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**CITY OF BALTIMORE**

**BRANDON M. SCOTT**  
Mayor



**DEPARTMENT OF LAW**  
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October 21, 2025

The Honorable President and Members  
of the Baltimore City Council  
Attn: Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 25-0051 – Labor and Employment – Pregnancy Accommodations

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 25-0051 for form and legal sufficiency. The bill would make discriminating against pregnant people or those recovering from pregnancy a violation of the City Code. It does that by adding Subtitle 20 –Pregnancy Accommodations to the City Code’s Title 11 – Labor and Employment.

Federal and State Laws on Pregnancy Accommodations

Several existing federal and state laws provide protections for pregnant workers. The federal Pregnant Workers Fairness Act (“PWFA”), enforced by the Equal Employment Opportunity Commission (“EEOC”), requires a covered employer to provide a “reasonable accommodation” to a qualified employee’s or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.” 42 USC § 2000gg-1, *et. seq.* The federal Family Medical Leave Act (“FMLA”) requires covered employers to provide eligible employees with up to 12 weeks of unpaid leave for incapacity due to pregnancy including pregnancy complications and morning sickness (regardless of whether the employee visits a health care provider); prenatal care; and the employee’s own serious health condition following the birth of the child. 29 CFR § 825.115(b), (f); 825.120(a)(4). Other federal laws that provide protections for eligible individuals include the Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended by the Pregnancy Discrimination Act (“PDA”), the Providing Urgent Maternal Protections for Nursing Mothers (“PUMP”) Act, and the Americans with Disabilities Act, and the Fair Labor Standards Act. 42 USC. § 2000e, *et. seq.*; 29 USC § 218d; 42 U.S.C. §§ 12101 –12117.

Additionally, Maryland law requires that “if an employee requests a reasonable accommodation, the employer shall explore with the employee all possible means of providing the reasonable accommodation”, which includes “(1) changing the employee’s job duties; (2) changing the employee’s work hours; (3) relocating the employee’s work area; (4) providing mechanical or electrical aids; (5) transferring the employee to a less strenuous or less hazardous position; or (6)

providing leave. Md. Code, State Gov't § 20-609 (d). Like federal law, a reasonable accommodation must not impose an undue hardship on the employer. Md. Code, State Gov't § 20-609 (a)(2).

The City has the authority to legislate in this area, so long as the local laws do not conflict (expressly or impliedly) with existing federal and state law. City Charter, Art. II, §§ (11), (27), (47).; *see, e.g., Worton Creek Marina v. Claggett*, 381 Md. 499, 512 (2004).

The PWFA expressly allows local governments to pass laws that provide “greater or equal protection for individuals affected by pregnancy, childbirth, or related medical conditions.” 42 USC. 2000gg-5(a). Bill 25-0051 significantly expands protections for pregnant workers beyond those required by state and federal law. The bill imposes pregnancy accommodation requirements on a broader set of employers than the PWFA. While the PWFA applies to employers with 15 or more employees, Section 20-1(G)(1) of the bill applies to employers with “2 or more full-time employees”. 29 CFR 1636.2(b)(1).

The bill also mandates a five-day response timeline for accommodation requests, requires employers to provide written denials when accommodations are denied and creates record-keeping obligations for employers. While the PWFA provides remedies and enforcement for eligible individuals who experience pregnancy discrimination, this bill expands these protections by providing local oversight and enforcement through the Baltimore Community Relations Commission and creates criminal penalties for violations. 29 CFR 1636.5.

The Bill defines terms that are utilized by other federal and state laws, such as “adverse action” and “reasonable accommodation.” While the City does have the ability to enact local laws that increase protections for those who are pregnant, by not using the same definitions as those in federal and state laws, the City’s law could be held to conflict with federal or state law as applied in a particular situation. For example, “Title VII does not define ‘undue hardship.’ The Supreme Court has recently explained that ‘undue hardship’ means the ‘burden’ of accommodating an employee’s request must be ‘substantial in the overall context of an employer’s business,’ i.e., ‘would result in substantial increased costs in relation to the conduct of its particular business.’” *Hall v. Sheppard Pratt Health Sys., Inc.*, 749 F. Supp. 3d 532, 542 (D. Md. 2024). The bill’s definition of “undue hardship,” while not illegal as written, could be preempted in a particular set of facts since the federal law requirements are flexible and are part of an evolving body of case law. Thus, while the bill need not be amended to align its definitions with those in the federal or state laws, it should be noted that the City’s law may not prevail in every case.

### Required Amendments

#### *I. Proof of Necessity*

Section 20-3(C) in Bill 25-0051 authorizes an employer to require proof of necessity for a reasonable accommodation before providing it to an eligible individual. Federal law does not require documentation for all reasonable accommodations, instead it outlines the circumstances where it is reasonable for employers to request documentation from eligible individuals and

requires the documentation requested must also be reasonable. 29 CFR 1636.3(l). An employer's ability to require proof conflicts with the PWFA because it is not a "greater or equal protection for individuals affected by pregnancy, childbirth, or related medical conditions." 42 USC. § 2000gg-5(a). Rather, it makes it harder for those seeking reasonable accommodation. Suggested amendment language is included with this bill report. There is also a typo in Section 20-3 (page 6, line 16) in the sentence "...accommodations to perform the essential functions of th[e] eligible individual's...". An amendment to fix that typo is attached.

*II. Waiver of Variance for Undue Hardship*

Bill 25-0051 allows employers to apply to the Commission for a waiver or variance if requirements of the subtitle impose an undue hardship. The reasonable accommodation process outlined by federal law is an interactive process that is specific to each employee and employer. 29 CFR 1636.3(h)(3). Employers are not required to make accommodations that create an undue hardship. 29 CFR 1636.1(b)(1). Therefore, Sections 20-4 and 20-2(B) must be removed.

Subject to these amendments, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,



Desiree Luckey  
Assistant Solicitor

cc: Ebony Thompson, City Solicitor  
Hilary Ruley, Chief Solicitor, General Counsel Division  
Jeff Hochstetler, Chief Solicitor  
Ashlea Brown, Chief Solicitor  
Michelle Toth, Assistant Solicitor

**AMENDMENTS TO COUNCIL BILL 25-0051  
(1st Reader Copy)**

By: Law Department

**Amendment No. 1**

On page 6, strike lines 24-26; and on the same page in line 16, strike “TH” and substitute “THE”.

**Amendment No. 2**

On page 6, strike lines 6 – 12 and 27-31.