of the Committee, I am Representative Naomi Muscha from District 24, which includes Barnes County and portions of Ransom and Cass.

As we often hear fellow legislators state, "It's a simple bill with only slight changes." I too make that claim for this bill. As stated in line one - it is to amend a current section of North Dakota's Century Code - with the changes of "a person" to "an individual" on lines 7 - 9 and lines 17 - 18.

The new addition to the Century Code - which is the "meat of the bill", is in subsection 2 starting on line 16. "It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified individual with a physical or mental disability, because that individual is pregnant, or because of that individual's religion."

Now, as I can imagine your thoughts ramping up to - "Don't we already have laws concerning this issue?" I can answer "yes, we do" BUT - only to a certain extent.

There are three federal laws that offer protection for pregnant workers. Those laws are The American with Disabilities Act, The Pregnancy Discrimination Act, and The Family and Medical Leave Act.

Quoting the National Women's Law Center (NWLC), "The American with Disabilities Act (ADA) requires employers to make reasonable accommodations for employees with disabilities if the accommodations

can be made without undue hardship to the employer. Pregnancy itself is not a disability under the ADA - but "pregnancy-related impairments" can be disabilities, if they substantially limit a major life activity such as walking, lifting or digesting." In 2008 the ADA Amendments Act, (ADAAA) which I'll call AD triple A, and again I quote the NWLC, "the ADAAA expanded the ADA's definition of disability to include temporary impairments and less severe impairments. As a result, individuals with pregnancy-related impairments such as hypertension, severe nausea, sciatica, or gestational diabetes should now be protected by the ADA, and entitled to reasonable accommodations under the ADA." Although, as we all know, pregnancy-related impairments are temporary so often they are not viewed in courts as disabilities. Consequently the new ADAAA standards have seldom been applied.

The second federal law, The Pregnancy Discrimination Act of 1978, (quoting NWLC) "prohibits discrimination on the basis of pregnancy and requires employers to treat pregnant women as well as they treat other employees who are similar in the ability or inability to work." Such treatment or accommodations are things such as allowing a pregnant worker to sit instead of stand for lengthy periods of time, take more frequent restroom breaks, eat or drink more frequently than regularly done, receive assistance if the job requires heavier lifting, or even be temporarily reassigned to a different duty.

The third federal law, The Family and Medical Leave Act (FMLA) provides eligible employees with the right to take up to 12 weeks of job-protected, unpaid leave to care for a new child. The FMLA also entitles employees to take unpaid medical leave if "a serious health condition...makes the employee unable to perform the functions of the position of such employee." "Serious health condition" includes an

inability to work arising out of pregnancy or for prenatal care."(NWLC) This law is often used against women when an employer doesn't want to make accommodations for a pregnancy, but rather insists the worker utilize the FMLA time, even though the worker is perfectly capable of working - and desires to work - if just given slightly needed accommodations.

Statistics show that the majority of pregnant workers who need some slight accommodations are low-wage earners or in nontraditional occupations. Very frequently the women are primary breadwinners of the family or even the sole-breadwinner. If they are forced to leave work unpaid, it's not just the woman who suffers, but rather the whole family.

I think common sense tells us that treating employees well results in a good bottom line for businesses. High employee morale contributes to raising other aspects of a business such as recruitment and retention of employees, safety, productivity, and reduced absenteeism. Quality businesses are needed in order to have a quality North Dakota. Also, we can acknowledge that we do have many conscientious employers in North Dakota who are granting and will continue to grant reasonable accommodations to pregnant workers. Passing this bill will only ensure that more employers will follow high North Dakota standards.

Line 18 - delete "*because that individual is pregnant*" and add "for an otherwise qualified individual with a known limitation arising out of pregnancy, childbirth, or a related medical condition;"

After line 24, add new subsection 3: *It is a discriminatory practice for an employer to require an otherwise qualified individual with a limitation arising out of pregnancy, childbirth, or a related medical condition to go out on leave if another reasonable accommodation can be provided to the individual's limitation.*

Renumber accordingly.

