
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1177 Session of
2019

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COMITTA AND SANCHEZ, APRIL 10, 2019

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 10, 2019

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

1 instrumentalities, employing one or more individuals in this
2 Commonwealth.

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

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

10 (a) Break time.--An employer shall provide reasonable unpaid
11 break time or permit an employee to use paid break time or
12 mealtime, or both, to allow the employee to express breast milk
13 for the employee's nursing child.

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

- 17 (1) shielded from view;
18 (2) free from intrusion from coworkers and the public;
19 and
20 (3) in proximity to the work area.

21 (c) Prohibited conduct.--An employer may not:

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

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

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

1 agreed to testify or assists or participates in any manner in
2 an investigation, proceeding, hearing or other action under
3 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 individual 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 (b) Judicial action.--The following shall apply:

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

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

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

29 (d) No exhaustion of remedies.--No individual may be
30 required to exhaust the administrative remedies provided in this

1 section prior to proceeding under subsection (b) or (c).

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

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

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

12 Section 5. Notification.

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

16 (1) The notice shall be prepared or approved by the
17 department.

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

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

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

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

1 (2) On its publicly accessible Internet website, the
2 department shall provide information and links to other
3 Internet websites where employers can access information
4 regarding methods to accommodate nursing mothers in the
5 workplace.

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

11 Section 6. Effective date.

12 This act shall take effect in 60 days.