



Ohio Legislative Service Commission

Bill Analysis

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H.B. 488

128th General Assembly
(As Introduced)

Reps. Harris and Pillich, Hagan, Dodd, Foley, Yuko, Domenick, Skindell, Phillips, Lehner, Letson, Okey, Dyer, Patten, Garland, Celeste, Murray

BILL SUMMARY

- Prohibits, under Ohio's Civil Rights Law, discrimination based on lactation with respect to employment and other work-related issues.
- Requires an employer to provide to each lactating employee reasonable, unpaid time each day to permit the lactating employee to express breast milk and requires, to the extent possible and practicable, this time to run concurrently with any break time already provided to the employee.
- Requires an employer to permit a lactating employee to express breast milk for as long as the lactating employee can demonstrate that the employee is lactating.
- Requires an employer to make a reasonable effort to provide a sanitary room or other area in close proximity to the work area, that is not a toilet stall, where a lactating employee can express breast milk in privacy.
- Makes a violation of the bill's requirements regarding allowing an employee to express breast milk at work an unlawful discriminatory practice under Ohio's Civil Rights Law.
- Allows a woman who believes she is injured by a violation of the bill's requirements regarding expressing breast milk while at work to file a complaint with the Ohio Civil Rights Commission.
- Requires the Commission to follow the procedures specified in the Ohio Civil Rights Law for complaints filed for violations of the prohibition against unlawful discriminatory practices in employment regarding that complaint.

- Requires the Director of Development, in consultation with the Commission, to provide information to connect employers with resources that provide information and assistance on appropriate current methods to accommodate lactating mothers in the workplace.

CONTENT AND OPERATION

Discrimination on the basis of lactation

The bill prohibits, under Ohio's Civil Rights Law, an employer and other employment related entities from discriminating against an individual based on lactation in a manner similar to the current law prohibition against employment discrimination on the basis of pregnancy or childbirth. Under continuing law, pregnancy and childbirth are included in the prohibition against discrimination "because of sex" or "on the basis of sex" regarding employment related issues, and the bill includes lactation in that prohibition. Under the bill, a woman affected by lactation must be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in Ohio's Equal Pay Law may be interpreted to permit otherwise. This is the same protection as provided under continuing law for women who are affected by pregnancy, childbirth, or similar conditions. (R.C. 4112.01(B).)

More specifically, continuing law lists seven unlawful discriminatory practices under Ohio's Civil Rights Law that prohibit discrimination because of, or on the basis of sex that, under the bill, prohibit discrimination because of, or on the basis of lactation. Under continuing law, it is an unlawful discriminatory practice:

(1) For any employer, because of the sex of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

(2) For an employment agency or personnel placement service, because of lactation, to: (a) refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person, or (b) comply with a request from an employer for referral of applicants for employment if the request directly or indirectly indicates that the employer fails to comply with the Ohio Civil Rights Law.

(3) For any labor organization to limit or classify its membership on the basis of sex;

(4) For any labor organization to discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, or employment conditions of any person as an employee because of sex;

(5) For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person because of sex in admission to, or employment in, any program established to provide apprentice training;

(6) Except if based on a bona fide occupational qualification certified in advance by the Ohio Civil Rights Commission, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to (a) elicit or attempt to elicit any information concerning the sex of an applicant for employment or membership, (b) make or keep a record of the sex of an applicant for employment or membership, (c) use an employment application, or a personnel or membership blank, that seeks to elicit information regarding sex, (d) print or publish, or cause to be printed or published, any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based on sex, (e) announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities for any group because of sex, or (f) use to recruit or hire persons, any employment agency, personnel placement service, training school or center, labor organization, or any other employee-referring source that is known to discriminate against persons because of sex.

(7) For any person seeking employment to publish or cause to be published any advertisement that specifies or in any manner indicates that person's sex, or expresses a limitation or preference as to the sex of any prospective employer. (R.C. 4112.02(A) to (F), not in the bill.)

Allowing an employee to express breast milk while at work

The bill requires an employer to provide to each lactating employee reasonable, unpaid time each day to permit the lactating employee to express breast milk. To the extent possible and practicable, this time must run concurrently with any break time already provided to the employee. An employer must permit a lactating employee to express breast milk for as long as the lactating employee can demonstrate that the employee is lactating. The bill also requires an employer to make a reasonable effort to provide a sanitary room or other area in close proximity to the work area, that is not a toilet stall, where a lactating employee can express breast milk in privacy. This location may include the employee's normal work area if the area meets the bill's requirements. (R.C. 4113.12(A), (B), and (C).) (See **COMMENT.**)

The bill prohibits any employer from violating any of the bill's prohibitions described immediately above. The bill specifies that a violation of these requirements regarding allowing an employee to express breast milk at work is an unlawful discriminatory practice under Ohio's Civil Rights Law. A woman who believes she is injured by a violation of these provisions regarding expressing breast milk while at work may file a complaint with the Ohio Civil Rights Commission in accordance with requirements specified in the Ohio Civil Rights Law (R.C. 4112.05, not in the bill). The Commission must follow the procedures specified in that law for complaints filed for violations of the prohibition against unlawful discriminatory practices in employment regarding that complaint. (R.C. 4113.12(D).) Under continuing law, the Commission first attempts to resolve the issue informally, but if it cannot be resolved, the Commission may issue orders to remedy the situation, including cease and desist orders, back pay, reinstatement, or hiring (R.C. 4112.05, not in the bill).

Under the bill, the Director of Development, in consultation with the Civil Rights Commission, must provide information, whether in paper, electronic, internet, or other format, to connect employers with resources that provide information and assistance on appropriate current methods to accommodate lactating mothers in the workplace (R.C. 4113.12(E)).

COMMENT

Federal law, under the Fair Labor Standards Act, requires an employer to provide both of the following:

(1) A reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time the employee has need to express the milk;

(2) A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, that may be used by an employee to express breast milk.

The law does not require an employer to compensate an employee receiving reasonable break time for any work time spent expressing breast milk. Additionally, an employer that employs less than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

The federal law states that nothing in the law regarding expressing breast milk while at work preempts a state law that provides greater protections to employees than

the protections provided for under the federal law. (29 U.S.C. 207(r).) The bill appears to apply to more employers than the federal law, as the bill does not contain a hardship exemption for an employer who employs less than 50 employees and applies to an employer who is not otherwise subject to the federal law.

HISTORY

ACTION	DATE
Introduced	04-13-10

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