

NYC Expands Protections for Nursing Mothers

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Key Points

- Two new measures expand New York City firms' obligations with respect to nursing mothers.
- Effective March 17, 2019, firms must provide a lactation room and refrigeration suitable for breast-milk storage, unless doing so would impose an "undue hardship."
- Firms also must distribute a written policy regarding the availability of a lactation room and provide reasonable break time for employees to express breast milk.

New Law Requires Provision of Lactation Room in Absence of "Undue Hardship"

Under current New York City law, all firms must "make reasonable efforts" to provide a private location for nursing mothers to express breast milk. On March 17, 2019, this obligation will increase: Firms with at least four employees will have to provide access to a designated lactation room and access to a refrigerator suitable for breast-milk storage, each "in reasonable proximity" to the employee's work area.

The law defines "lactation room" as "a sanitary place, other than a restroom, that can be used to express breast milk shielded from view and free from intrusion and that includes at minimum an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water." Where such a room is also used for other (nonlactation) purposes, the room must solely be reserved for lactation when an employee needs it for the purpose of expressing breast milk.

Where providing a lactation room would pose an "undue hardship," a firm must engage in a cooperative dialogue with a nursing mother to determine what alternate accommodation(s) may be available. Following such a dialogue, a firm must issue a written determination identifying any accommodation(s) granted or denied.

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Required Lactation Policies and Procedures

Also effective March 17, 2019, firms will be required to distribute and maintain a written policy regarding lactation issues. The policy must provide employees with the right to request a lactation room and must:

- Specify the means by which an employee may submit a request for such a room
- Provide that the firm will respond to a request for a lactation room within five business days of receipt
- Provide a procedure to address a situation in which two or more employees need to use the lactation room at the same time
- State that the firm will provide reasonable break time for an employee to express breast milk pursuant to Section 206-c of the New York State Labor Law
- State that, if the request for a lactation room poses an undue hardship on the firm, the firm will engage in a cooperative dialogue with the employee to determine whether an alternative accommodation(s) may be available.
- The new law also requires the New York City Commission on Human Rights, together with the New York City Department of Health and Mental Hygiene, to create a model lactation room policy, as well as a model lactation room request form, for firms to consider in developing their own materials.

What Firms Should Do Now

In light of these new laws, firms with four or more employees located in New York City should take the following steps:

On or before March 17, 2019, designate a lactation room that comports with the specifications set forth in the new law, unless doing so would create an “undue hardship.”

Also on or before March 17, 2019, promulgate a lactation policy in compliance with the new requirements.

Await the model policy materials being developed by the New York City Commission on Human Rights and the Department of Health and Mental Hygiene to help with the foregoing.