


FROM	NAME & TITLE	Lauren Jackson, Community Relations Representative	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Office of Civil Rights and Wage Enforcement 7 E. Redwood Street, 9 th Floor Baltimore, MD 21202		
	SUBJECT	Council Bill 18-0276: Lactation Accommodations in the Workplace		

DATE: October 16, 2018

TO The Honorable President and Members of the Baltimore City Council
Attn. Natawna B. Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street

The Office of Civil Rights has reviewed City Council Bill 18-0276. This bill requires employers to provide lactation accommodations, in addition to recommending the policy and procedures that would oversee such accommodations. Because the Office of Civil Rights, and in particular the Community Relations Commission (CRC), has been tasked by the bill to provide administrative enforcement, the agency and CRC recommend that the policies set forth in proposed Article 11, Subtitle 16 be encapsulated within the scope of Article 4 of the Baltimore City Code. By encapsulating the current proposed policies into Section 4, the CRC would not have to create separate rules and regulations for which to govern this proposed legislation, thereby delaying expedient implementation.

The CRC enthusiastically supports this bill provided the following recommendations are adopted:

- Expand the definition of Familial status as defined by Article 4, Section 1-101(k) to include specific language in regards to lactation and post-partum health.
- Expand the definition of Employer as defined by Article 4, Section 1-101(i) in order to ensure that more employers (those with 2 or more employees) are covered in particular reference to lactation accommodations.
- Expand Article 4, Subtitle 3-1 to include the procedures laid out by the proposed Article 11, Subtitle 16-10 through 16-13 (Lactation Breaks, Lactation Location- In General, Lactation Location- Multi-Purpose Locations, Lactation Location- Multi-Tenant Buildings) and 16-20 through 16-21 (Employer Policy and Process, Employer Records).
- Eliminate language in regards to the "Waiver of Undue Hardship." Undue hardship could be asserted as a defense by the employer during the investigative process, therefore rendering the language around the waiver unnecessary. If, however, the "Waiver of Undue Hardship" is seen as vital by the sponsors of this bill, the CRC recommend that the waiver only be available for employers that have between 2 and 14 employees. Employers with 15 or more employees will be liable under the Pregnancy Discrimination Act of 1978.
- Eliminate criminal penalties. The CRC acknowledges that criminal penalties serve to express and enforce the seriousness of discrimination against those who are lactating. However, the CRC believes that the civil penalties outlined by Article 4 have the ability to provide significant remedial action.

The CRC has provided the attached document with specific language the CRC proposes to amend Article 4 of the Baltimore City Code to encapsulate the policies set forth in proposed Article 11, Subtitle 16 contained in City Council Bill 18-0276. The CRC believes that the outlined policies would greatly serve to protect lactating individuals from discrimination in the workplace. Therefore the Office of Civil Rights and the CRC fully support the passing of this Bill, provided the suggested recommendations are adopted.

cc: Jill P. Carter, Director
Raemond A. Parrott, Supervisor

Sincerely,

Lauren E. Jackson, Community Relations Representative

The CRC provides the following specific recommendations:

BY repealing and reordaining, without amendments (as recommended by City Council Bill 18-0276)

Article 4 - Community Relations

Section 1-101(a) and (f)(1)

Baltimore City Code

(Edition 2000)

BY repealing and reordaining, with amendments (as recommended by City Council Bill 18-0276)

Article 4 - Community Relations

Section 1-101(f)(3)

Baltimore City Code

(Edition 2000)

BY repealing and reordaining, with amendments

Article 4- Community Relations

Section 1-101(k), Section 3-101

EXPLANATION:

CAPITALS indicate matter added to existing law – language provided by City Council Bill 18-0276

CAPITALS & BOLD indicate matter added to existing law- language and location recommended by CRC.

[Brackets] indicate matter deleted from existing law.

[**Bolded brackets**] indicate matter deleted from proposed language provided by City Council Bill 18-0276

Article 4. Community Relations

Subtitle 1. Definitions; General Provisions

§ 1-1. Definitions.

(a) *In general.*

In this article, the following terms have the meanings indicated.

(f) *Discrimination.*

(1) “Discrimination” means any difference in the treatment of an individual or person because of race, color, religion, national origin, ancestry, sex, marital status, physical or mental disability, sexual orientation, or gender identity or expression.

...

(3) However, it is not discrimination for:

...

