

## **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. The following policy sets forth the required standard.

This policy shall be provided, in writing, to all employees at the time of hire, on an annual basis thereafter, and upon an employee's return to work following the birth of a child.

### Using Break Time for Breast Milk Expression

The District shall provide thirty (30) minutes of paid break time for its employees to express breast milk when the employee has a reasonable need to express breast milk. Employees must be permitted to use existing paid break or meal time if they need additional time for breast milk expression beyond the paid 30 minutes. This time shall be provided for up to three years following childbirth. The District shall provide paid break time as often as an employee reasonably needs to express breast milk. The number of paid breaks an employee will need to express breast milk is unique to each employee and the District shall provide reasonable break times based on the individual. The District shall not discriminate in any way against an employee who chooses to express breast milk in the workplace.

The District is prohibited from requiring an employee to work before or after their normal shift to make up for any time used as paid break time to express breast milk.

The District shall continue to follow existing federal and state laws, regulations, and guidance regarding paid break time and mealtimes regardless of whether the employee uses such time to express breast milk.

The District shall not require that an employee works while expressing breast milk, but Labor Law Section 206-c does not otherwise prevent an employee from voluntarily choosing to do so if they want to. Paid breaks provided for the expression of breast milk must be 30 minutes. An employee must be allowed to use regular break or meal time to take a longer paid break if needed. Employees may also opt to take shorter paid 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.

## Making a Request to Express Breast Milk at Work

If an employee needs to express breast milk at work, they shall give the District reasonable advance notice, generally before returning to the workplace if the employee is on leave. This advance notice allows the 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 shall do so by submitting a written request to their direct supervisor or individual designated by the District for processing requests. The District shall respond to this request by writing within five days. The District shall notify all employees in writing through e-mail or printed memorandum when a room or other location has been designated for breast milk expression.

## Lactation Room Requirements

The District shall provide a private room or alternative location for the purpose of breast milk expression. The space provided for breast milk expression shall not be a restroom or toilet stall. The space designated for expressing breast milk shall be maintained and clean at all times.

The room or other location shall fully practicable and in accordance with legal mandates:

- 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 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 District may dedicate a centralized location to be used by all employees. Any space provided for breast milk expression shall be close to the work area of the employee(s) using the space. The space shall be in walking distance, and the distance to the location shall not significantly extend an employee's needed break time.

If there is not a separate room or space available for lactation, the 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 ensure 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, the District must utilize a sign advising the space is in use and not accessible to other employees or the public.

If the workplace has a refrigerator, the District must allow employees to use it to store breast milk. However, the District shall not be 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.

If the District can demonstrate an undue hardship in providing a space with the above requirements, the District shall 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 in the statute 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 District may not deny an employee the right to express breast milk in the workplace due to difficulty in finding a location.

#### New York State Department of Labor Resources

If an employee believes that they are experiencing retaliation for expressing breast milk in the workplace, or that the District is in violation of this policy, they should contact the New York State Department of Labor’s Division of Labor Standards to file a complaint. (1-888-52-LABOR; [LSAsk@labor.ny.gov](mailto:LSAsk@labor.ny.gov); [dol.ny.gov/breast-milk-expression-workplace](https://dol.ny.gov/breast-milk-expression-workplace)). Complaints are confidential.

#### Federal Resources

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](https://dol.gov/agencies/WHd/pump-at-work).

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

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