

AN ACT concerning health.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Construction Site Temporary Restroom Facility Act is amended by changing Sections 1, 5, 10, 15, and 20 and by adding Sections 6, 10.5, and 25 as follows:

(410 ILCS 37/1)

Sec. 1. Short title. This Act may be cited as the Construction Site Temporary Restroom Facility and Sanitary Conditions for Menstruation and Lactation Act.

(Source: P.A. 94-42, eff. 6-17-05.)

(410 ILCS 37/5)

Sec. 5. Legislative finding. It has been established by scientific evidence that improper plumbing can result in the introduction of pathogenic organisms into the potable water supply, result in the escape of toxic gases into the environment, and result in potentially lethal disease and epidemic. It is further found that minimum numbers of plumbing facilities and fixtures are necessary for the comfort and convenience of workers and persons in public places and that individuals who are employed on construction sites and who are menstruating, lactating, or both need additional support from

their employers to ensure construction site safety and a construction industry that is inclusive of all workers.

(Source: P.A. 94-42, eff. 6-17-05.)

(410 ILCS 37/6 new)

Sec. 6. Definitions. As used in this Act:

"Construction industry" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, or adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation, or other structure, project, development, real property, or improvement, or any part thereof, whether or not the performance of the work described involves the addition to or fabrication into any structure, project, development, real property, or improvement described in this Section of any material or article of merchandise, including moving construction-related materials on the job site. "Construction industry" does not include:

(1) landscaping services not performed in connection with a construction project;

(2) custom fabrication or manufacturing performed at a fixed facility; or

(3) work performed at the same location for fewer than 5 consecutive work days.

"Employee" has the meaning given to that term in Section 2 of the Illinois Wage Payment and Collection Act.

"Employer" has the meaning given to that term in Section 2 of the Illinois Wage Payment and Collection Act. "Employer" includes the State and units of local government, any political subdivision of the State or units of local government, or any State or local government agency. "Employer" does not include an entity that engages in the business of providing temporary bathrooms or temporary toilet facilities.

"Menstrual hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

(410 ILCS 37/10)

Sec. 10. Temporary restroom facility.

(a) Within 6 months after the effective date of this amendatory Act of the 104th General Assembly, the owner or the owner's representative of a temporary building or building under construction that is not yet occupied for its intended purpose shall comply with paragraphs (2) and (3) of subsection (b) of this Section.

(b) The owner or the owner's representative of a temporary building or building under construction, that is not yet occupied for its intended purpose, shall ensure that employees

working on the construction site have access to restroom facilities ~~that which~~ meet the following requirements:

(1) Toileting facilities shall be enclosed and discharged into a sanitary sewer. In lieu of connecting to a sewer, the sanitary facility may be a portable, enclosed, chemically-treated tank-tight unit.

(2) If a woman or an individual who menstruates is present and employed for construction purposes on the construction site, if the nature of the person's job does not inherently limit the person's presence on the construction site to 2 days or less, and if there are 10 or more workers of any gender at the construction site, then a separate toilet facility shall be provided at the construction site and designated, for use by women and individuals who menstruate, with exterior signage to identify the class of individuals who shall have access, except in existing places of public accommodation or public buildings in compliance with the Equitable Restrooms Act. Otherwise, toileting individual portable units are used, separate toileting facilities are not required for males and females. Toileting facilities shall be provided based on the Occupational Safety and Health Administration construction sanitation standards, which are as follows:

(A) For 20 employees or less, one toilet facility shall be provided.

(B) For 20 employees or more, one toilet facility and one urinal per 40 workers shall be provided.

(C) For 200 or more employees, one toilet facility and one urinal per 50 workers shall be provided.

(3) Hand cleansing units shall be provided.

(4) All non-sewered units shall be pumped and cleansed regularly to ensure adequate working facilities.

(5) For non-residential temporary buildings or non-residential buildings, the restroom facilities shall be located within 300 feet of the entrance of the building under construction.

(6) For residential temporary buildings or residential buildings, the restroom facilities shall be made readily available in nearby areas.

(Source: P.A. 94-42, eff. 6-17-05.)

(410 ILCS 37/10.5 new)

Sec. 10.5. Sanitary conditions for construction workers who menstruate, express milk, or both.

(a) Within 6 months after the effective date of this amendatory Act of the 104th General Assembly, employers in the construction industry shall comply with this Section.

