

New York State Expands Obligations to Accommodate Nursing Employees, Publishes Model Policy

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Employers in New York State are required to comply with new obligations to accommodate nursing employees and to issue a mandatory lactation policy released by the Department of Labor beginning June 7, 2023. The expanded obligations arise from new amendments to New York State's Nursing Mothers in the Workplace Act (New York Labor Law § 206-c).

Pre-Amendment Accommodation Requirements

Previously, New York State required employers to provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth.

The law also required an employer to make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. The law further forbade an employer from discriminating against an employee who chooses to express breast milk in the workplace.

Expansion of Accommodation Obligations

The amendments to New York State's Nursing Mothers in the Workplace Act expand employer obligations. Employers must allow breaks to lactating employees "each time such employee has reasonable need" to express breast milk for up to three years following childbirth.

Employers are also required to designate a room or other location to express breast milk. The room or other location must be in a place that is:

1. In close proximity to the work area;
2. Well lit;
3. Shielded from view;
4. Free from intrusion from other persons in the workplace or the public; and
5. Not a restroom or toilet stall.

This room or location must provide, at minimum:

1. A chair;
2. A working surface;
3. Nearby access to clean running water; and
4. An electrical outlet (if the workplace is supplied with electricity).

If the sole purpose of the room is not dedicated for use by lactating employees, then the employer is required to make the room available upon employee need. Employers



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“must provide notice” to all employees” as soon as practicable when the room has been designated for use by employees to express breast milk.

When compliance with these requirements is impracticable because it would impose an undue hardship on the employer by “causing significant difficulty or expense,” the employer must make reasonable efforts to provide a room or location that is in close proximity to the work area where an employee can express breast milk in privacy.

If an employer has access to refrigeration, the employer is required to allow a breastfeeding employee to store expressed milk in the refrigerator.

Implementation of Written Lactation Policy

The amendments tasked the commissioner of labor to develop and implement a written policy on the rights of nursing employees to express breast milk in the workplace. The New York State Department of Labor has issued its model policy: [New York State Department of Labor’s Policy on the Rights of Employees to Express Breast Milk](#).

Employers must provide the written policy to each employee upon hire, annually thereafter, and to employees returning to work following the birth of a child. The policy is required to: (a) inform employees of their rights pursuant to the state law; (b) specify the means by which a request may be submitted to the employer for a room or other location for use by employees to express breast milk; and (c) require the employer to respond to the request within a reasonable timeframe, but not to exceed five business days.

Takeaways for New York Employers

New York State employers must implement the New York State Department of Labor’s mandatory lactation policy and ensure they provide proper notice of the policy to their employees.

Further, employers should consider how to implement the expanded accommodation obligations and how to coordinate the New York State Department of Labor’s mandatory lactation policy within existing company policies addressing lactation accommodations.

Additionally, employers with at least four employees in New York City are reminded of similar lactation accommodation obligations, as well as mandatory policy requirements under New York City law.

Finally, federal laws addressing [lactation accommodation](#) were also [expanded pursuant to the PUMP for Nursing Mothers Act](#).

If you have any questions regarding this or other legislation affecting the workplace, please contact the Jackson Lewis attorney with whom you regularly work.

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