

POLICY ON THE RIGHTS OF EMPLOYEES TO EXPRESS BREAST MILK IN THE WORKPLACE

Introduction and Purpose

Section 206-c of the New York State Labor Law gives all employees in New York the right to express breast milk in the workplace. This law applies to all public and private employers in New York State, regardless of size or the nature of their business.

The New York State Department of Labor has developed the official policy on breast milk expression in the workplace as required by the law, ensuring that all employees know their rights and all employers understand their responsibilities. This policy is the minimum required standard, but employers are encouraged to include additional accommodations tailored to their workplace.

With the information provided below, employees will learn how much time they are allowed for breast milk expression, the kind of space employers are required to provide for breast milk expression, how to notify employers about the need to express breast milk in the workplace, and how to notify the Department of Labor if these rights are not honored.

Employers are required to provide this policy in writing to all employees when they are hired and again every year after. Employers are also required to provide the policy to employees as soon as they return to work following the birth of a child.

Using Break Time for Breast Milk Expression

Employees will be permitted to use their paid break time or meal time to express breast milk. The School District will also provide employees with unpaid break time at least every three (3) hours for employees to express breast milk at the request of the employee. Unpaid breaks provided for the expression of breast milk will be at least twenty (20) minutes. However, if the designated lactation room where such break will be taken is not close to an employee's work station, the provided break must be at least thirty (30) minutes. An employee must be allowed to take a longer unpaid break if needed. Employees may also opt to take shorter unpaid breaks.

Employees who work remotely have the same rights to unpaid time off for the purpose of expressing breast milk, as all other employees who perform their work in-person.

An employee will be permitted to work before or after their normal shift to make up any time used as unpaid break time to express breast milk, as long as this time falls within the employer's normal work hours. However, an employee will not be required to make up their unpaid break time. In addition, an employee may voluntarily choose to continue to work while expressing breast milk in the lactation room. Time working while expressing breast milk must be compensated. The School District will continue to follow existing federal and state laws, regulations, and guidance regarding paid and unpaid break time and meal times regardless of whether the employee uses such time to express breast milk.

The time requested by an employee for the purpose of expressing breast milk will be provided for up to three years following childbirth.

Making a Request to Express Breast Milk at Work

If an employee wants to express breast milk at work, they need to give the School District reasonable advance notice, generally before returning to the workplace if the employee is on leave. This advance notice is to allow the School District the time to find an appropriate location and adjust schedules if needed. Employees wishing to request a room or other location to express breast milk in the workplace should do so by submitting a written request to the Principal. The School District will respond to this request for a room or other location to express breast milk in writing within five (5) days of its receipt of the request. The School District will notify all employees in writing through email or printed memo when a room or other location has been designated for breast milk expression.

Lactation Room Requirements

In addition to providing the necessary time during the workday, the School District will provide employees with a private room or alternative location for the purpose of breast milk expression. The space provided for breast milk expression cannot be a restroom or toilet stall.

The room or other location must:

- Be close to an employee's work area
- Provide good natural or artificial light
- Be private – both shielded from view and free from intrusion
- Have accessible, clean running water nearby
- Have an electrical outlet (if the workplace is supplied with electricity)
- Include a chair
- Provide a desk, small table, desk, counter or other flat surface

There does not need to be a separate space for every nursing employee. The School District may dedicate a single room or other location for breast milk expression. Should there be more than one employee at a time needing access to a lactation room, the School District may dedicate a centralized location to be used by all employees.

Any space provided for breast milk expression must be close to the work area of the employee(s) using the space. The space must be in walking distance, and the distance to the location should not significantly extend an employee's needed break time.

If there is not a separate room or space available for lactation, the School District may use a vacant office or other available room on a temporary basis. This room must not be accessible to the public or other employees while an employee is using it for breast milk expression.

As a last resort, an available cubicle may be used for breast milk expression. A cubicle can only be used if it is fully enclosed with a partition and is not otherwise accessible to the public or other employees while being used for breast milk expression. The cubicle walls must be at least seven feet tall to insure the employee's privacy.

To ensure privacy, if the lactation room has a window, it must be covered with a curtain, blind or other covering. In addition, the lactation space should have a door equipped with a functional lock. If this is not possible (such as in the case of a fully enclosed cubicle), as a last resort, an employer must utilize a sign advising the space is in use and not accessible to other employees or the public.

In the event the School District would suffer undue hardship in providing a space in accordance with the above requirements, the School District will still provide a room or other location (other than a restroom or toilet stall) that is in close proximity to the work area where an employee can express breast milk in privacy, that meets as many of the requirements as possible. Undue hardship is defined as “causing significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.” However, the School District may not deny an employee the right to express breast milk in the workplace due to difficulty in finding a location.

If a refrigerator is available in the building in which the employee is assigned, the employee will be permitted to use the refrigerator to store breast milk. However, the School District is not responsible for ensuring the safekeeping of expressed milk stored in any refrigerator in the workplace. Employees are required to store all expressed milk in closed containers and bring milk home each evening.

The space designated for expressing breast milk will be maintained and clean at all times.

Complaints

The School District will not discriminate against an employee who chooses to express milk in the workplace.

If an employee believes that they are experiencing retaliation for expressing breast milk in the workplace, or that their employer is in violation of this policy, should contact the New York State Department of Labor’s Division of Labor Standards. Call us at 1-888-52-LABOR, email us at LSAsk@labor.ny.gov, or visit the nearest Labor Standards office to personally file a complaint.

A list of our offices is available at dol.ny.gov/location/contact-division-labor-standards. Complaints are confidential.

In addition to such other rights the employee may have, the employee may exercise their rights under the federal PUMP Act by filing a complaint with the U.S. Department of Labor. The federal PUMP Act went into effect in 2023, expanding protections for almost all employees expressing breast milk at work. Under the PUMP Act, any covered workers not provided with breaks and adequate space for up to a year after the birth of a child are able to file a complaint with the U.S. Department of Labor or file a lawsuit against their employers. For more information, please visit dol.gov/agencies/whd/pump-at-work.

Ref: 29 USC §218d (Breastfeeding Accommodations in the Workplace)
Labor Law §206-c

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