

Legislation Text

File #: 220664, Version: 0

Amending Chapter 9-1100 of The Philadelphia Code, entitled “Fair Practices Ordinance: Protections Against Unlawful Discrimination,” to protect against discrimination related to reproductive health, modify and harmonize related provisions of the Chapter, and make other related or technical changes, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-1100 of The Philadelphia Code shall be amended to read as follows:

CHAPTER 9-1100. FAIR PRACTICES ORDINANCE: PROTECTIONS AGAINST UNLAWFUL DISCRIMINATION

* * *

§ 9-1101. Legislative Findings.

(1) The Council finds that:

(a) The population of the City consists of people of every race, ethnicity, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, age, disability, marital status, and familial status. Many of these people are discriminated against in employment opportunities, public accommodations and obtaining adequate housing facilities. There are also members of the City population who are discriminated against based on their sources of income, as a result of their genetic information, *reproductive health autonomy*, because they are victims of domestic or sexual violence, or need reasonable accommodations in the workplace related to pregnancy, childbirth, or a related medical condition.

* * *

(e) In order to assure that all persons regardless of race, ethnicity, color, sex (including pregnancy, childbirth, or a related medical condition), *reproductive health autonomy*, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information and domestic or sexual violence victim status enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing and use of public accommodation facilities, it is necessary that appropriate legislation be enacted.

* * *

§ 9-1102. Definitions.

(1) For purposes of this Chapter the following terms shall have the following meanings:

* * *

(e) Discrimination. Any direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex (including pregnancy, childbirth, or a related medical condition), *reproductive health autonomy*, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, or other act or practice made unlawful under this Chapter or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. Discrimination on the basis of race shall include discrimination based on characteristics commonly associated with race, including hairstyles.

* * *

(x.1) *Reproductive Health Autonomy. The state of having used, using or intending to use a particular medicine or device, medical service or procedure, practice or similar interventions related to the human reproductive system, including, but not limited to, the use or intended use of fertility-related medical procedures or medicines; sexually transmitted disease prevention, testing, or treatment; or family planning services and counseling, such as those related to birth control medication or supplies, other contraception methods, sterilization procedures, pregnancy testing, or the intended or actual initiation or termination of a pregnancy.*

* * *

§ 9-1103. Unlawful Employment Practices.

(1) It shall be an unlawful employment practice to deny or interfere with the employment opportunities of an individual based upon [his or her] *such individual's* race, ethnicity, color, sex (including pregnancy, childbirth, or a related medical condition), *reproductive health autonomy*, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, familial status, genetic information, or domestic or sexual violence victim status, including, but not limited to, the following

* * *

(l) For any employer to fail to provide reasonable accommodations to the needs of an employee for [her] *the employee's* pregnancy, childbirth, *reproductive health autonomy*, or a related medical condition, as required by Section 9-1128.

* * *

§ 9-1104. Exemptions from Unlawful Employment Practices.

(1) Nothing in [Section 9-1103] *in this Chapter 9-1100 related to unlawful employment practices* shall apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by any such corporation, association, educational institution, or society of its religious activities.

* * *

(3) Nothing in this [Section] *in this Chapter 9-1100 related to unlawful employment practices* shall apply with respect to employee benefits offered by an employer whose employee benefits plan is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), or to a church plan as defined in ERISA.

§ 9-1128. Unlawful Employment Practices Based Upon *Reproductive Health Autonomy*, Pregnancy, Childbirth and Related Medical Conditions.

(1) It shall be an unlawful [discriminatory] employment practice for an employer to fail to provide reasonable accommodations to an employee for needs related to *reproductive health autonomy*, pregnancy, childbirth, or a related medical condition, provided (i) the employee requests such accommodations and (ii) such accommodations will not cause an undue hardship to the employer.

(a) For purposes of this Section 9-1128, “reasonable accommodation” shall mean an accommodation that can be made by an employer in the workplace that will allow the employee to perform the essential functions of the job. Reasonable accommodations include, but are not limited to, restroom breaks, periodic rest for those who stand for long periods of time, assistance with manual labor, leave for a period of disability arising from childbirth, reassignment to a vacant position, and job restructuring.

(2) Undue Hardship. The employer shall have the burden of proving undue hardship. For purposes of this Section 9-1128 <https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-278779>, factors to be considered in making a determination of undue hardship shall include, but not be limited to the following:

(a) The nature and cost of the accommodations;

(b) The overall financial resources of the employer's facility or facilities involved in the provision of the reasonable accommodations, including the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodations upon the operation of the employer;

(c) The overall financial resources of the employer, including the size of the employer with respect to the number of its employees and the number, type and location of its facilities; and

(d) The type of operation or operations of the employer, including the composition, structure and functions of the workforce, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(3) Affirmative Defense. In any case where the need for reasonable accommodations under this Section is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodations, satisfy the requisites of the job.

(4) Notice of Rights. The employer shall provide written notice, in a form and manner to be determined by the Commission, of the right to be free from discrimination in relation to *reproductive health status autonomy*, pregnancy, childbirth, and related medical conditions and the right to reasonable accommodations related to *reproductive health autonomy*, pregnancy, childbirth, and related medical conditions under this Section, to all new and existing [employees within 90 days of the effective date of this Section.] *employees*. Such notice may also be posted conspicuously at an employer's place of business in an area accessible to employees.

(5) Education. The Commission is authorized to develop courses of instruction and conduct ongoing public

education, as necessary, to inform employers, employees, employment agencies and job applicants about their rights and responsibilities under this Section.

(6) Relationship to Other Laws. [This Section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other provision of law.] *Nothing in the ordinance adding this sentence to the Code, nor any provision of this Section, shall be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way diminish the coverage of reproductive health autonomy, pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other provision of law, including the scope of sex discrimination otherwise prohibited by this Chapter 9-1100.*

* * *

§ 9-1134. Interpretation. This Chapter shall be interpreted consistently with the United States and Pennsylvania Constitutions, and the Pennsylvania Religious Freedom Protection Act. Nothing set forth in this Chapter shall infringe on the constitutional rights of those regulated or violate Pennsylvania law.