

LEGAL ALERT: RIGHT OF NURSING MOTHERS TO EXPRESS BREAST MILK

SUMMARY

New York State Labor Law Section 206-c requiring all public and private employers, regardless of the size or nature of their business, to provide nursing mothers with unpaid breaks or paid break or meal times to express breast milk went into effect on August 15, 2007. The New York State Department of Labor subsequently released guidelines to help employers interpret this law on May 7, 2008.

The following lists important points that employers should keep in mind:

- All employees returning to work after giving birth are entitled to unpaid breaks or paid break or meal times in a private location (not the restroom) in close proximity to the workplace to express breast milk for up to 3 years after childbirth.
- Employers must give employees notice of this right individually or through a general distribution.
- Breaks should generally be 20 minutes, every 3 hours, but are evaluated on a case-by-case basis.
- The separate location should be within walking distance and private.
- Employers cannot deny employees of this benefit simply due to difficulty in finding a location. They must make reasonable efforts, meaning that it is not significantly impracticable, inconvenient or expensive to provide such a space. A fully enclosed cubicle is a sufficient last resort and a separate office is sufficient on a temporary basis.
- If there are multiple employees who need to use this room, an employer may dedicate one room and establish a schedule accordingly.
- Employers can also collaborate with other employers in shared spaces (mall, office building) to provide one dedicated lactation area.
- Employers cannot discriminate against an employee who chooses to express breast milk in the workplace. Discrimination can include the encouragement or allowance of a work environment that is hostile to the right of nursing mothers to take leave for this purpose.

Please see the attached for a more detailed summary of the law and guidelines.

Whom does this law affect?

This requirement applies to all public and private employers, regardless of the size or nature of their business. All employees returning to work after giving birth are entitled to this benefit for up to three years after child birth.

What does the statute require?

<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

Section 206-c of the New York State Labor Law requires all public and private employers to provide (1) reasonable unpaid break time or allow employees to use paid breaks or meal times and (2) a private separate location to express breast milk for up to three years after child birth. No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace.

What do the guidelines say?

What are employers required to do?

Notice: Employers must notify employees returning to work after child birth of their right to take unpaid breaks to express breast milk. This notice can be given individually or distributed to all employees generally. (e.g. through publication in the employee handbook or posting in a central location)

Timing of unpaid breaks: This applies to the employee's basic work week and any overtime or additional hours worked.

- **Length**: Breaks should be at least 20 minutes, unless the employee chooses to take a shorter break. If the room is not in close proximity to the workplace, the break should be at least 30 minutes.
- **Frequency**: These breaks should generally be available every 3 hours, but are evaluated on a case-by-case basis.
- **Work constraints**: The employer may postpone the scheduled unpaid break for up to 30 minutes if the employee is needed until appropriate coverage is available.
- **Employee options**: Employers should note that employees can choose to:
 - ❖ schedule such unpaid breaks during a regularly paid break or meal time; and
 - ❖ work before or after her normal shift to make up the time taken for such unpaid breaks as long as that time falls within the employer's normal work hours.

Location/Room: Employers must provide a private, separate location (not a restroom) in close proximity to the employee's working area to express milk, as long as it is not significantly impracticable, inconvenient or expensive to do so.

- **Private**: The room shall be well lit at all times and ensure privacy (e.g. curtains or blinds if there are windows). There must be either a lock on the door or a clearly marked sign indicating that such space is not publicly accessible.
- **Close proximity**: The location should be within walking distance and should not significantly affect the length of the break.

- **Provisions:** At minimum, the room shall contain a small table, desk, counter, or other flat surface. Employers are encouraged to provide an outlet, clean water supply and access to refrigeration to store the expressed milk.
- **Significantly impracticable, inconvenient or expensive:** The relevant factors to determine what is overly burdensome for an employer to provide such a separate room include but are not limited to:
 - ❖ Nature of work performed at the business;
 - ❖ Overall size and physical layout of the business;
 - ❖ Type of facility where the business is housed;
 - ❖ Size and composition of the employer's workforce;
 - ❖ Business' general hours of operation and the employees' normal work shifts;
 - ❖ Relative cost of providing a room or other space for the dedicated purpose.
- **Alternatives:** If an employer is unable to provide a dedicated lactation room, a separate office is sufficient on a temporary basis. A fully-enclosed and private cubicle with walls at least seven feet high can be used as a last resort if a separate room is unavailable. *Employers cannot deny employees of this benefit simply due to difficulty in finding a location.*

Employer responsibility: Employers are not responsible for the safekeeping of expressed milk stored in a refrigerator on its premises. Employers are, however, responsible for maintaining the cleanliness of the room.

Multiple employees: An employer may dedicate one room for this purpose and establish a schedule to accommodate the needs of multiple employees who may need access at the same time.

Employer Option Regarding Shared Work Areas: Employers located in shared spaces such as office buildings or malls may cooperate with each other to establish and maintain one dedicated lactation area. Such an area must be located at a reasonable distance from the employees using the room. Employers should note that each employer is still individually responsible for complying with the requirements of the guidelines.

Non-discrimination: No employer shall discriminate against an employee who chooses to express breast milk in the workplace. Discrimination can include the encouragement or allowance of a work environment that is hostile to the right of nursing mothers to take leave for this purpose.

What are employees required to do?

Notice: Employees are required to give the employer advance notice, preferably prior to their return following child birth, to allow the employer time to establish a location and schedule time to express breast milk amongst multiple employees, if needed.

Milk storage: Employees must store all expressed milk in closed containers and bring such milk home every evening.

Suggested Employer Activities

While the following is not a list of required activities, the guidelines include these suggestions for employers to aid their compliance with this law.

1. Provide educational information in the lactation room or area regarding the benefits of breastfeeding and tips on expressing and storing breast milk including posters, newsletters, books and referral information to health education programs about breastfeeding.
2. Allow flexible work hours, job sharing, and/or part-time scheduling to accommodate employees with children of nursing age.
3. Provide an easily accessible sink to wash tubing used for pumping breast milk.
4. Allow mothers of nursing children attending on-site day care to take breaks to breast feed in lieu of pumping.
5. Provide a list of lactation consultants whom breastfeeding mothers could contact for assistance.
6. Including protection for pregnant and breastfeeding mothers in the company's sexual harassment policy.
7. Designate a breastfeeding coordinator to allow consistent and coordinated implementation of this benefit in the workplace.