

LEGISLATIVE REFERENCE BUREAU

L.R.B. Form No. 4 (Rev. 1/11/17)

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No. _____

LEGISLATIVE REFERENCE BUREAU

AN ACT

Providing for workplace accommodations for nursing mothers.

INTRODUCED _____ 20_____

By _____ District NO. _____

By _____ District NO. _____

By _____ District NO. _____

By _____ District NO. _____

See next page for additional co-sponsors.

Prior Session _____

Referred to Committee on	
Date _____	20_____
Reported _____	20_____
As Committed-Amended	
Recommendation	

By Hon. _____	

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
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 the
5 employer's operation.

6 Section 3. Right of nursing mothers to express breast milk in
7 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 express breast milk
11 for her nursing child.

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

15 (1) shielded from view;

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

17 and

18 (3) in proximity to the work area.

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

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

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

29 (3) Retaliate against an employee who testifies, has
30 agreed to testify or assists or participates in any

1 manner in an investigation, proceeding, hearing or other
2 action under or related to this act.

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

7 Section 4. Violations.

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

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

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

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

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

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

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

28 (iv) inspecting or copying documents or other
29 information, in whatever medium it exists, which relates
30 to the matters subject to this act.

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

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

20 (6) If the employer contests the department's initial
21 determination, the department shall issue an order to show
22 cause to the employer within 15 days following the receipt of
23 the employer's written notice of contest and request an
24 administrative hearing, which hearing shall be scheduled
25 before the Secretary of Labor and Industry or the Secretary
26 of Labor and Industry's designee within 30 days of issuance
27 of the order to show cause. The hearing shall be conducted in
28 accordance with the provisions of 2 Pa.C.S. Ch. 5 Subch. A
29 (relating to practice and procedure of Commonwealth agencies)
30 and 1 Pa. Code Pt. II (relating to general rules of

1 administrative practice and procedure).

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

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

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

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

30 (1) If the department determines under subsection (a)(7)

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

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

9 Section 5. Notification.

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

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

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

18 (3) 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 (b) Information.--The following apply:

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

28 (2) On its publicly accessible Internet website, the
29 department shall provide information and links to other
30 Internet websites where employers can access information

1 regarding methods to accommodate nursing mothers in the
2 workplace.

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

8 Section 6. Effective date.

9 This act shall take effect in 60 days.

