

# How to accommodate for nursing breaks at work

New mothers who breastfeed their infants and return to work frequently intend to continue nursing. New breastfeeding laws assure break time for nursing mothers so they can express and store milk for their babies. Lactation breaks are quickly becoming the norm. For new mothers who breastfeed and return to work, breaks are absolutely essential. Delayed or no breaks can cause pain and medical complications as well as interfere with the ability to continue nursing. Here's what the new laws require and how you can make lactation breaks at work part of your family-friendly policies.

## Nursing breaks and the Fair Labor Standards Act

When Congress passed the Affordable Care Act (ACA), it included a little-noticed change to the Fair Labor Standards Act (FLSA). The change, which became effective March 23, 2010, the same day the ACA passed, provides unlimited milk expression breaks. Those breaks serve as lactation accommodations for hourly workers. Another provision in the ACA provided that breastfeeding support, including some supplies like a breast pump, must be covered. This has encouraged more new mothers to breastfeed before and after returning to work.

All employers with 50 or more workers must allow the unlimited breaks for eligible nursing mothers. Employers with fewer workers are also covered unless they can show providing the breaks is an undue hardship. The law does not define undue hardship. Exempt employees are not covered. However, exempt employees generally have flexibility to arrange for breaks as needed.

Exactly what is required? Here's a summary:

- Eligible nursing mothers must be allowed to take lactation breaks at work whenever they need to express milk.
- Break frequency depends on the individual mother, her milk supply and the needs of the infant or infants. See details below.
- Employers must allow the breaks until the employee's infant reaches one year of age.
- Nursing mothers must be provided a private place to express milk. That space cannot be a bathroom. It must be shielded from view.
- Lactation breaks must be uninterrupted.
- Lactation breaks do not have to be paid unless the nursing mother is taking a regularly scheduled paid break. She must also be fully relieved of duty while expressing milk. Otherwise, the break must be paid.

## Length, duration and frequency of nursing breaks

The Department of Labor (DOL), which administers the FLSA, has issued employer guidance on breaktime for nursing mothers. You can find that guidance [here](#). That document provides more information on the breaks. For example, it clarifies that an employer does not need to create a permanent lactation break room. Instead, the DOL envisions a flexible approach to finding and providing an appropriate site when a new mother needs one. Finally, this nursing mothers' law, as part of the FLSA, also prohibits retaliation against mothers who express

milk.

The DOL suggests that breaks last between 15 and 20 minutes to allow the average nursing mother to express and store milk. This depends on whether the lactation space has an electrical outlet or whether the mother must pump manually. Electric pumps tend to be more efficient than manual ones. Break length also depends on how far the employee must go to reach the lactation space. Another factor is whether she can keep her pumping supplies there and how far she must walk to store milk. DOL also suggests that nursing mothers will need between two and three breaks in an eight-hour shift.

There is no requirement in the FLSA's lactation accommodation provisions covering the storage of expressed milk. Because breast milk is highly perishable, it needs to be refrigerated. Nursing mothers may choose to bring their own coolers to work or use another available office refrigerator or freezer. If you have a large number of child-bearing age women in your workplace, you may want to provide a separate refrigerator.

## Other breastfeeding and nursing mothers' laws

The DOL says that states, cities and municipalities can pass their own laws providing nursing breaks. The federal law is just the minimum requirement. Many states and cities have created greater nursing mother protections. Additional jurisdictions are scheduled to require nursing breaks in the coming months and years.

Currently, twenty-nine states plus the District of Columbia provide workplace protections for nursing mothers. In some cases, the protection mirrors the ACA/FLSA provisions. But some do provide greater benefits. This includes greater accommodations for nursing mothers if their regular jobs don't allow for convenient milk expression breaks.

Always check if your state or city has additional required lactation accommodation rules. Some recently enacted state and city breastfeeding laws include:

**Kentucky:** On June 27, 2019, a new [pregnancy and lactation](#) accommodations law covering employers with 15 or more workers went into effect. Kentucky's law doesn't exclude exempt workers. New and expectant mothers in the Bluegrass State are entitled to the following accommodations under the Kentucky Pregnant Workers' Act:

- Frequent or longer breaks;
- Time off to recover from childbirth;
- Acquisition or modification of equipment and appropriate seating;
- Temporary transfer to a less strenuous or less hazardous position;
- Light duty or a modified work schedule; and
- Private space that is not a bathroom, to express breast milk.

**Oregon:** As of September 29, 2019, an Oregon state law will expanded breastfeeding and lactation protection. Employers must provide reasonable accommodations to employees and job applicants who have limitations related to pregnancy. This includes all employers with 6 or more workers. Smaller employers are also covered unless they can convince Oregon authorities the law creates an undue hardship.

- Accommodations include acquisition or modification of equipment or devices, more frequent or longer break periods or periodic rest; assistance with manual labor; or modification of work schedules or job assignments.
- Lactation breaks follow the FLSA requirements but continue until the child reaches the age of 18 months.
- Break times for nursing mothers to express milk must be provided as often as needed.

**New York state and New York City:** New York state has some of the most generous lactation accommodation laws in the country.

- Employers must provide lactation breaks that last a minimum of 30 minutes.
- Exempt and hourly workers are covered.
- New mothers may continue to take lactation breaks for up to the child's third birthday.

As of March 2019, all New York City employers must provide lactation rooms and a written lactation policy. There are very specific requirements for what must be included in the break space:

- The lactation room must be within a 'reasonable proximity' to the lactating mother's workspace.
- There must also be a chair, an electric outlet, a table to store supplies, a place for the pump and access to running water.
- The employer must also provide a refrigerator to store expressed milk close to the mother's workspace.

## Nursing break best practices

Employers can x

capitalize on improvements they make to help new mothers return to work and continue nursing their infants. Providing a clean, private and convenient milk expression facility makes good sense for any employer touting its family-friendly bona fides. Here are some best practices for providing lactation accommodations:

**Family or infant friendly label:** Check if your state allows you to designate yourself as family-friendly in promotional or recruiting materials. For example, Washington state has passed a law that allows employers to earn the label "infant friendly." It requires allowing flexible work schedules and providing a lactation space that's convenient, sanitary, private and safe. Additional musts include water for pump cleanup and a convenient separate refrigerator, so milk isn't stored with everyone else's lunch.

**Commercial solutions:** If you can't or don't have space to set aside for a lactation room, look at some of the commercially available options. If you have recently been at a major airport, you may have seen one option – a [portable pod](#) that's fully equipped for private nursing or milk expression. When placed in a workplace, these even include refrigeration for milk storage.

**Adding mothers' rooms:** When the ACA nursing break provisions went into effect, Johns Hopkins University (JHU) and hospital developed a model for nursing accommodation. This includes multiple mothers' rooms across campus. The rooms are equipped with hospital grade breast pumps, supply vending machines and storage refrigerators. JHU has published a comprehensive guide for managers, which can be adapted to various workplaces. You can read the [guide here](#). It includes tips on how to approach a returning mother who wants to express milk and how to handle breaks.