

Legal Trends

ACCOMMODATING NURSING MOTHERS IN THE WORKPLACE

Although women comprise nearly half of the U.S. labor force, they still face workplace obstacles unique to them. Fortunately, that is starting to change, albeit incrementally. In a year where, for the first time, a U.S. Senator cast a vote while holding her infant daughter,¹ state legislatures are taking notice and implementing laws to facilitate the expression of breast milk for nursing, working mothers.

The Federal government was the first to act. In 2010, the Affordable Care Act amended the Fair Labor Standards Act to require FLSA-covered employers with 50 or more employees to provide “reasonable break time” to *non-exempt* employees to express breast milk. (Employers with less than 50 employees are exempt if they demonstrate an “undue hardship.”) The requirement extends only for the first year after the child’s birth, and the break time need not be compensated (unless the employee simultaneously performs compensable work). Employers must provide a non-bathroom *space* “that is shielded from view and free from intrusion from co-workers and the public.” If the space is not dedicated to the nursing mother’s use, it must be available to nursing mothers as needed.

Massachusetts greatly expanded these requirements when it enacted the Pregnant Workers Fairness Act earlier this year. **Massachusetts** employers with at least 6 employees must provide a private, non-bathroom, conveniently located *room* to nursing mothers containing, at a minimum, comfortable seating, electrical outlets and a table/surface to place breast pumps and other items. Unlike the FLSA, these requirements apply to all employees, regardless of their FLSA classification.

On September 30, 2018, California’s Governor signed a similar law. Previously, **California** employers only needed to make a reasonable effort to provide workers with a private space to express breast milk. Under the new law, they must provide a conveniently located, temporary lactation location to be used solely for that purpose while the nursing mother is present. Employers demonstrating an undue hardship are exempted from these requirements. Interestingly, Governor Brown vetoed a more expansive bill that, like Massachusetts, would have required the room to have a place to sit and a surface to place a breast pump. The vetoed bill also would have required employers to develop a policy to educate employees on their rights to a safe and comfortable lactation space at work.

Several other states, including **Delaware, D.C., Nevada, Rhode Island** and **Utah**, also require certain accommodations to be made to nursing mothers. As breastfeeding rates in the U.S. continue to rise -- from 2009 to 2015 the percentage of U.S. children breastfed at any time increased by 10% -- we expect to see more and more states (and even cities) enact legislation in this area.

¹ <https://abcnews.go.com/Politics/expected-rule-change-duckworth-nurse-newborn-senate-floor/story?id=54565569>



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