



New York Expands Required Workplace Accommodations for Nursing Employees: 5 Things Employers Should Know

Insights

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New York is expanding accommodations and protections for nursing employees in the workplace. In accordance with amendments to New York Labor Law Section 206-c, which will go into effect in June 2023, employers across the state will soon be statutorily mandated to designate a room or other location for an employee to express breast milk. Employers must also provide an employee with break time (either unpaid or paid, if available) to express breast milk each time there is a reasonable need. While certain localities like New York City already mandate similar accommodations, these requirements – now mandated by statute rather than agency guidance – will be new to many employers. You must also keep in mind soon-to-be-enacted federal requirements expanding protections for nursing mothers. Here are the five things New York employers should know.

1. Provide Reasonable Unpaid or Paid Break Time

New York employers must provide reasonable unpaid break time or permit an employee to use paid break time or mealtime to express breast milk each time they have a reasonable need to express breast milk for up to three years following childbirth. [Guidelines](#) released by the New York Department of Labor's Division of Labor Standards (DOL) in response to the original iteration of Section 206-c provides for reasonable break time of no less than 20 minutes. However, this time is not resolute. An employee may take more (or less) time as needed and must be provided with no less than 30 minutes of break time where the room or location to express breast milk is not in close proximity to an employee's workstation.

2. Designate a Room or Location to Express Breast Milk in Privacy

Upon request, an employer must designate a room or other location for use by an employee to express breast milk. The designated room or location must be in a place that is:

- In close proximity to the work area;
- Well lit;
- Shielded from view; and
- Free from intrusion from other persons in the workplace or public.

An employer must provide, at a minimum: a chair, working surface, nearby access to running water, and, if the workplace is supplied with electricity, an electrical outlet in the room or location. A restroom or toilet stall do not meet these requirements.

Where the designated room or location is not solely for the use of an employee to express breast milk, the room or location must be made available to the employee when needed and cannot be used for any other purpose while in use. Employers must notify employees as soon as practicable when the room or location has been designated for use by employees to express breast milk.

Undue Hardship Exemption

An undue hardship arises where compliance with the provisions of the law would cause the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business. A proven undue hardship will not, however, absolve an employer from all provisions of the law. New York employers must still make reasonable efforts to provide a room or other location that is in close proximity to an employee's work area where an employee can express breast milk in privacy. Again, the room or location cannot be a restroom or toilet stall.

3. Provide Equal Access to Refrigeration

If the workplace has access to a refrigerator, an employer must allow an employee to store expressed breast milk.

4. Abide by Notice Requirements

The Department of Labor will develop a written policy regarding the rights of nursing employees to express breast milk in the workplace. The policy will:

- Inform employees of their rights;
- Specify how an employee may request a room or location to express breast milk; and
- Require employees to respond to requests for a room or location to express breast milk in no more than five business days.

Employers must provide employees with this written policy upon hire, annually, and when an employee returns to the workplace following the birth of a child. Current DOL guidelines (regarding notice given to employees returning to the workplace after the birth of a child) allow for general notice through an employee handbook or posting of the notice in a central location. However, it is not certain that this allowance will continue after the amendments go into effect.

5. Enforce Prohibitions Against Retaliation and Discrimination

Employers are prohibited from discharging, threatening, penalizing, or in any other way discriminating or retaliating against an employee who chooses to express breast milk in the workplace or exercises rights under the law.

Conclusion

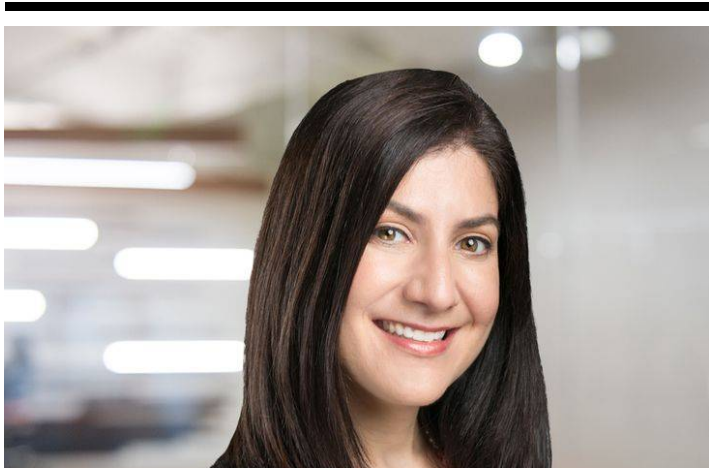
On a federal level, protections for breastfeeding workers are soon to be expanded by the PUMP Act, which was approved by Congress last week and expected to be signed into law by President Biden shortly. Given the broader provisions of New York's law, compliance with federal requirements will not be enough to avoid liability under the state law, or the broader protections for New York City employees.

Accordingly, you must take steps to prepare for the amendments that go into effect on June 7, 2023. In preparation, you should:

- Identify a room or location at the worksite that can be used to accommodate a nursing employee and meets the requirements of the law. If such a space is not at all available, and the creation of such a space would create an undue hardship, you must still identify a room or location that will provide the nursing employee with privacy to express breast milk and is in close proximity the employee's work area.
- Advise and train any employees with supervisory authority on the requirements to provide break time and a room or location to express breast milk upon request.
- Prepare responsible staff for the requirement to provide employees with the DOL-developed written policy.

We will continue to monitor developments and provide updates as appropriate, so make sure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our New York City office.

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