



Legislation Text

File #: 18-0276, **Version:** 0

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill

Introduced by: Councilmember Sneed

A Bill Entitled

An Ordinance concerning

Lactation Accommodations in the Workplace

For the purpose of requiring certain employers to provide certain lactation accommodations (including lactation breaks and locations) and to develop, distribute, and implement certain policies and procedures for providing these lactation accommodations; establishing minimum standards for lactation accommodations; defining certain terms; providing for certain exceptions and authorizing certain waivers or variances under certain conditions; requiring employers to maintain certain records; prohibiting retaliatory or discriminatory actions against persons exercising rights under this Ordinance; authorizing the adoption of administrative rule and regulations to carry out this Ordinance; providing for administrative and judicial review of and remedial relief for violations; imposing certain criminal penalties for violations; providing for a special effective date; and generally relating to the required provision of certain lactation accommodations for employees.

By repealing and reordaining, without amendments

Article 4 - Community Relations
Section 1-101(a) and (f)(1)
Baltimore City Code
(Edition 2000)

By repealing and reordaining, with amendments

Article 11 - Community Relations
Section 1-101(f)(3)
Baltimore City Code
(Edition 2000)

By adding

Article 11 - Labor and Employment
Sections 16-1 through 16-30, to be under the new subtitle designation,
“Lactation Accommodation in the Workplace”
Baltimore City Code
(Edition 2000)

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

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 in accord with City Code Article 11, Subtitle 16 {“Lactation Accommodation in the Workplace”}.

Article 11. Labor and Employment

Subtitle 16. Lactation Accommodation in the Workplace

Part 1. Definitions; General Provisions

§ 16-1. Definitions.

(a) *In general.*

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

(b) *Community Relations Commission; Commission.*

“Community Relations Commission” or “Commission” means the Baltimore Community Relations Commission established by City Code Article 4 {“Community Relations”}, Subtitle 2 {“Community Relations Commission”}.

(c) *Employee.*

(1) *In general.*

“Employee” means, except as otherwise provided in this subsection, any individual who works in Baltimore City for an employer.

(2) *Exclusions.*

“Employee” does not include:

- (i) an individual engaged in the activities of an educational, charitable, religious, or other nonprofit organization where the services rendered to that organization are on a voluntary basis or in return for charitable aid conferred on the individual;
- (ii) an individual who is employed by his or her parent, spouse, or child; or
- (iii) an individual who is employed as a domestic within a private residence.

(d) *Employer.*

(1) *Employer.*

“Employer” means, except as otherwise provided in this subsection, any person who employs 2 or more full-time equivalent employees working in the City of Baltimore.

(2) *Exclusions.*

“Employer” does not include the federal government, the State government, or any instrumentality or unit of either.

(e) *Lactation accommodation.*

“Lactation accommodation” means both lactation break and lactation location.

(f) *Lactation break.*

“Lactation break” means the break time that an employer is required by this subtitle to provide an employee for purposes of expressing breast milk.

(g) *Lactation location.*

“Lactation location” means the space, room, or location that an employer is required by this subtitle to provide an employee for purposes of expressing breast milk.

(h) *Person.*

(1) *In general.*

“Person” means:

- (i) an individual;

- (ii) a partnership, firm, association, corporation, or other entity of any kind; or
- (iii) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind.

(2) *Inclusions.*

“Person” includes, except as used in § 16-30 {“Criminal penalties”} of this subtitle, *any department, board, commission, council, authority, committee, office, or other unit of City government.*

§ 16-2. Mandatory, prohibitory, and permissive terms.

(a) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(b) *Prohibitory terms.*

“May not” and “no ... may” are each mandatory negative terms used to establish a prohibition.

(c) *Permissive terms.*

“May” is permissive.

§ 16-3. {Reserved}

§ 16-4. Rules and Regulations.

(a) *In general.*

The Community Relations Commission must adopt rules and regulations to carry out this subtitle.

(b) *Filing with Legislative Reference.*

A copy of all rules and regulations adopted under this subtitle must be filed with the Department of Legislative Reference before they take effect.

§§ 16-5 to 16-9. {Reserved}

Part 2. Required Accommodations

§ 16-10. 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.

(b) *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.

§ 16-11. 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
- (2) 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;
 - (ii) at least one electrical outlet; and

(iii) 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.

§ 16-12. 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.

§ 16-13. 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 § 16-11 {"Lactation location - In general"} and § 16-12 {"Lactation location - Multi-purpose locations"} of this Part 2; and
- (2) is sufficient to accommodate the number of employees who might desire to use it at any given time.

§ 16-14. Waiver or variance for undue hardship.

(a) *In general.*

In accordance with the rules and regulations adopted under § 16-4 {"Rules and regulations"} of this subtitle, an employer may apply to the Community Relations Commission for a waiver or variance of any requirement of this Part 2 that the employer can demonstrate would impose an undue hardship by causing significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the employer's business.

(b) *Rules and regulations.*

The Commission's rules and regulations must include:

- (1) the criteria for establishing an undue hardship as described in subsection (a) of this section;

- (2) the procedures, forms, and documentation required to apply for the waiver or variance; and
- (3) the procedures for the Commission's hearing on and consideration of the application.

§§ 16-15 to 16-19. *{Reserved}*

Part 3. Employer Policy and Process; Records

§ 16-20. 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, 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;
- (3) state that any employee aggrieved by an alleged violation of this subtitle may file a complaint with the Baltimore Community Relations Commission; and
- (4) 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 § 16-21 {"**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.

§ 16-21. 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.

§§ 16-22 to 16-24. {Reserved}

Part 4. Administrative Enforcement

§ 16-25. Complaint to Community Relations Commission.

(a) *Complaint authorized.*

- (1) Any person aggrieved by an alleged violation of this subtitle may file a complaint with the Baltimore Community Relations Commission.
- (2) The complaint shall be filed, investigated, and heard in the same manner as that provided in City Code Article 4 {"Community Relations"}, Subtitle 4 {"Enforcement"}, for alleged violations of that article's unlawful discriminatory employment practices.

(b) *Decision and order.*

In its decision and order, the Commission may award the aggrieved person:

- (1) back pay for lost wages caused by the violation of this subtitle;
- (2) reinstatement;
- (3) compensatory damages, which may include:
 - (i) compensation for humiliation, embarrassment, and emotional distress; and
 - (ii) expenses incurred in seeking other employment; and
- (4) reasonable attorney's fees.

§ 16-26. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by the final decision of the Community Relations Commission may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

§ 16-27. {Reserved}

Part 5. Prohibited Conduct; Criminal Penalties

§ 16-28. Retaliation or discrimination prohibited.

No employer or other person may take or refuse to take a personnel action or otherwise retaliate or discriminate

against any person as a reprisal for that person's having alleged a violation of this subtitle or otherwise having exercised a right granted by this subtitle.

§ 16-29. *{Reserved}*

§ 16-30. Criminal penalties.

Any person who violates any provision of this subtitle or of a rule or regulation adopted under this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$500 or imprisonment for not more than 90 days or both fine and imprisonment for each offense.

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance takes effect on the 90th day after the date it is enacted.