Senate Industry, Business and Labor
House Bill 1463
March 18, 2015

Chairman Klein and members of the Senate Industry, Business, and Labor Committee my name is Lindzie McDonald and I am a resident of McKenzie County. Today I stand before you to tell you my personal story about pregnancy discrimination and support House Bill 1463.

I began working as a Dispatcher/Correction officer for McKenzie County Sheriff's Office on March 21, 2012. I answered 911 calls as well as the radio for deputies, fire, ambulance, crash and rescue, and the city police officers. I book prisoners in as well as fed them and take care of their needs.

On May 16th 2012 I called my supervisor, to let her know I had a doctor's appointment scheduled for June 1, 2012 and asked not to be scheduled to work on that day. My supervisor asked for the reason for the doctor's appointment. I told her because I was pregnant. She said if I was scheduled to work on that day, I would have to take a sick day, that I would have to schedule my doctor appointments around my work schedule and that she would not accommodate the schedule for my appointments.

I became ill on May 25, 2012, and was sent home from work. My husband took me to the emergency room on May 26, 2012, and I was advised by the doctor to see my OB/GYN doctor about getting a note to be put on day shifts instead of rotating shifts during the pregnancy. I am a high risk patient based on my prior pregnancy history. On May 29th, 2012, my doctor faxed a letter to my employer requesting consideration for me to be moved to all day shift while pregnant.

On May 30th 2012, I sought confirmation that my supervisor received the doctor's note. She stated that I needed to come in and see her at 10:15AM and if I was unable to come in, to call at that time. When I called, she said, "You have two options, either work the schedule you have or quit". I told her I would talk to my doctor and my husband and get back to her. My husband and I met with my supervisor and the sheriff at 2:45pm that day. The sheriff stated they couldn't let me work all day shifts due to how the dispatchers/ corrections officers had to work a rotating shift. We talked about me going on medical leave, but because I was employed less than a year, we could not put me on medical leave. I pointed out that all I was asking was to be put on the day shift during my pregnancy and indicated that if I did not keep working I would lose my health insurance and that I would also lose my housing, which was provided by the employer. The sheriff said he would look into the housing issue since I was planning on returning to work after the baby was born. I asked if I could work the (4) days I was already scheduled to work in June 2012 since they were day shifts, but I was told no and that I had to either work all of my shifts or none of my shifts. Ultimately, I was terminated from my job.

Since being fired in 2012 I still have trouble getting a job. I have to put that I was fired on application because that was my last job. As soon as they see fired I don't even get a chance to say what happened. Put yourself in my shoes just for a minute please and think how you would feel if you couldn't support your family. I have to live with it every day. I have wondered what my life would be like if they would of let me keep my job.

If there was a law in place I would have been able to keep my job my insurance and my housing. I strongly urge you to please pass this bill so people like me don't have to go through this. They will be able to support there family's. I hope one day somebody will give me the chance to work for them again and show that just because I was fired for pregnancy don't mean I did anything wrong with my job.



Senate Industry, Business, and Labor Committee

HB 1463

March 18, 2015

Chairman Klein and Committee Members, I am Courtney Koebele and I serve as Executive Director for the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

The North Dakota Medical Association is in support of HB 1463. One of our members who is a Board Certified OB/GYN and is currently practicing in North Dakota, Dr. Rhonda Schafer-McLean, weighed in on this issue to provide clarification:

Dear Senate Industry, Business, and Labor Committee:

I am writing to suggest appropriate pregnancy accommodations in conjunction with the changes being considered regarding HB 1463.

Reasonable pregnancy accommodations may include:

- 1. Allowance for using a seat instead of standing throughout the day.*
- 2. Allowance for position changes throughout the day.*
- 3. Allowance for short periods of rest or ambulation throughout the day.*
- 4. Allowance for shorter shifts.*
- 5. Allowance for fewer shifts per week.*
- 6. Allowance for lifting restrictions.*
- 7. Allowance for elimination of specified tasks.*
- 8. Allowance for increased prenatal testing as prescribed without negative feedback or fear of termination.*
- 9. Allowance for props, such as foot stool or maternity belt, as necessary.*

The above list is NOT exhaustive. All reasonable accommodations supported by the patient's physician should be considered.

