

New York City Council Enacts Mandatory Lactation Accommodation for Employees, Including a Written Policy

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On October 17, 2018, as part of a set of bills known as the “Mother’s Day Bills,” the New York City Council passed two measures concerning lactation accommodation in the workplace. The pair of bills, [Int. 879-2018](#) and [Int. 905-2018](#), which amend the New York City Human Rights Law (and supplement existing federal and state laws),¹ will require employers with four or more employees in New York City to (i) provide employees with break time and a private space to express milk, and (ii) notify employees about these rights in a detailed written policy. As a result of Mayor de Blasio’s failure to veto the bills within 30 days after their passage by the City Council, the bills were deemed enacted on November 17, 2018. Int. 879-2018 and Int. 905-2018 (the “Laws”) will become effective on March 17, 2019.

Lactation Room Requirements

[Int. 879-2018](#) will require all employers to designate a “lactation room,” which is defined as “a sanitary place, other than a restroom, that can be used to express breast milk shielded from view and free from intrusion.” The room must include, at a minimum: (i) an electrical outlet; (ii) a chair; (iii) a surface on which to place a breast pump and other personal items; and (iv) nearby access to running water. Employers also must provide a refrigerator suitable for breast milk

¹New York State Labor Law [Section 206-c](#) requires **all** employers to provide an employee “reasonable” unpaid break time or permit an employee to use paid break time or mealtime each day to express breast milk for her nursing child for up to three years following childbirth. The employer must make “reasonable efforts” to provide a private location, in close proximity to the work area, where an employee can express milk. See the New York State Department of Labor’s [Guidelines Regarding the Rights of Nursing Mothers to Express Breast Milk in the Work Place](#), which, among other things, define “reasonable” break time as at least 20 minutes.

In addition, [Section 7\(r\) of the federal Fair Labor Standards Act](#) (“FLSA”), as amended by the Affordable Care Act, requires employers to provide reasonable break time for an employee covered by the FLSA to express breast milk for her nursing child for one year after the child's birth each time the employee has need to express the milk. Employers also are required to provide a private place, other than a bathroom, which an employee may use to express breast milk.

storage, which along with the lactation room, must be within “reasonable proximity” to the employee’s work area.

An appropriately furnished lactation room must be provided upon an employee’s request, but the room may be used for other purposes when an employee is not using it to express milk. However, employers must provide notice to employees that the lactation room’s use for expressing milk takes priority over its use for any other purposes.

If providing a compliant lactation room would impose an undue hardship on an employer, the employer must engage in a “[cooperative dialogue](#)” with the employee(s) requesting the lactation room to determine if a reasonable accommodation is available.

Lactation Accommodation Policy Requirements

[Int. 905-2018](#) will require employers to provide employees with a written policy informing them of their rights with respect to lactation accommodation. The policy must include a statement that employees have a right to request the use of a lactation room. Additionally, the written policy must:

- describe the process by which an employee may submit a request for use of a lactation room;
- state that the employer will respond to a request for a lactation room within a reasonable amount of time (not to exceed five business days);
- provide a procedure to follow when two or more individuals need to use the lactation room at the same time, “including contact information for any follow up required;”
- state that the employer will provide reasonable break time for an employee to express breast milk pursuant to New York Labor Law § 206-c (see footnote 1); and
- state that if the provision of a lactation room will impose an undue hardship on the employer, the employer will engage in a cooperative dialogue with the employee.

Employers will be required to distribute the policy to all employees upon hire (which can be achieved by including the policy in an employee handbook that is distributed at the time of hire). The New York City Commission on Human Rights will create a model policy and lactation request form.

What Employers Should Do Now

New York City employers should do the following:

- Review current policies and practices to ensure compliance with all applicable federal, New York State and New York City breastfeeding laws. Keep in mind that New York State’s lactation accommodation law applies to *all* employers, regardless of size;
- Incorporate a written policy of lactation accommodation rights into onboarding materials and/or employee handbooks;
- Train Human Resources personnel and supervisors/managers on any changes made to current lactation accommodation policies and procedures pursuant to the Laws; and
- Arrange for any needed renovations or other changes to selected room(s) or location(s) to satisfy the standards for a compliant lactation room as set forth in Int. 879-2018.

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