

## **New York Expands Employees' Lactation Accommodations**

On June 7, 2023, amendments to New York State's Nursing Mothers in the Workplace Act will go into effect, expanding the accommodations New York State employers must afford their nursing employees.

### **The Requirements**

The amended law expands accommodations for nursing mothers employed in New York state in three primary areas:

- it provides additional guidance on the use of break time to express milk;
- it establishes more detailed requirements for lactation rooms; and
- it requires employers to provide written notice to employees of their lactation rights at several statutorily enumerated times.

Many employers will already be familiar with the majority of the new requirements, as they largely track New York City's [existing lactation accommodation requirements](#). However, the New York State law differs in several areas, and employers should ensure their policies and procedures are updated accordingly. For example, unlike New York City's law, which applies only to employers with 15 or more employees, the amended state law applies to all public and private employers, *regardless of size*.

### Break Time

New York State already requires that employers provide "reasonable" unpaid break time or permit an employee to use paid break or meal time to express milk for up to three years following the birth of a child. Current guidance from the New York State Department of Labor explains that employees must be permitted to take breaks at least once every three hours to pump breast milk, and specifies that each such break be at least 20 minutes long, with additional time if needed. The new amendments clarify that employees may take breaks "each time such employee has reasonable need to express breast milk."

### Lactation Rooms

State law already requires that employers make "reasonable efforts" to provide a lactation room or other location "in close proximity to the work area" for the purposes of expressing milk. The amended law provides further detail regarding this requirement, adding that this space may not be a restroom or toilet stall, and requiring that it be well lit, shielded from view, and free from intrusion from other persons in the workplace or the public. It must also have "a chair, a working surface, nearby access to clean running water and, if the workplace is supplied with electricity, an electrical outlet." The amended law adds that employers must extend access to refrigeration for storing expressed milk if the workplace has refrigeration amenities.

As under New York City law, the designated space may be used for other purposes when employees are not using it to express breast milk. In such circumstances, employers must

notify their employees as soon as practicable that even though the lactation room may be used for other purposes, its use for expressing milk takes priority.

If satisfying these lactation room requirements is impractical because compliance would impose an “undue hardship” by causing “significant difficulty or expense” because of the employer’s size, financial resources, nature of business, or structure of business, then an employer must still make “reasonable efforts” to provide an alternative location “that is in close proximity to the work area where an employee can express breast milk in privacy.” Note that if providing a lactation room imposes undue hardship on New York City employers, they must still engage in a cooperative dialogue to identify an appropriate accommodation that meets an employee’s needs, as required by city law.

### Written Notice

The amended state law requires the New York Labor Commissioner to develop and implement [a written policy](#) that informs employees of their rights under the law, specifies how employees may request a lactation room, and requires employers to respond to such requests within a reasonable timeframe (which cannot exceed 5 days). The statute requires that employers provide this written model policy, [available here](#), to employees upon hire and then on an annual basis, and upon return to work following the birth of a child. Although further guidance may shed additional light on whether employers have flexibility to adopt a policy that tracks the legal requirements but does not adopt the model policy wholesale, given the text of the amendment, the most prudent course of action for employers at this time is to provide the state’s model policy to employees. New York City law only requires that employers create and provide their own policy consistent with the city law.

### **Practical Takeaways**

- Employers should ensure their existing policies comply with applicable federal, New York State, and New York City lactation laws.
- Employers should make sure that a written policy of lactation accommodation rights is incorporated into employee handbooks, and conforms to the [New York State model policy](#).
- Employers should assess their workplace to determine what space meets the criteria established for a lactation room under the new laws and determine if any changes need to be made to their physical space to comply with lactation room requirements.
- Human resources personnel should be trained and advised of the changes to the law.
- Employers should provide a copy New York State model policy, when it becomes available, to employees (i) upon hire, (ii) on an annual basis, and (iii) upon return to work following the birth of a child.

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