Respectfully,

RSM

NDMA agrees with Dr. Schafer-McLean's list of accommodations and encourages the Committee to consider these allowances. I would be happy to answer any questions. Thank you for your time.

Senate Industry, Business and Labor
House Bill 1463
March 18, 2015

Good morning Chairman Klein and members of the Senate Industry, Business, and Labor committee. I am Renee Stromme representing the North Dakota Women's Network. We are a statewide advocacy organization working to improve the lives of women. We stand in support of House Bill 1463.

More women work during pregnancy, through later stages of pregnancy, than ever before. Many women can work through their pregnancies without needing any changes in their jobs. However, too often when pregnant workers ask for modest accommodations recommended by their doctors, like a stool to sit on or the right to drink water during a shift, they are instead forced onto unpaid leave or even fired. This is a particular problem for women who work in physically demanding jobs that have been traditionally held by men, and for women in low-wage occupations where work rules can be especially inflexible.ⁱ

When pregnant workers who have medical needs for accommodation are forced off the job, their families suffer what may be a devastating loss of income at the very moment their financial needs are increasing. And women's earnings are crucial to most families' financial security and wellbeing.

And while the section of code being amended in this bill requires employers to make reasonable accommodations for employees with disabilities, ordinary pregnancy is not considered a disability. As a result, the needs of pregnant women in the workplace are not met and some lose their job because they need to avoid heavy lifting or stay off ladders, when the medical need for these accommodations arises out of a normally progressing pregnancy.

What pregnant workers need is the clear, unambiguous rule that HB 1463 would provide. The bill simply would require employers to extend the same reasonable accommodations they are already required to provide workers with disabilities to those pregnant employees who have a medical need for them.

When employers provide reasonable accommodations, pregnant workers can work under safe conditions and provide for their families. And employers retain their trained workforce and avoid the costs of high turnover. This is a win-win proposition for working women and business. The North Dakota Women's Network supports House Bill 1463 and asks the committee give favorable approval to the bills.

ⁱ For stories of women pushed out of work because they were denied the temporary accommodations that they sought during pregnancy, see generally NATIONAL WOMEN'S LAW CENTER AND A BETTER BALANCE, IT SHOULDN'T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS (2013), available at http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf.

Pregnant women in the region face discrimination in the work place

By Archie Ingersoll and Tracy Frank on Mar 1, 2015 at 1:00 a.m.

Email News Alerts

BISMARCK - When Steph Meier took a job managing a maternity clothing store, she never expected her boss would harass her because she was pregnant.



Or as Meier put it, “The most ironic thing that could ever happen.”

Meier, 29, said she staffed the Motherhood Maternity shop in Bismarck by herself for months and that her boss repeatedly told her to find a different job because she couldn’t handle working so much during her pregnancy.

Fed up, Meier quit in March 2013, and she filed a discrimination complaint against her former employer.

“It just shocks me that things like this still happen today,” she said.

Meier, who reached a settlement with Motherhood Maternity, is one of over 100 pregnant workers in North Dakota who have filed similar claims with state and federal officials since 2000, an analysis found.

In recent years, the numbers of pregnancy discrimination complaints have dropped locally and nationally. Based on these statistics, it’s hard to say whether such discrimination is actually declining or whether fewer victims are filing claims, women’s rights advocates say.

But what’s certain is that pregnant women in North Dakota, Minnesota and elsewhere continue to face discrimination, especially those who are low-wage workers, like nursing assistants and retail clerks, and those in traditionally male fields, like police officers and package delivery drivers, advocates say.

Women in these occupations, which can require lifting or standing for long stretches, sometimes find themselves at odds with their employers when seeking lighter duties because of pregnancy. Lately, there’s been a wave of state legislation aimed at easing the burdens of pregnant women in the workplace.

Even in jobs that aren't physically demanding, there can be discrimination based on notions that pregnant women are not competent or committed to their work.

"A lot of pregnancy discrimination is based on insidious sorts of stereotypes, which may not always be completely conscious," said Emily Martin, general counsel at the National Women's Law Center, a nonprofit organization in Washington, D.C.

'I wanted to work'

For Lindzie McDonald, working as an emergency dispatcher was a dream job.