(v) any person to provide:

(A) separate toilet facilities for males and females; OR

(B) LACTATION ACCOMMODATIONS FOR FEMALES

...

(i) Employer

(1) “Employer” means every person, other than fraternal and religious organizations, who employs 15 or more persons, exclusive of parents, spouse, or children of such a person during at least 15 days in the preceding 12 months

(I) IN REFERENCE ONLY TO THE REQUIREMENT THAT EMPLOYERS ACCOMMODATE EMPLOYEES WHO ARE LACTATING, EMPLOYER WILL BE DEFINED AS ANY PERSON WHO EMPLOYS 2 OR MORE EMPLOYEES

...

(k) *Familial Status*

(1) "Familial Status" defined as 1 or more individuals (who have not attained the age of 18 years being domiciled with

...

(3) THE PROTECTIONS AFFORDED AGAINST DISCRIMINATION ON THE BASIS OF FAMILIAL STATUS SHALL APPLY TO ANY PERSON WHO IS LACTATING AND/OR OTHERWISE PARTICIPATING IN ACTIONS ASSOCIATED WITH POST-PARTUM HEALTH

...

**Subtitle 3
Unlawful Practices**

§ 3-1. Employment.

Except where a particular occupation or position reasonably requires, as an essential qualification, the employment of a person or persons of a particular race, color, religion, national origin, ancestry, sex, age, marital status, physical or mental capability, sexual orientation, or gender identity or expression and that qualification is not adopted as a means of circumventing the purpose of this article, it is an unlawful employment practice:

...

(8) FOR AN EMPLOYER TO NOT PROVIDE A REASONABLE LOCATION AND AMOUNT OF BREAK TIME TO ACCOMMODATE AN EMPLOYEE WHO DESIRES TO EXPRESS BREAST MILK. IN ORDER TO ACCOMMODATE AN EMPLOYEE WHO IS LACTATING, AN EMPLOYER MUST ADHERE TO THE FOLLOWING:

(I) LACTATION BREAKS.

(A) IN GENERAL. AN EMPLOYER MUST PROVIDE A REASONABLE AMOUNT OF BREAK TIME TO ACCOMMODATE AN EMPLOYEE WHO DESIRES TO EXPRESS BREAST MILK. WHEN AND HOW PROVIDED.

(1) IF POSSIBLE, THE BREAK TIME REQUIRED BY THIS SECTION MUST RUN CONCURRENTLY WITH ANY PAID REST OR BREAK TIME ALREADY REQUIRED BY LAW OR OTHERWISE AUTHORIZED FOR THE EMPLOYEE.

(2) BREAK TIME REQUIRED BY THIS SECTION THAT DOES NOT RUN CONCURRENTLY WITH PAID REST OR BREAK TIME REQUIRED BY LAW OR OTHERWISE AUTHORIZED FOR THE EMPLOYEE MAY BE UNPAID.

(II) LACTATION LOCATION – IN GENERAL.

(A) "CLOSE PROXIMITY ..." DEFINED.

IN THIS SECTION, "CLOSE PROXIMITY TO THE EMPLOYEE'S WORK AREA" MEANS NO MORE THAN 500 FEET AND TWO ADJACENT FLOORS FROM THE FURTHEST EMPLOYEE WORK AREA BEING SERVED.

(B) IN GENERAL.

(1) AN EMPLOYER MUST PROVIDE A LACTATION LOCATION, OTHER THAN A BATHROOM OR A CLOSET, THAT:

(A) IS IN CLOSE PROXIMITY TO THE EMPLOYEE'S WORK AREA; AND

(B) SHIELDS ITS OCCUPANTS FROM VIEW AND FROM INTRUSION BY COWORKERS OR OTHERS.

(2) THE LACTATION LOCATION MAY INCLUDE THE PLACE WHERE THE EMPLOYEE NORMALLY WORKS IF IT OTHERWISE MEETS THE REQUIREMENTS OF THIS PART 2.

(C) SPECIFICATIONS.

