



Committee: Joint
Committee Review: At a future date
Staff: Ludeen McCartney-Green, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #righttonurish

AGENDA ITEM #3C
June 14, 2022
Introduction

SUBJECT

Bill 11-22, Buildings – Lactation Rooms in County Buildings – Required

Lead Sponsor: Councilmember Friedson

Co-Sponsors: Councilmembers Hucker, Albornoz, Katz, and Navarro

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Introduction

DESCRIPTION/ISSUE

Bill 11-22 would:

- (1) require County buildings to include a lactation room for County employees or provide alternative accommodations;
- (2) require employees to receive break time for lactation needs;
- (3) require the County Executive to establish personnel regulations for certain accommodations;
- (4) require certain educational materials posted on the County's website; and
- (5) generally, amend the law regarding buildings and personnel regulations.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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MEMORANDUM

June 9, 2022

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 11-22, Buildings - Lactation Rooms in County Buildings – Required

PURPOSE: Introduction – no Council votes required

Bill 11-22, Buildings - Lactation Rooms in County Buildings – Required sponsored by Lead Sponsor Councilmember Friedson, and Co-sponsors Councilmembers Hucker, Albornoz, Katz, and Navarro is scheduled to be introduced on June 14, 2022. A public hearing is tentatively scheduled for July 12, 2022 at 1:30 p.m.¹

Bill 11-22 would:

- (1) require County buildings to include a lactation room for County employees or provide alternative accommodations;
- (2) require employees to receive break time for lactation needs;
- (3) require the County Executive to establish personnel regulations for certain accommodations;
- (4) require certain educational materials posted on the County’s website; and
- (5) generally, amend the law regarding buildings and personnel regulations.

PURPOSE

The purpose of Bill 11-22 is to promote public health, reduce health disparities, and support County employees who wish to express breast milk at work by requiring designated lactation rooms in certain County buildings, and providing employees with reasonable break time for lactation. A memorandum from the lead sponsor is on page ©7.

BACKGROUND

Federal Law

The Patient Protection and Affordable Care Act (known as the “Affordable Care Act” (ACA)) enacted in 2010, requires employers to provide a *space* that is not a bathroom for employees to express breast milk. The space must be completely private so that no one can see

¹ #righttonurish

inside, and no one is able to enter the space while it is being used. It also must be functional, and usable as a space for expressing breast milk. *See* 29 U.S.C. 207(r).

Employers are not required to create a permanent dedicated space for breastfeeding employees. In many workplaces, there is no unused space. In that case, the employer could instead provide access to a temporary space normally used for other things (like a meeting room or storage area). If the space is available each time the employee needs it, the employer is meeting the requirements of federal law. If there are no breastfeeding employees, the employer does not need to maintain a space.²

The ACA also amended the Fair Labor Standards Act (FLSA) to require employers to provide reasonable break time for an employee to express breast milk for a nursing child up to one year after the child's birth. *Id.*

Federal law does not preempt state laws from creating a permanent³, dedicated space for lactation or providing greater protections for employees by expanding the reasonable break time beyond one year after a child's birth.

State Law

Maryland passed House Bill 306 in 2018, a state version that mirrors the federal law, where *state employees* are provided reasonable break time and a place to express breast milk. Section § 2-130 of Maryland State Personnel and Pension Code, states:

- (a) In general.** — The State, through its appropriate officers and employees, shall provide:
- (1) a reasonable break time for an employee to express breast milk for her nursing child after the child's birth each time the employee needs to express the milk; and
 - (2) on notice, a place, other than a bathroom, that is shielded from view and free from coworkers and the public and that may be used by an employee to express breast milk.
- (b) Compensation.** — The State may not be required to compensate an employee receiving reasonable break time under subsection (a)(1) of this section for any time spent expressing breast milk at work.

State law does not provide any preemption for a local jurisdiction to implement greater protections to increase lactation accommodations for breastfeeding employees.

Lactation Rooms in County Buildings.

The County's Office of Human Resources (OHR), in collaboration with the Department of General Services (DGS), provides guidance for County Departments to comply with FLSA, including allocating or repurposing space in a County building for employees who return to work after a birth of a child and need a lactation room. While the County has some buildings that may include a designated lactation room for some departments, other departments, may comply with federal law and solely provide a temporary, functional space.

² U.S. Department of Labor [Fact Sheet](#) and the Frequently Asked Questions.

³ Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(r)(4)).

BILL DESCRIPTION

Bill 11-22 would extend protections for women in the workplace by requiring a permanent, dedicated room for County employees who are breastfeeding in certain County buildings.

Specifically, it would require County buildings, whether existing or newly constructed, to include at least one lactation room for County employees to express breast milk. A lactation room means a designated sanitary room, other than a bathroom, made available for expressing breast milk, that is shielded from view; free from public or coworker intrusion; displays appropriate signage, and contains the following:

1. a chair;
2. a flat surface to place a breast pump;
3. a sink with running water;
4. a small refrigerator;
5. a microwave;
6. at least one or more electrical outlets; and
7. any other related supplies as provided in regulations.