"When you get those 911 calls, it's an adrenaline rush," she said. "You're the lifesaver on the end of that line."

But that dream ended too quickly, said McDonald, who was fired less than three months after she started at the McKenzie County Sheriff's Department because pregnancy complications kept her from working her scheduled shifts.

"I got really, really sick," she said. "I tried working while sick because they didn't have a lot of dispatchers."

McDonald, who lives in Watford City, ended up in the emergency room where she found out that on top of being sick, she was also pregnant.

She said her doctor told her part of the reason she felt so ill was because she wasn't getting enough sleep. Dispatchers worked 12-hour shifts, sometimes during the day and sometimes at night. When she worked night shifts, she said, it was difficult to sleep during the day.

"My average sleep was only about four to five hours when I was working these shifts because my body wouldn't go to sleep," she said.

McDonald's doctor gave her a note asking her employer to consider putting her on day shifts while she was pregnant, she said. The answer from the sheriff's department was "no."

Letting McDonald work only day shifts during her pregnancy would have gone against the department's policy and would have been unfair to the other dispatchers covering her shifts, according to documents filed with the North Dakota Department of Labor and Human Rights.

McDonald lost her job in June 2012 because she couldn't comply with the department's policy, according to the documents.

"I wanted to work," she said. "But there was only so much I could do."

In February 2013, McDonald filed a charge of pregnancy discrimination against the sheriff's department. The Department of Labor and Human Rights, which investigated her case, found

that she had not been discriminated against and that she was not entitled to accommodations different than any other employee with a temporary medical condition.

The McKenzie County Sheriff's Department did not return phone calls or emails seeking comment, and Scott Porsborg, the department's attorney, declined to discuss the case.

These days, McDonald and her husband manage a campground and own a trucking business, but she's had trouble getting another job since being fired as a dispatcher.

"It's very frustrating," she said. "It still upsets me."

Making accommodations

This month, the North Dakota House unanimously approved a bill that would require employers to give pregnant workers reasonable accommodations, including at times of morning sickness, said Renee Stromme, executive director of the North Dakota Women's Network.

Stromme said she's optimistic the bill will become law. "It isn't terribly burdensome to an employer," she said. "It's just a small adjustment."

At least 12 states, including Minnesota, have already enacted so-called accommodation laws, which place limits on lifting and allow for more frequent food, water and restroom breaks. These state laws are meant to close gaps in the federal Pregnancy Discrimination Act of 1978, which doesn't specifically require employers to accommodate pregnant workers.

However, federal law does mandate that employers treat pregnant workers the same as other employees "who are similar in their ability or inability to work," according to the U.S. Equal Employment Opportunity Commission.

Some interpretations of federal law have cleared the way for companies to put employees injured at work on light duty while not giving pregnant workers the same accommodation, said Ariela Migdal, a women's rights attorney at the American Civil Liberties Union.

"There's all different ways that companies have managed to offer their light-duty programs kind of to everyone except pregnant workers, and some courts have said that's OK," she said.

The U.S. Supreme Court is considering this question in the case of Peggy Young, a delivery driver for the United Parcel Service in Maryland, whose doctor advised her not to lift more than 20 pounds at work during her pregnancy. This led UPS to force Young to take an extended, unpaid leave of absence.

Since then, UPS has changed its policy to accommodate pregnant workers. Women's rights advocates say such a change can benefit a company's bottom line by curbing turnover and boosting productivity.

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State accommodation laws put limits on how far a company needs to go to accommodate a pregnant employee. For instance, employers don't have to make an accommodation that would cause undue hardship to their business.

"Sitting down or extra breaks or things like that – that is reasonable," said Stephanie Winterquist, spokeswoman for the Fargo-Moorhead Human Resource Association. "Putting in an elevator so that they don't have to go, you know, two flights of stairs – that's not reasonable."

'Family friendly'

Stephanie Henley was living in Oklahoma when she saw the ad on Craigslist: KNS, a trucking firm in North Dakota's Oil Patch, needed an office clerk.

Wanting to be closer to her 19-year-old son in Valley City, Henley applied for the job. And when she got it, she moved her husband and two other children to KNS company housing in Parshall.