THE LACTATION LOCATION MUST:

(1) BE SAFE, CLEAN, AND FREE OF TOXIC OR HAZARDOUS MATERIALS;

(2) LIMIT ACCESS TO IT BY A DOOR THAT CAN BE LOCKED FROM THE INSIDE; AND

(3) CONTAIN:

- (I) A SURFACE (E.G., A TABLE OR SHELF) ON WHICH TO PLACE A BREAST PUMP AND OTHER PERSONAL ITEMS;
- (II) A PLACE TO SIT;
- (III) AT LEAST ONE ELECTRICAL OUTLET; AND
- (IV) UNLESS ELSEWHERE PROVIDED BY THE EMPLOYER IN CLOSE PROXIMITY TO THE EMPLOYEE'S WORK AREA:
 - (A) A SINK WITH RUNNING HOT AND COLD WATER; AND
 - (B) A REFRIGERATOR IN WHICH THE EMPLOYEE CAN STORE BREAST MILK.

(III) LACTATION LOCATION –MULTI-PURPOSE LOCATIONS.

AN EMPLOYER MAY PROVIDE A LACTATION LOCATION THAT IS ALSO USED FOR OTHER PURPOSES, BUT ONLY AS LONG AS:

- (1) THROUGHOUT THE PERIOD OF ANY EMPLOYEE'S NEED TO EXPRESS MILK, THE PRIMARY FUNCTION OF THE LOCATION IS ITS USE AS A LACTATION LOCATION;
- (2) DURING THAT PERIOD, THE LOCATION'S USE FOR LACTATION TAKES PRECEDENCE OVER ALL OTHER FUNCTIONS AND USES; AND
- (3) THE EMPLOYER PROVIDES NOTICE TO ALL EMPLOYEES WHO MIGHT OTHERWISE NEED TO USE THAT LOCATION FOR OTHER PURPOSES, THAT:
 - (I) THE LOCATION'S PRIMARY FUNCTION IS ITS USE AS A "LACTATION LOCATION"; AND
 - (II) THIS PRIMARY FUNCTION TAKES PRECEDENCE OVER ALL OTHER FUNCTIONS AND USES.

(IV) LACTATION LOCATION –MULTI-TENANT BUILDING.

IF AN EMPLOYER'S WORKSPACE IS INADEQUATE TO SATISFY THE REQUIREMENTS OF THIS PART 2 AND OTHER EMPLOYERS ARE LOCATED IN THE SAME BUILDING, THE EMPLOYER MAY FULFILL THE REQUIREMENTS OF THIS PART 2 BY PROVIDING A LACTATION LOCATION THAT:

- (1) IS SHARED BY 2 OR MORE EMPLOYERS IN THE BUILDING;
- (2) COMPLIES WITH § 3-1(8)(ii){"LACTATION LOCATION – IN GENERAL"} AND § 3-1(8)(iii) {"LACTATION LOCATION –MULTI-PURPOSE LOCATIONS"}; AND
- (3) IS SUFFICIENT TO ACCOMMODATE THE NUMBER OF EMPLOYEES WHO MIGHT DESIRE TO USE IT AT ANY GIVEN TIME.

(V) EMPLOYER POLICY AND PROCESS.

(A) *IN GENERAL.*

EACH EMPLOYER SUBJECT TO THIS SUBTITLE MUST DEVELOP AND IMPLEMENT A WRITTEN LACTATION ACCOMMODATION POLICY.

(B) *MINIMUM CONTENTS.*

THE WRITTEN POLICY MUST:

- (1) CONTAIN A STATEMENT THAT EMPLOYEES HAVE A LEGAL RIGHT TO REQUEST A LACTATION ACCOMMODATION;
- (2) INCLUDE THE EMPLOYER'S PROCESS FOR REQUESTING A LACTATION ACCOMMODATION, WHICH PROCESS MUST, AT A MINIMUM:
 - (I) SPECIFY THE MEANS BY WHICH AN EMPLOYEE MUST SUBMIT THE REQUEST TO THE EMPLOYER;
 - (II) REQUIRE THE EMPLOYER TO RESPOND TO THE REQUEST WITHIN 5 BUSINESS DAYS; AND
 - (III) REQUIRE THE EMPLOYER AND EMPLOYEE TO ENGAGE IN AN INTERACTIVE PROCESS TO DETERMINE LACTATION BREAK PERIODS AND A LACTATION LOCATION APPROPRIATE FOR THE EMPLOYEE;
- (3) STATE THAT, WHENEVER THE EMPLOYER DOES NOT PROVIDE LACTATION BREAKS OR A LACTATION LOCATION, OR PROVIDES A LACTATION LOCATION THAT DOES NOT FULLY COMPLY WITH [PART 2 OF THIS SUBTITLE] SUBTITLE 3-1(8)I-IV , [OR ASSERTS ANY WAIVER OR VARIANCE GRANTED UNDER § 16-14 {"WAIVER OR VARIANCE FOR UNDUE HARDSHIP"} OF THIS SUBTITLE], THE EMPLOYER WILL BE REQUIRED TO DESCRIBE, IN A WRITTEN RESPONSE TO THE REQUEST, THE SPECIFIC BASES ON WHICH THE EMPLOYER HAS DONE SO;