While some County buildings already have an existing lactation room, this bill would provide for consistency, throughout *all* County buildings, if feasible. Further, if the Director of Department of General Services determines that a room in a County building is unable to be repurposed as a lactation room, then the Director must consider alternative accommodations. Alternative accommodations include creating a space for a lactation pod or station that is mobile, private and functional for the employee.

Further, an employee must be given reasonable break time to express breast milk. The breaktime must align with existing lunch or other regular breaks. Th is similar to federal and state law, but it provides stronger protection because there is no one-year time period after a birth of a child.

The bill would also require the Executive to develop personnel regulations to adopt a lactation accommodation policy.

See lines 52-66, as follows:

- (a) The policy, at a minimum, must contain guidelines regarding:
- (1) the process to request the use of a lactation room, as provided under Section 8-14C(b);
 - (2) the process to request break time under Section 33-27;
 - (3) the availability of the lactation room; and

(4) best practices for maintenance of room, including recommended general cleaning of milk expression areas and storage of breast milk in the designated refrigerator.

(b) Outreach and Education. The Director of the Office of Human Resources must provide, or cause to be provided, on its website informational materials related to prenatal and postpartum breastfeeding for County employees.

This packet contains:

Bill 11-22

Legislative Request Report

Councilmember Friedson's Memo

Circle #

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Bill No. 11-22
Concerning: Buildings – Lactation Rooms
in County Buildings - Required
Revised: 5/23/2022 Draft No. 2
Introduced: June 14, 2022
Expires: December 13, 2023
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Friedson
Co-Sponsors: Councilmembers Hucker, Albornoz, Katz, and Navarro

AN ACT to:

- (1) require County buildings to include a lactation room for County employees or provide alternative accommodations;
- (2) require employees to receive break time for lactation needs;
- (3) require the County Executive to establish personnel regulations for certain accommodations;
- (4) require certain educational materials posted on the County’s website; and
- (5) generally amend the law regarding buildings and personnel regulations.

By amending

Montgomery County Code
Chapter 8, Buildings
Section 8-14C

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-27 and 33-28

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec 1. Sections 8-14C, 33-27, and 33-28 are amended as follows:**

2 **8-14C. [Reserved] Lactation Rooms in County Buildings.**

3 (a) Definitions. In this Section, the following terms have the meanings
 4 indicated.

5 County building means a building, whether existing or newly constructed,
 6 that is owned or leased by the County where County employees work.

7 County employee has the meaning stated in Section 33-6.

8 Department means the Department of General Services.

9 Director means the Director of General Services or the Director’s
 10 designee.

11 Lactation room means a designated sanitary room, other than a bathroom,
 12 made available for expressing breast milk, that:

- 13 (1) is shielded from view;
- 14 (2) is free from public or coworker intrusion;
- 15 (3) displays appropriate signage that indicates “lactation room” or
 16 “nursing room;” and
- 17 (4) contains the following:
 - 18 (A) a chair;
 - 19 (B) a flat surface to place a breast pump;
 - 20 (C) a sink with running water;
 - 21 (D) a small refrigerator;
 - 22 (E) a microwave;
 - 23 (F) at least one or more electrical outlets; and
 - 24 (G) any other related supplies as provided in regulations.

25 (b) Lactation room - required. Except as provided in subsection (c) or (d),
 26 the Department must provide at least one lactation room in each County

27 building that is available for use by any County employee to express
 28 breast milk.

29 (c) Alternative Accommodations. If the Director determines that a County
 30 building does not have a room that could be repurposed as a lactation
 31 room, at a reasonable cost, the Department must consider alternative
 32 accommodations. Alternative accommodations include installing or
 33 creating a space for a portable lactation room or station.

34 (1) The Executive may enter into a memorandum of understanding
 35 between the Department and an owner that offers, for sale or lease,
 36 a portable lactation room or station to meet the requirement for
 37 subsection (c).

38 (d) Exceptions. A County building may be excluded from the requirement
 39 under subsection (b), if the building:

- 40 (1) is solely a warehouse;
- 41 (2) is primarily used for archives; or
- 42 (3) would require new construction to create a room and the cost of
 43 such construction is unfeasible.

44 (e) Regulations. The Director may promulgate Method (2) regulations to
 45 implement the requirements of this Section.

46 **33-27. [Reserved] Break Time for Lactation.**

47 (a) An employee must be provided with reasonable break time during the
 48 workday to accommodate the need for lactation.

49 (b) The break time must run concurrently with any lunch or normal break
 50 already provided to the employee unless an alternative schedule has been
 51 approved by the employee's supervisor.

52 **33-28. [Reserved] Lactation Accommodation Policy.**

53 (a) Personnel regulations. The County Executive must adopt personnel
 54 regulations under Method (1) to establish a lactation accommodation
 55 policy. The policy, at a minimum, must contain guidelines regarding:

56 (1) the process to request the use of a lactation room, as provided
 57 under Section 8-14C(b);

58 (2) the process to request break time under Section 33-27;

59 (3) the availability of the lactation room; and

60 (4) best practices for maintenance of room, including recommended
 61 general cleaning of milk expression areas and storage of breast
 62 milk in the designated refrigerator.