"They said that they were a very family friendly organization," she said.

Henley, 41, had been working there less than a year when, in May 2014, she became pregnant with her fourth child. On learning the news, her boss and the company's owner did not offer their congratulations. Instead, their reaction was cold and self-interested, she said.

"Are you still going to be able to clean?" Henley recalled being asked. Cleaning the owner's home was a duty she'd taken on to show that she was an obliging employee.

Tensions between Henley and her superiors peaked in September. That's when her husband came to the office because their daughter, who was about 15 months old, had hurt her hand, and he needed help bandaging it.

Henley said that for some reason this visit upset her boss, who had her baby in the office at the same time. Henley's boss told her that she needed to ask permission before her husband and daughter stop by, Henley said.

Less than a week later, Henley was fired.

In the fall, she filed a complaint with the North Dakota Department of Labor and Human Rights accusing KNS of discriminating against her because she was pregnant.

"The red tape to go through everything is very intimidating, but you know, they had no reason to fire me," Henley said.

State officials have not finished reviewing her claim. In an email, KNS denied there was any discrimination.

Henley said she's reached out to employment lawyers for help with her case, but they've all told her they represent employers, not employees. McDonald said she also couldn't find an attorney to handle her case.

One of the few North Dakota attorneys who take employees' discrimination cases is Mark Larson of Minot. He said one reason for the limited number of lawyers like him is financial.

Larson said he and other plaintiffs' attorneys typically are only paid if they win a settlement for a client. This can sometimes be a losing proposition for attorneys, given the time they spend on cases.

But the practice continues because clients frequently can't afford to pay legal costs upfront, Larson said.

"You've got a worker that has no job, and I'm supposed to ask them to pay me an hourly fee?"

Retaliation worries

Claims of workplace discrimination can be filed with the EEOC or with the state human rights agencies in Minnesota and North Dakota. Investigating these claims, officials often determine that no law has been violated.

"I think there's a misnomer out there that a pregnant employee is entitled to some form of reasonable accommodation, and that isn't exactly what the law provides," said Kathy Kulesa, North Dakota's human rights director.

From 2010 to 2013, there was a finding of "no probable cause," or insufficient evidence that the law was broken, in 68 percent of pregnancy discrimination cases filed with the North Dakota Department of Labor and Human Rights, records show.

For the same years, 66 percent of cases filed with the Minnesota Department of Human Rights were deemed to have no probable cause, and the figure was 61 percent for EEOC cases nationwide.

In cases with findings of no probable cause, workers can still sue their employers in state or federal court, Kulesa said.

For pregnant women who've experienced discrimination but haven't lost their jobs, it's common for them to not even file a complaint due to fear of retaliation, Martin said.

"It's much easier to bring a charge of discrimination against someone you no longer work for," she said.

The bulk of pregnancy discrimination cases involve a pregnant job applicant who wasn't hired or a pregnant worker who was fired, said Lisa Edison-Smith, a Fargo attorney who specializes in employment law.

Edison-Smith said she occasionally represents employees, but that 80 to 90 percent of her work has been for companies.

“Of the employers that I deal with, certainly I think ... the vast majority of them want to comply with the law,” she said.

Employers also want to avoid paying hefty settlements which, in Edison-Smith’s experience, can reach five figures or more.

Meier said a nondisclosure agreement prevents her from discussing the settlement she reached with Motherhood Maternity. A company spokeswoman declined to discuss the case, including how much money, if any, Meier received.

If Motherhood Maternity did pay Meier a cash settlement, it wouldn’t have been the first time the Philadelphia-based retail giant did so in a pregnancy discrimination case.

In 2007, Motherhood Maternity was ordered to pay \$375,000 after the EEOC accused the company of refusing to hire pregnant applicants and firing an assistant manager who spoke up about it.

“It is shocking that a corporation whose market is pregnant women would refuse to employ them and then retaliate against a woman who complained about the practice,” an EEOC official said at the time. “We are pleased that this settlement will steer this important company to better treatment of pregnant employees.”



