



## LAW UPDATE LABOR AND EMPLOYMENT

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### **LEGISLATURE AMENDS REQUIREMENTS FOR LACTATION ACCOMMODATION IN THE WORKPLACE**

Effective January 1, 2020, Senate Bill 142 amends California workplace lactation accommodation requirements. As a result of the legislation, Labor Code sections 1030, 1031, and 1033 regarding lactation accommodation for employees will be amended in several respects. Additionally, new Labor Code section 1034 requires a workplace lactation accommodation policy. The details of these amendments and new provisions are described more fully below.

#### *Lactation Accommodation in the Workplace*

Employers must provide a reasonable amount of break time to accommodate an employee desiring to express breastmilk for the employee's infant child each time the employee has a need to express milk. The break time must, if possible, run concurrently (at the same time) with any break time already provided to the employee. Break time that does not run concurrently with legally-authorized rest time for the employee is unpaid.

In addition to break time for an employee to express milk during the workday, employers must provide the use of a room or other location for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets specified requirements. A lactation room or location cannot be a bathroom and must be in close proximity to the employee's work area, shielded from view, and free from intrusion while the employee is expressing milk. When a multipurpose room is used for lactation, among other uses, the use of the room for lactation must be given precedence over the other uses, but only for the time used for lactation purposes. A lactation room or location must comply with all the following requirements:

- Be safe, clean, and free of hazardous materials;
- Contain a surface to place a breast pump and personal items;
- Contain a place to sit; and
- Have access to electricity or alternative devices, including but not limited to, extension cords or charging stations needed to operate an electric or battery-powered breast pump.

The employer must also provide access to a sink with running water and a refrigerator suitable for storing milk in close proximity to the employee's workspace. If a refrigerator cannot be provided, an employer may provide another cooling device suitable for storing milk, such as a cooler.

If an employer has operational, financial, or space limitations, it may comply with these requirements by designating a temporary lactation location. A temporary location may not be a bathroom and must be in close proximity to the employee's work area, shielded from view, and free from intrusion while the employee is expressing milk.

An employer that employs fewer than 50 employees may be exempt from a requirement described above if it can demonstrate that the requirement would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business. Further, if the employer can demonstrate that providing a room or location other than a bathroom would impose an undue hardship, the employer must make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private.

An employee who alleges denial of reasonable break time or adequate space to express milk can file a complaint with the Labor Commissioner. Employers are prohibited from discharging or in any other manner discriminating or retaliating against an employee for exercising or attempting to exercise any right protected under these revised laws.

#### Employer Policy Regarding Lactation Accommodation in the Workplace

In addition to the requirements above, employers will now be required to develop and implement a policy regarding lactation accommodation that includes the following<sup>1</sup>:

- A statement about an employee's right to request lactation accommodation;
- The process by which the employee makes the request for lactation accommodation;
- An employer's obligation to respond to the request for lactation accommodation; and
- A statement about an employee's right to file a complaint with the Labor Commissioner for any violation of a lactation accommodation-related right.

This policy must be distributed to new employees upon hire and, importantly, when an employee makes an inquiry about, or requests, parental leave. If an employer cannot provide break time or a location that complies with the policy described above, the employer shall provide a written response to the employee.

Should you have questions or concerns regarding this information, please contact an attorney in our Labor and Employment Practice Group.

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<sup>1</sup> California School Boards Association Model Board Policy 4033 was revised in December 2019 to meet the new legal requirements.