(4) STATE THAT ANY EMPLOYEE AGGRIEVED BY AN ALLEGED VIOLATION OF THIS SUBTITLE MAY FILE A COMPLAINT WITH THE BALTIMORE COMMUNITY RELATIONS COMMISSION; AND

(5) STATE THAT RETALIATION AGAINST AN EMPLOYEE FOR EXERCISING THE RIGHTS CONFERRED BY THIS SUBTITLE IS PROHIBITED.

(C) *EMPLOYER TO KEEP COPIES OF ALL RESPONSES.*

THE EMPLOYER MUST RETAIN, IN ACCORDANCE WITH § 3-1(8)(vi) {"EMPLOYER RECORDS"} OF THIS SUBTITLE, A COPY OF ALL WRITTEN RESPONSES MADE UNDER THE POLICY REQUIRED BY SUBSECTION (B)(3) OF THIS SECTION.

(D) *DISTRIBUTION OF POLICY.*

(1) THE EMPLOYER MUST DISTRIBUTE A COPY OF THE EMPLOYER'S LACTATION ACCOMMODATION POLICY TO ALL EMPLOYEES:

(i) UPON THEIR HIRING; AND

(ii) AGAIN, WITHIN 10 CALENDAR DAYS OF ANY MODIFICATION TO THE POLICY.

(2) THE EMPLOYER MUST ALSO OFFER A COPY OF THE LACTATION ACCOMMODATION POLICY TO ANY EMPLOYEE WHO REQUESTS OR INQUIRES ABOUT PREGNANCY OR PARENTAL LEAVE.

(3) IF THE EMPLOYER HAS AN EMPLOYEE HANDBOOK OR SET OF POLICIES THAT IS AVAILABLE TO EMPLOYEES, THE LACTATION ACCOMMODATION POLICY MUST BE INCLUDED IN THAT HANDBOOK OR SET OF POLICIES.

(VI) EMPLOYER RECORDS.

(A) *IN GENERAL.*

EACH EMPLOYER SUBJECT TO THIS SUBTITLE MUST MAINTAIN A RECORD OF ALL REQUESTS FOR A LACTATION ACCOMMODATION RECEIVED BY THE EMPLOYER.

(B) *REQUIRED CONTENTS.*

THE RECORD MUST INCLUDE THE FOLLOWING DOCUMENTATION:

(1) THE NAME OF THE EMPLOYEE;

(2) THE DATE OF THE INITIAL REQUEST AND OF ANY UPDATE TO THE INITIAL REQUEST;

(3) A COPY OF ALL WRITTEN OR DIGITAL CORRESPONDENCE BY OR ON BEHALF OF THE EMPLOYEE AND EMPLOYER; AND

(4) A DESCRIPTION OF HOW THE EMPLOYER RESOLVED THE REQUEST.

(C) *RETENTION PERIOD; INSPECTION.*

THE EMPLOYER MUST:

(1) RETAIN THE RECORD AND DOCUMENTATION REQUIRED BY THIS SECTION FOR A PERIOD OF 3 YEARS FROM THE DATE OF THE REQUEST FOR LACTATION ACCOMMODATION; AND

(2) ALLOW THE COMMUNITY RELATIONS COMMISSION ACCESS TO THAT RECORD, SUBJECT TO REASONABLE NOTICE, TO MONITOR COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE.

(D) *AFFECT OF FAILURE TO COMPLY.*

IN ANY MATTER INVOLVING AN ALLEGED VIOLATION OF THIS SUBTITLE, IF THE EMPLOYER HAS FAILED TO MAINTAIN OR RETAIN THE RECORD AND DOCUMENTATION REQUIRED BY THIS SECTION, OR DOES NOT ALLOW THE COMMISSION REASONABLE ACCESS TO THEM, IT WILL BE PRESUMED THAT THE EMPLOYER HAS VIOLATED THIS SUBTITLE, ABSENT CLEAR AND CONVINCING EVIDENCE OTHERWISE.