EMPLOYMENT

FACT SHEET

H.B. 1463: Making Room for Pregnancy on the Job

February 2015

Pregnant and Pushed Out of Work

Although many women can continue working throughout their pregnancies without any changes at work, some women find that at some point during pregnancy some job activities—such as lifting, bending, or standing for long periods—begin to pose a challenge. Many of these women could continue to work without risk to themselves or their pregnancies with slight job modifications. But in the absence of such a modification, they may face a choice between their jobs and the health of their pregnancies—and that's a choice no one should have to make.

Today, more women are continuing to work while they are pregnant, and through later stages of pregnancy. For example, two-thirds of women who had their first child between 2006 and 2008 worked during pregnancy, and 88 percent of these first-time mothers worked into their last trimester.¹ Approximately 3 out of 4 women who give birth in North Dakota in any given year are working women.²

Women's wages are absolutely critical to the wellbeing of their families: in 2010, nearly two thirds of mothers were primary or co-breadwinners for their families.³ Because a new baby means increased expenses, a woman's wages will often be particularly important to her family when preparing for the birth of a child. But too many employers refuse to provide even simple, temporary accommodations when a pregnant worker has a medical need for them, like a stool that would allow a cashier to sit instead of stand during a long shift, reassignment of job

duties to allow a pregnant worker to avoid heavy lifting, or an exception from a rule against drinking water while working. Indeed, too often employers respond to a request for an accommodation by flatly refusing, firing a pregnant worker, or pushing her out onto unpaid leave. As a result, pregnant women's health is put at risk, or they are forced out of their jobs at the moment they and their families can least afford it.

H.B. 1463

H.B. 1463 would ensure that pregnant women can continue to do their jobs and support their families by making it unmistakably clear that employers must grant the same sorts of accommodations for medical needs arising out of pregnancy, childbirth, and disabilities related to pregnancy and childbirth that they already must make for other disabilities under North Dakota law. The bill would:

- Require employers to make reasonable accommodations for employees who have limitations in their ability to work stemming from pregnancy, childbirth, or disabilities related to pregnancy or childbirth. These accommodations might include:
 - o Providing a stool to a pregnant employee experiencing swelling of the legs as a result of standing for an entire shift;
 - o Modifying a no-food-or-drink policy so that an employee can drink water to prevent painful and potentially dangerous uterine contractions;



- o Shifting an employee's work schedule if she regularly experiences severe nausea early in the morning;
 - o Modifying a policy that limits an employee's ability to take restroom breaks if the employee has an increased need for restroom breaks as a result of pregnancy and faces an increased risk of urinary tract infections in the absence of these breaks.
 - o Reassigning occasional heavy lifting duties for a pregnant employee who has been advised not to lift more than 20 pounds by her health care provider; or
 - o Allowing a pregnant worker to fill an alternative, available position for which she is qualified if her current position imposes particular medical risks to her pregnancy.
- Ensure that an employer would not be required to provide an accommodation that would disrupt or interfere with the employer's normal operations; threaten anyone's health or safety; contradict a business necessity of the employer; or impose an undue hardship on the employer, taking into account the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.

Good for Workers, Good for Business

Only 1.9 percent of workers in North Dakota give birth each year, and only a fraction of those workers would require accommodations. Employer experience with disability accommodations and workplace flexibility policies show that the costs of providing temporary accommodations for pregnant workers are likely to be small—and that providing accommodations can be expected to reduce workforce turnover, increase employee satisfaction and productivity, and save workers' compensation and other insurance costs.⁵

A Commonsense Solution

H.B. 1463 provides a commonsense solution for pregnant workers in North Dakota who are being asked to choose between their health and their livelihood. States and cities around the country have acted in a bipartisan fashion to pass similar protections. It is now up to North Dakota to ensure that pregnant workers can continue to do their jobs and contribute to the state's economic success.

¹ U.S. Census Bureau, *Maternity Leave and Employment Patterns of First-Time Mothers 1961-2008*, 4, 6 (Oct. 2011).

² See National Partnership for Women and Families, *Pregnant Workers Need the Pregnant Workers Fairness Act* (May 2013), <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/pregnant-workers-need-pregnant-workers-fairness-act.pdf>.

³ Center for American Progress, *The New Breadwinners: 2010 Update* (April 2012), http://www.americanprogress.org/issues/2012/04/epd_breadwinners.html.

