
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2061 Session of
2018

INTRODUCED BY DALEY, MICCARELLI, DEAN, SCHLOSSBERG, STEPHENS,
CALTAGIRONE, DAVIS, WARREN, SANTORA, DRISCOLL, PASHINSKI,
ENGLISH, KINSEY, READSHAW, MURT, WATSON, BARRAR, FRANKEL,
J. McNEILL, SCHWEYER AND GILLEN, FEBRUARY 28, 2018

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 28, 2018

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 or governmental body, including the
15 Commonwealth and its political subdivisions and their
16 instrumentalities, employing one or more individuals in this

1 Commonwealth.

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

7 Section 3. Right of nursing mothers to express breast milk in
8 workplace.

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

13 (b) Room.--An employer shall provide a room or other place,
14 other than a bathroom, which may be used by an employee to
15 express breast milk for her nursing child that is:

16 (1) shielded from view;

17 (2) free from intrusion from coworkers and the public;

18 and

19 (3) in proximity to the work area.

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

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

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

30 (3) Retaliate against an employee who testifies, has

1 agreed to testify or assists or participates in any
2 manner in an investigation, proceeding, hearing or other
3 action under or related to this act.

4 (d) Applicability.--An employer with fewer than 50 employees
5 shall not be subject to the requirements of subsections (a) and
6 (b) if the requirements would impose an undue hardship on the
7 employer.

8 Section 4. Violations.

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

10 (1) An employee aggrieved by an alleged violation of
11 section 3 may file a complaint with the department within 90
12 days after the alleged violation. A complaint may be filed
13 orally or in writing.

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

17 (3) The department shall, within 15 days of receipt of a
18 complaint, provide the employer with a copy of a written
19 complaint or with written notice of the receipt of an oral
20 complaint and initiate an investigation. The department may
21 obtain the information it deems necessary to investigate the
22 complaint by any reasonable means, including:

23 (i) entering the employer's place of business at any
24 reasonable time to inspect the premises;

25 (ii) interviewing the complainant and other
26 employees;

27 (iii) interviewing representatives of the employer;
28 and

29 (iv) inspecting or copying documents or other
30 information, in whatever medium it exists, which relates

1 to the matters subject to this act.

2 (4) An employer shall have 15 days from receipt of a
3 written complaint or notice of an oral complaint under
4 paragraph (3) to respond in writing to the department
5 regarding the complaint.

6 (5) Within 15 days following receipt of the employer's
7 response under paragraph (4) or within 45 days following
8 receipt of the complaint under paragraph (1) if the employer
9 does not file a response under paragraph (4), the department
10 shall notify the complainant and the employer in writing of
11 an initial determination as to whether a violation has
12 occurred, whether remediation is required, including
13 reinstatement and the payment of back wages, if applicable,
14 and the amount of the civil penalty, if any, the department
15 intends to assess against the employer under paragraph (7).
16 Within 10 days following receipt of the initial
17 determination, the employer shall either comply with the
18 remediation included in the notice and pay the civil penalty
19 to the department or contest the department's initial
20 determination by written notice to the department.

21 (6) If the employer contests the department's initial
22 determination, the department shall issue an order to show
23 cause to the employer within 15 days following the receipt of
24 the employer's written notice of contest and request an
25 administrative hearing, which hearing shall be scheduled
26 before the Secretary of Labor and Industry or the Secretary
27 of Labor and Industry's designee within 30 days of issuance
28 of the order to show cause. The hearing shall be conducted in
29 accordance with the provisions of 2 Pa.C.S. Ch. 5 Subch. A
30 (relating to practice and procedure of Commonwealth agencies)

1 and 1 Pa. Code Pt. II (relating to general rules of
2 administrative practice and procedure).

3 (7) Upon a determination by the department after the
4 conclusion of the hearing under paragraph (6) that a
5 violation of section 3 has occurred, the department shall
6 enjoin the employer from continuing the violation, may order
7 the employer to pay compensatory damages to the complainant
8 and may order reinstatement of and back pay to an employee
9 for retaliation in violation of section 3(c). The department
10 may assess a civil penalty not to exceed \$300 for a first
11 violation and \$1,000 for each subsequent violation. The
12 department's determination under this subsection shall be
13 considered an adjudication under 2 Pa.C.S. Ch. 7 (relating to
14 judicial review).

15 (8) An employee may file an action in a court of common
16 pleas of competent jurisdiction seeking preliminary
17 injunctive relief if immediate relief from an alleged
18 violation of section 3(a) or (b) is required.

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

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

27 (d) No exhaustion of remedies.--No individual may be
28 required to exhaust the administrative remedies provided in this
29 section prior to proceeding under subsection (a)(8), (b) or (c).

30 (e) Attorney fees.--The following shall apply:

1 (1) If the department determines under subsection (a) (7)
2 that a violation of section 3 has occurred, the department
3 may award attorney fees and costs to the complainant. If the
4 department determines that no violation of section 3 has
5 occurred, the department may award attorney fees and costs to
6 the employer if the employer proves that the complaint was
7 filed in bad faith.

8 (2) The court may award attorney fees and costs to the
9 prevailing party in an action filed under subsection (b).

10 Section 5. Notification.

11 (a) Notification to employees.--An employer subject to this
12 act shall post and keep posted a notice in accordance with the
13 following:

14 (1) The notice shall be prepared or approved by the
15 department.

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

19 (3) The notice shall summarize the requirements of this
20 act and include information pertaining to the procedures and
21 remedies to enforce this act.

22 (b) Information.--The following apply:

23 (1) On their publicly accessible Internet websites, the
24 department and the Department of Health shall publish
25 information and links to other Internet websites where the
26 public can access information concerning expressing breast
27 milk, including information relating to expressing breast
28 milk in the workplace.

29 (2) On its publicly accessible Internet website, the
30 department shall provide information and links to other

1 Internet websites where employers can access information
2 regarding methods to accommodate nursing mothers in the
3 workplace.

4 (3) The department shall consult with appropriate
5 organizations or associations to determine the appropriate
6 information and Internet website links to provide employees
7 and employers with the most accurate and useful information
8 available.

9 Section 6. Effective date.

10 This act shall take effect in 60 days.