
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1196 Session of
2015

INTRODUCED BY McILHINNEY, SCHWANK, RAFFERTY, FONTANA, BREWSTER,
MENSCH, DINNIMAN, KITCHEN, TARTAGLIONE, WILLIAMS, HUGHES,
TOMLINSON, GREENLEAF, TEPLITZ AND LEACH, APRIL 20, 2016

REFERRED TO LABOR AND INDUSTRY, APRIL 20, 2016

AN ACT

1 Providing for workplace accommodations for nursing mothers.

2 The General Assembly of the Commonwealth of Pennsylvania

3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Workplace
6 Accommodations for Nursing Mothers Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Department." The Department of Labor and Industry of the
12 Commonwealth.

13 "Employer." An individual, association, partnership,
14 corporation, organization, governmental body, including the
15 Commonwealth and its political subdivisions and their
16 instrumentalities, employing one or more individuals in this
17 Commonwealth.

1 "Undue hardship." Any action that would result in
2 significant difficulty or expense when considered in relation to
3 factors such as the size of the employer, the financial
4 resources of the employer or the nature and structure of its
5 operation.

6 Section 3. Right of nursing mothers to express breast milk and
7 breastfeed in workplace.

8 (a) Breaktime.--An employer shall provide reasonable unpaid
9 breaktime or permit an employee to use paid breaktime or
10 mealtime, or both, to allow the employee to breastfeed or
11 express breast milk for her nursing child.

12 (b) Room.--An employer shall provide a room or other place,
13 other than a bathroom, that is shielded from view, free from
14 intrusion from coworkers and the public and in proximity to the
15 work area, which may be used by an employee to breastfeed or
16 express breast milk for the employee's nursing child.

17 (c) No retaliation.--An employer may not:

18 (1) Refuse to hire, employ, bar, discharge from
19 employment, withhold pay from, demote or penalize an
20 employee because the employee breastfeeds or expresses
21 breast milk, or desires to breastfeed or express breast
22 milk, on the employer's premises in compliance with this
23 act.

24 (2) Retaliate against an employee who makes a
25 charge, files a complaint or institutes or causes to be
26 instituted an investigation, proceeding, hearing or other
27 action under or related to this act.

28 (3) Retaliate against an employee who testifies, has
29 agreed to testify or assists or participates in any
30 manner in an investigation, proceeding, hearing or other

1 action under or related to this act.

2 (d) Construction.--Nothing in this section shall be deemed
3 to require an employer to permit an employee to bring a child
4 onto the employer's premises for purposes of breastfeeding if
5 the employer maintains a written policy against bringing
6 children onto the employer's premises that is evenly and
7 indiscriminately applied.

8 (e) Applicability.--The following shall apply:

9 (1) An employer with fewer than 50 employees shall not
10 be subject to the requirements of subsections (a) and (b) if
11 the requirements would impose an undue hardship on the
12 employer as determined by the department.

13 (2) An employer that meets the criteria contained in
14 paragraph (1) may apply in writing to the department for a
15 waiver from the requirements of subsections (a) and (b). The
16 department shall develop and post on its publicly accessible
17 Internet website an application form to be used by employers
18 under this paragraph. An employer shall submit with the
19 application any other information or materials as may be
20 necessary for the department to determine whether the
21 employer meets the criteria contained in paragraph (1).

22 (3) The department shall be deemed to have granted a
23 waiver to an employer who submits an application under
24 paragraph (2), if the department fails to respond to the
25 application within 60 days following receipt of the
26 application and any other information or materials required
27 under paragraph (2). The employer shall not be subject to the
28 requirements of subsections (a) and (b) during the time its
29 application is pending with the department.

30 (4) Except as provided in paragraph (3), an employer who

1 fails to receive a waiver from the department as provided in
2 this subsection shall be deemed to be subject to all
3 requirements of this act.

4 Section 4. Violations.

5 (a) Complaints.--The following shall apply:

6 (1) An employee aggrieved by an alleged violation of
7 section 3(a) or (b) may file a complaint with the department
8 within 90 days after the alleged violation. A complaint may
9 be filed orally or in writing.

10 (2) The department shall develop and post on its
11 publicly accessible Internet website a form to be used to
12 file a written complaint under this subsection.

13 (3) If the department makes an initial determination
14 that a complaint filed under this subsection is valid, the
15 department shall, within 30 days following receipt of the
16 complaint, provide the employer with a copy of the complaint
17 filed in writing or with written notice of a complaint filed
18 orally.

19 (4) An employer shall have 30 days from receipt of a
20 written complaint or notice of an oral complaint under
21 paragraph (3) to respond in writing to the department
22 regarding the complaint.

23 (5) Within 60 days following receipt of the employer's
24 response under paragraph (4), or within 90 days following
25 receipt of the complaint under paragraph (1), if the employer
26 does not file a response under paragraph (4), the department
27 shall notify the complainant and the employer in writing of
28 the department's determination as to whether a violation of
29 section 3(a) or (b) has occurred and whether the department
30 intends to assess a civil penalty against the employer under

1 paragraph (6).

2 (6) Upon a determination by the department that a
3 violation of section 3(a) or (b) has occurred, the department
4 shall enjoin the employer from continuing the violation and
5 may order the employer to pay compensatory damages to the
6 complainant. The department may also assess a civil penalty
7 not to exceed \$300 for a first violation and \$1,000 for each
8 subsequent violation.

9 (7) The department's determination under this subsection
10 shall be considered an adjudication under 2 Pa.C.S. Ch. 7
11 (relating to judicial review).

12 (8) An employee may file an action in a court of common
13 pleas of competent jurisdiction seeking preliminary
14 injunctive relief if immediate relief from an alleged
15 violation of section 3(a) or (b) is required. The employee
16 shall not be required to exhaust the administrative remedy
17 provided under this section prior to filing the action.

18 (b) Judicial action.--An individual aggrieved by an alleged
19 violation of section 3(c) may file a private cause of action
20 seeking any reasonable remedy, including employment,
21 reinstatement, lost wages and other damages.

22 (c) Additional remedies preserved.--Nothing in this act
23 shall be construed to impair existing rights or remedies
24 available to an employee for a violation by an employer of any
25 provision of section 3.

26 Section 5. Notification.

27 (a) Notification to employees.--Every employer subject to
28 this act shall post and keep posted a notice in accordance with
29 the following:

30 (1) The notice shall be prepared or approved by the

1 department.

2 (2) The notice shall be posted in conspicuous places on
3 the premises of the employer where notices to employees are
4 customarily posted.

5 (3) The notice shall summarize the requirements of this
6 act and include information pertaining to the procedures and
7 remedies to enforce this act.

8 (b) Information for the public.--The department and the
9 Department of Health shall publish information and links to
10 other websites where the public can access information
11 concerning breastfeeding and expressing breast milk, including
12 information relating to breastfeeding and expressing breast milk
13 in the workplace, on the departments' publicly accessible
14 Internet websites.

15 (c) Information for employers.--On its publicly accessible
16 Internet website, the department shall provide information and
17 links to other Internet websites where employers can access
18 information regarding methods to accommodate nursing mothers in
19 the workplace. The department shall consult with appropriate
20 organizations or associations to determine the appropriate
21 information and Internet website links to provide employers with
22 the most accurate and useful information available.

23 Section 6. Effective date.

24 This act shall take effect in 60 days.