



GET READY FOR CALIFORNIA'S NEW LACTATION ACCOMMODATION LAW

Earlier this month Governor Newsom signed SB-142, which amends California's lactation accommodation law for employers and also requires employers to develop a written lactation accommodation policy.

If you are an employer in San Francisco, you will find that the new requirements are very similar to San Francisco's Lactation in the Workplace Ordinance. For other parts of the state, the law imposes significant additions to the physical requirements for lactation spaces, and also requires employers to develop a written lactation policy. Additionally, failure to allow reasonable break time for lactation or a compliant location is considered failure to provide a rest break and exposes an employer a \$100/day civil penalty, plus liability for rest period premium pay.

Here are some highlights of the new law:

New Physical Space Requirement:

Amendments that took effect in 2019 required that in almost every case, a lactation accommodation space be offered in areas near an employee's work space other than a bathroom. The new amendments continue the prohibition on the use of a bathroom and also set out new physical requirements for lactation accommodation spaces. Under the new

amendments, lactation spaces must:

1. Be shielded from view, free from intrusion, clean, safe and free of hazardous materials;
2. Have access to electricity;
3. Contain a place to sit; and
4. Contain a surface for a breast pump and personal items

Employers must also offer access to a sink with running water and a refrigerator suitable for storing breast milk, or an alternative cooling device, like a cooler if a refrigerator is not available. Agricultural employers remain subject to a looser requirement.

Temporary and Shared-use Spaces:

Multipurpose rooms can be used as lactation spaces as long as the use for lactation takes precedence over other uses. On multi-employer worksites or in multi-tenant buildings, a shared space can be offered if an employer cannot provide a location in its own space. A lactation space may be a temporary space if required by operational, financial or space concerns, so long as the space is otherwise compliant.

Multi-employer Jobsites: The general contractor or employer responsible for coordinating the work at the site is responsible for providing the lactation space within 2 business days of a request by a subcontractor employer.

When and How Often: Current law already provides that a “reasonable” amount of lactation break time must be provided. The amended provisions specify that lactation breaks must be provided “each time” an employee needs to express milk. If possible, lactation breaks should run concurrently with paid rest breaks, but if that is not possible, you can require employees to clock out for lactation breaks.

Hardship Exemptions: Employers with 50 or fewer employees may seek an exemption from the Labor Commissioner if they can demonstrate undue hardship. Labor Code section 1032, which provides that employers are not required to provide break time for lactation if it would “seriously disrupt” operations was unchanged by the amendment, but in our view should be considered to apply only to individual instances of missed lactation breaks because of unusual circumstances, rather than to the failure to provide compliant lactation breaks as a whole.

Written Lactation Policy: Employers are required to develop and distribute a written lactation accommodation policy. The policy must be incorporated into employee handbooks if the employer has a handbook, or into the employer’s other written policies. It must be distributed upon hiring and on inquiry about parental leave. Unfortunately, the final version of the statute deleted the proposed language that would have required the DLSE to disseminate model policy language.

What Next?

- Many employers update their handbooks and written employment policies at the end of the year. If your business hasn’t updated your handbook in a few years, now is a great time since the new law imposes an affirmative

obligation to include lactation policy language. We can assist with crafting appropriate language or any other updates your handbook requires.

- If you are an employer in San Francisco, you may already be subject to a written policy requirement under San Francisco’s Lactation in the Workplace Ordinance, but should still review your existing policy and lactation spaces to ensure compliance.
- Businesses like event planners, food truck operators, contractors or others that commonly work at multi-employer sites should also give consideration to addressing off-site lactation space needs and should make sure that supervisors are trained to either request necessary space from a general contractor/coordinating employer, or to respond to a request from a subcontractor.
- Employers should also inspect their existing lactation spaces to ensure that they meet the law’s physical requirements and make any necessary updates before the end of the year.
- Finally, if you believe you may need to seek a hardship exemption, keep in mind that the statute still requires employers to make reasonable efforts to provide an alternate lactation space.

If you have additional questions or need assistance in complying with the new lactation accommodation law, please contact any attorney in Donahue Fitzgerald’s Employment Group.

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