63 (b) Outreach and Education. The Director of the Office of Human Resources
 64 must provide, or cause to be provided, on its website informational
 65 materials related to prenatal and postpartum breastfeeding for County
 66 employees.

67 **Sec. 2. Implementation.** The County Executive must issue any policy and
 68 regulations required under this Act, and make available the required lactation rooms,
 69 within 6 months after the effective date of this Act.

LEGISLATIVE REQUEST REPORT

Bill 11-22

Bill 11-22, Buildings – Lactation Rooms in County Buildings – Required

DESCRIPTION:	Bill 11-22 would: <ol style="list-style-type: none">(1) require County buildings to include a lactation room for County employees or provide alternative accommodations;(2) require employees to receive break time for lactation needs;(3) require the County Executive to establish personnel regulations for certain accommodations;(4) require certain educational materials posted on the County’s website; and(5) generally, amend the law regarding buildings and personnel regulations.
PROBLEM:	Employers are not required to create a permanent dedicated space for breastfeeding employees. Federal law requires an employer to instead provide access to a temporary space, other than a bathroom, but that space may have other uses, including for meetings, utility, storage, etc. The space may not provide the essentials needed for a nursing employee. The limited access to accommodation may raise health disparities and discourage County employees to continue breastfeeding in the workplace after a birth of a child.
GOALS AND OBJECTIVES:	The purpose of Bill 11-22 is to promote public health, reduce health disparities, and support County employees who wish to express breast milk at work by requiring designated lactation rooms in certain County buildings, and providing employees with reasonable break time for lactation.
COORDINATION:	Department of General Services and Office of Human Resources
FISCAL IMPACT:	To be provided by OMB
ECONOMIC IMPACT:	To be provided by OLO
RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:	To be provided by OLO
EVALUATION:	To be done.
EXPERIENCE ELSEWHERE:	To be researched.

SOURCE OF INFORMATION:

Ludeen McCartney-Green, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES:

N/A

PENALTIES:

N/A



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

ANDREW FRIEDSON
COUNCILMEMBER
DISTRICT 1

MEMORANDUM

TO: Montgomery County Councilmembers
FROM: Andrew Friedson *AF*
SUBJECT: **Supporting Working Parents in the County Government Workforce**
DATE: May 31, 2022

On June 14, 2022, I will introduce two bills to benefit working parents in the County Government workforce. I believe that the County government, as an employer of almost 10,000, must lead by the power of its example. We must model an environment that acknowledges, values, and uplifts women, parents, and families.

The first bill, *The Paid Parental Leave Act*, will provide for six weeks of paid parental leave for County employees and the second, *The Right to Nourish Act*, for lactation room(s) in County buildings. I would appreciate your co-sponsorship.

Historically, women in the workforce have been overburdened and under supported. COVID-19 has only exacerbated existing challenges. Women need our backing to productively engage in the workforce and their homes, perhaps now more than ever.

A significant body of literature supports the implementation of paid parental leave and lactation rooms in the workplace. The two are inextricably linked and produce noteworthy outcomes. Paid parental leave improves maternal mental and physical health, supports fathers' involvement in care, and enhances families' economic security. Research also shows that paid parental leave reduces infant mortality perhaps partially due to adherence to recommended medical checkup and vaccinations schedules. The greatest impact appears to be on mothers who could not otherwise afford to take time off.

Furthermore, paid parental leave contributes to healthy infant development vis a vis increased initiation and duration of breastfeeding. Breastfed infants have reduced risk of developing type 2 diabetes, obesity, asthma, infections, and sudden infant death syndrome, and lowers a mother's risk of heart disease, type 2 diabetes, ovarian cancer, and breast cancer. Sadly, a return to work often marks the end of breastfeeding because mothers cannot maintain their milk supply. This doesn't have to be the case. The CDC reports that in 2018 – 2019 Montgomery County had the highest rate of breastfeeding initiation (96.3%) in the State. With adequate facilities to support their efforts, mothers won't be forced to choose between returning to work and continuing to breastfeed.

We also know that race-based differences in breastfeeding exacerbate health disparities and other related inequities. For instance, in the US 64% of Black mothers initiate and 14% breastfeed exclusively at six months, compared to 82% and 23% among White mothers. Many factors play into these persistent disparities including issues related to work and labor conditions. The CDC and national public health

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ANDREW FRIEDSON
COUNCILMEMBER
DISTRICT 1

partners recommend providing support for breastfeeding in the workplace to reduce disparities in breastfeeding.

While it is morally just to support women, parents, and caregivers in the workplace, Montgomery County Government will also reap the rewards of this public policy. Paid parental leave has been shown to increase retention and productivity and boost labor force participation. Breastfeeding is linked to decrease direct and indirect insurance claim costs and missed days from work due to caring for a sick infant. This legislation represents a win-win for all involved.

Please do not hesitate to reach out to me or [Mary Gies](#) on my staff with any questions. We look forward to receiving your support.