(b) Employers in the construction industry shall provide their workers who menstruate, who are performing construction activities on a construction site, and whose jobs do not inherently limit their presence on the work site to 2 days or

less with the following minimum sanitary conditions:

(1) access, on the construction site, either to:

(A) a minimum size bathroom that can include a standard sized portable chemical toilet and that can be secured with a latch upon entry; or

(B) a permanent structure with a bathroom with toileting facilities that can be secured with a latch upon entry;

(2) an adequate amount of time to accommodate for multiple layers of clothing while using the bathroom; and

(3) a sufficient amount or supply of menstrual hygiene products that are available at no cost to the workers and are:

(A) located, for construction sites with fewer than 10 workers, in all gender-neutral bathrooms;

(B) located, for construction sites with 10 or more workers, in bathrooms that are designated for workers who menstruate and that are marked with exterior signage that identifies the class of individuals who shall have access; or

(C) provided in kits for each employee who needs the products.

As used in this subsection (b), "a sufficient amount or supply of menstrual hygiene products" means at least 10 units of the products.

(c) Employers in the construction industry shall provide

their workers who are lactating and performing construction activities on a construction site with lactation accommodations upon request as needed to express breast milk unless doing so constitutes an undue hardship. Lactation accommodations under this Section may include:

(1) a flexible work schedule, including scheduling breaks that provide time for expressing breast milk;

(2) a location, other than the bathroom, that is convenient and sanitary for the employee to express breast milk, that is private and lockable from the inside, and that is identified by exterior signage that designates who shall have access;

(3) convenient hygienic refrigeration on the construction site for the storage of milk; and

(4) a convenient water source that is in a private location near the location where the breast milk is expressed and that is available for the employee's use to clean and wash hands and wash milk expression equipment.

(d) Compliance with minimum lactation accommodations under this Section does not relieve employers from compliance with the Nursing Mothers in the Workplace Act or the Illinois Human Rights Act.

(e) On multiemployer construction sites, each employer is responsible for ensuring that facilities for their own employees are provided either directly or through agreement with the prime contractor or the owner's representative of a

temporary building or building under construction.

(f) For purposes of this Section, "undue hardship" means an action that is prohibitively expensive or disruptive when considered in light of the following factors: (i) the nature and cost of the accommodation needed; (ii) the overall financial resources of the facility or facilities involved in the provision of the lactation accommodation, the number of persons employed at the facility, the effect on expenses and resources, or the impact of the accommodation upon the operation of the facility; (iii) the overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees, and the number, type, and location of its facilities; (iv) the type of operation or operations of the employer, including the composition, structure, and functions of the workforce of the employer and the geographic, administrative, or fiscal relationship of the facility or facilities in question to the employer; and (v) whether making the accommodation would create dangerous conditions risking the health and safety of employees, or would unreasonably disrupt the operations and completion of the project at the construction site. The employer has the burden of proving undue hardship. The fact that the employer provides or would be required to provide a similar accommodation to similarly situated employees creates a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

(g) On or before January 1, 2027, the Department of Public Health, in consultation with the Department of Human Rights, shall provide guidance to employers via a website or other means concerning lactation accommodations.

(410 ILCS 37/15)

Sec. 15. Enforcement. Inspectors employed by municipalities and counties may inspect construction sites to ensure compliance with this Act. Employees on construction sites may call the county or municipality with jurisdiction over the construction site to request an inspection if noncompliance with this Act is suspected.

Retaliation by employers is prohibited. It is unlawful for any employer to threaten to take or to take any adverse action against an employee because the employee:

(1) exercises employee's rights or attempts to exercise the employee's rights under this Section;

(2) opposes practices that the employee believes to be in violation of this Section; or

(3) supports the exercise of the employee's rights of another under this Section.

It is unlawful for any employer to consider the need for a lactation or a menstruation accommodation by an employee as a negative factor in any employment action that involves hiring, evaluating, promoting, disciplining, terminating, or laying-off of the employee.

(Source: P.A. 94-42, eff. 6-17-05.)

(410 ILCS 37/20)

Sec. 20. Penalty.

(a) Any owner or employer who fails or refuses to comply with the provisions of this Act shall be deemed guilty of a petty offense and shall be issued a fine not to exceed \$100.

(b) Any owner or employer convicted of violating the provisions of this Act shall be subject to a conviction for succeeding offenses for each day he or she fails or refuses to comply with the provisions of this Act.

(c) Any owner or employer who receives notice that it has failed to provide a separate toilet facility, menstrual products, or lactation accommodations required under this Act for a woman or individual who menstruates or expresses breast milk shall have a 7-day grace period to comply with this Act before the owner or employer shall be subject to a penalty under this Act. The notice required under this Section must be provided in writing to the owner or employer. The grace period shall not apply if the owner or employer has previously received notice with respect to the same employee.

(Source: P.A. 94-42, eff. 6-17-05.)

(410 ILCS 37/25 new)

Sec. 25. Immunity from liability. An employer that in good faith provides menstrual products in sealed packaging for

employee use as required by paragraph (3) of subsection (b) of Section 10.5 of this Act shall not be liable in any civil action for injuries resulting from the use of the product, except for willful or wanton conduct by the employer.

Section 99. Effective date. This Act takes effect January 1, 2027.