⁴ See National Women's Law Center, *Pregnant Workers Make Up a Small Share of the Workforce and Can Be Readily Accommodated: A State-by-State Analysis* (2013), http://www.nwlc.org/sites/default/files/pdfs/state_by_state_analysis.pdf.

⁵ See National Women's Law Center, *The Business Case for Accommodating Pregnant Workers* (2012), http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers_business_case_12.04.12.pdf.

Burckhard, Randall A.

From: Roseland, Karin <KRoseland@marchofdimes.org>
Sent: Tuesday, March 17, 2015 1:48 PM
To: Klein, Jerry J.; Campbell, Tom S.; Burckhard, Randall A.; Miller, Joe T.; Murphy, Philip M.; Poolman, Nicole
Cc: Mathern-Jacobson, Rebecca; Oversen, Kylie
Subject: HB 1463
Attachments: HB 1463.docx

March 17, 2015

Dear Senator/Representative:

On behalf of the March of Dimes North Dakota Chapter, I write to express our support for House Bill No. 1463 which would prohibit employment discrimination and ensure reasonable workplace accommodations for workers who are limited in their ability to perform their jobs due to pregnancy, childbirth, or related medical conditions.

The mission of the March of Dimes is to improve the health of women of childbearing age, infants, and children by preventing birth defects, premature birth, and infant mortality. To protect the health of their pregnancy, women need to be able to take appropriate precautions in the workplace. For instance, they should wear gloves or a mask if using chemicals, they should stay away from coworkers who are sick to prevent contracting an illness, they should not lift heavy objects, they should walk around if they generally sit during the day, and they should rest periodically if they stand for long periods of time. In addition, employers should create a supportive environment for mothers to successfully combine work with breastfeeding.

While the federal Pregnancy Discrimination Act makes it unlawful to discriminate on the basis of pregnancy, childbirth, or related health conditions, HB 1463 would ensure reasonable accommodations are provided to employees to enable them to continue working despite limitations due to pregnancy, childbirth, or related medical conditions. These accommodations would not present an undue hardship on the covered entity and might include providing an employee with a chair, providing assistance with heavy lifting, offering uncompensated break time, or providing temporary job restructuring. The bill will make it unlawful to refuse an employee or prospective employee's request for reasonable accommodations, it would prohibit denying employment opportunities based on the need for a reasonable accommodation, and it would prohibit an employee from being required to take leave if reasonable accommodations can be provided.

As an organization focused on helping women have healthy pregnancies, we ask for your support of HB 1463. This bill will help ensure women stay healthy while pregnant and after childbirth and will allow them to maintain their employment.

Karin Roseland
 State Director

March of Dimes
 North Dakota Chapter
 1712 Main Ave Suite 101
 Fargo, ND 58103
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 Fax (701) 235-8725

March of Dimes is the champion for babies.



Good Morning Committee Chairman Klein and members of the Senate Industry, Business and Labor committee.

For the record my name is Tom Ricker, I am the President of the North Dakota AFL-CIO, representing working men and women in North Dakota.

The North Dakota AFL-CIO is in support of HB 1463.

While some employers already provide accommodations in the workplace during pregnancy, many of North Dakota's working women do not have this basic guarantee.

According to research from the Society for Human Resource Management the cost to replace a salaried employee making \$50,000 per year costs an employer between \$25,000 and \$37,500. That is the equivalent of six to nine months of salary on top of their normal wages.

A small investment such as a reasonable accommodation in the workplace during a pregnancy would result in higher moral, lower absenteeism rates, a safer work environment for the mother to be and potentially a lower employee turnover rate for the employer, which in the long run would be a cost savings to the employer.

According to the 2013 United States Census Bureau, women account for 48.9% of all North Dakotans and 46.1% of North Dakota workers are women. This legislation could potentially positively impact nearly ½ of all North Dakota workers.

Thank you for allowing me the opportunity to speak in support of HB 1463, I would encourage you all to vote yes to recommend a do pass on HB 1463 and send a strong, unified message to your colleagues in the Senate that you support all working women, and families in North Dakota.

I will stand for any questions.