

NEW YORK CITY LABOR LAW POSTING

Lactation Accommodation Policy

Employer MUST check one of the three boxes below and select appropriate policy

Lactation Accommodation Policy – Workplaces with Dedicated Lactation Room(s)

[If employer has a dedicated lactation room, use this model policy.]

The Company provides accommodations to employees who pump during work hours. This includes the following lactation accommodation policy administered by _____ [name of relevant department].¹ This policy will be distributed to all current employees and all new employees at the start of their employment. This policy will be posted in the workplace and on the intranet if one exists.

In accordance with the New York City Human Rights Law, the Company provides reasonable accommodations for employees' pregnancy, childbirth, or related medical conditions, including accommodations for lactation. Before an employee returns from parental leave, the Company will seek to discuss with the employee whether the employee needs a reasonable accommodation to express breast milk at work.

The Company will not tolerate discrimination or harassment against any employee based on the request for or usage of lactation accommodations. Any discrimination, harassment, or other violations of this policy can be reported to _____ [name of relevant department].²

Use of Lactation Room

- The Company's dedicated lactation room[s] is/are located at _____ [insert location].
- The lactation room: is clean; is free from intrusion and shielded from view of others; contains at least one electrical outlet, a surface to place a pump and other personal items, and a chair; is near running water³ (i.e., for washing hands and/or cleaning breast pump parts); and can be locked from the inside.
- When more than one employee needs to use the designated lactation room, the Company will discuss various options with all employees who use the lactation room to determine what arrangement addresses each employee's needs such that each employee has access to the lactation room amenities. Options may include: finding an alternative clean space free from intrusion; sharing the space among multiple users; or creating a schedule for use. Any accommodation will ensure each employee is afforded a reasonable amount of time to pump.
- Even if the lactation room is available, an employee who wishes to pump at their usual workspace will be permitted to do so long as it does not create an undue hardship for the Company.⁴
- A refrigerator is available for employees to store breast milk.⁵ If the Company does not have a refrigerator and cannot provide one because of an undue hardship, the Company will discuss alternative options for where the employee may store their breast milk, which may include, for example, providing a cooler and ice packs.

30 Minutes Paid Break Time to Express Breast Milk

- The Company will provide 30 minutes of paid break time, and must further permit an employee to use existing paid break time or meal time for time in excess of 30 minutes to express breast milk and will not unreasonably limit any additional time needed or the frequency that an employee expresses breast milk.⁶ The Company will speak with the employee to determine a schedule of breaks that reasonably accommodates the pumping needs of the employee.
- The Company does not require the employee to work while pumping. However, if the employee works while pumping, the employee will be paid at their regular rate for that time.

Lactation Accommodation Request Process

- Before an employee returns from parental leave, the Company will send this policy to the employee in writing (electronically or by mail) and request information from the employee regarding the need for a reasonable accommodation to express breast milk at work.
- Employees may also independently request a lactation accommodation by contacting _____ [name of relevant department/name of individual]. A request may be made orally or in writing to _____ [name of relevant department/name of individual] and should indicate that the employee will need accommodations for expressing breast milk at work. If the Company has a request form, the employee may complete it and submit it to the employer in a manner designated by the Company.
- _____ [Name of relevant department/name of individual] will respond to a request for a lactation accommodation as quickly as possible. Under no circumstances will this amount of time exceed five (5) business days.⁷ During the time it takes to respond to a request and/or engage in a cooperative dialogue to determine the accommodation, the Company will provide a temporary accommodation to the employee so that the employee can pump in a manner that meets the employee's immediate needs, unless that poses an undue hardship for the employer.⁸
- The Company recognizes that employees' lactation accommodation needs may change over time. Employees may request changes to their existing lactation accommodation at any point.

Undue Hardship⁹

- If the Company believes that the lactation accommodation requested poses an undue hardship on the Company, we will discuss reasonable alternatives with the employee to accommodate the employee's needs, initiating a cooperative dialogue¹⁰ as quickly as possible, but absolutely no later than five (5) business days from the date of the request.¹¹ The conversation between the Company and the employee will be in good faith, may occur orally or in writing, and will conclude with a final written determination of the accommodation granted or denied. This process gives the employee an opportunity to have an open discussion with the Company about their needs, and the Company has an opportunity to hear its employee and work with them to come up with an appropriate accommodation for the employee.
- There is no exception or undue hardship allowance to the obligations to provide 30 minutes of paid break time or to allow employee use of existing paid break and meal time in excess of 30 minutes.
 - Employers must provide 30 minutes of paid break time for lactation purposes without exception, and cannot claim undue hardship for this requirement. Additionally, employees must be allowed to use any existing paid break and meal periods beyond this 30-minutes.
- During the time it takes to respond to a request and/or engage in a cooperative dialogue to determine the accommodation, the Company will provide a temporary accommodation to the employee so that the employee can pump in a manner that meets the employee's immediate needs unless doing so poses an undue hardship.

¹ Employees who are nursing have additional rights under the New York State Labor Law (N.Y. Lab. Law § 206-c), information available at <https://dol.ny.gov/expressing-breast-milk-workplace>. Federal law also has protections for expressing breast milk in the workplace, information available at <https://www.dol.gov/agencies/whd/pump-at-work>. For additional information on the New York City Human Rights Law, visit <http://www.NYC.gov/HumanRights>.

² Employees may also contact the New York City Commission on Human Rights by visiting <http://www.NYC.gov/HumanRights>.

³ N.Y.C. Admin. Code § 8-102. If the lactation room is not near the employee's workspace, [Name of Employer] will discuss alternative options.

⁴ Discomfort expressed by a coworker, client, or customer generally does not rise to the level of "undue hardship" for the employer. It is the employer's responsibility to prove that an accommodation poses an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

(a) The nature and cost of the accommodation;
(b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

⁵ N.Y.C. Admin. Code § 8-107(22)(b)(i)(2). See N.Y.C. Commission on Human Rights, Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, https://www.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpreterGuide_2021.pdf. See section 206-c of the New York Labor Law. Information about the NYS law and guidelines can be found here: <https://dol.ny.gov/expressing-breast-milk-workplace>. It provides that "[a]n employer shall provide paid break time for thirty minutes, and permit an employee to use existing paid break time or meal time for time in excess of thirty minutes, to allow an employee to express breast milk for each employee's nursing child up to three years following child birth. No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace." N.Y. Lab. Law § 206-c(1). The federal Fair Labor Standards Act also requires employers to provide certain accommodations for employees to express breast milk. See U.S. Dept. of Labor, Wage and Hour Div., "Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work," <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers>.

⁶ N.Y.C. Admin. Code § 8-107(22)(c)(i)(2). See N.Y.C. Commission on Human Rights, Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, https://www.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpreterGuide_2021.pdf; see also N.Y. Lab. Law § 206-c.

⁷ It is the employer's responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

(a) The nature and cost of the accommodation;
(b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

⁸ It is the employer's responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

(a) The nature and cost of the accommodation;
(b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

⁹ The term "cooperative dialogue" means the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person's accommodation needs; potential accommodations that may address the person's accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity. N.Y.C. Admin. Code § 8-102.

¹⁰ N.Y.C. Admin. Code § 8-107(22)(c)(i)(2). See N.Y.C. Commission on Human Rights, Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, https://www.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpreterGuide_2021.pdf.

Lactation Accommodation Policy – Workplaces with Multi-Purpose Space for Lactation

[If there is no dedicated lactation room but it is not an undue hardship¹ for an employer to make available a multi-purpose space (other than a restroom) for lactation and prioritize its use for that purpose, use this model policy.]

The Company provides accommodations to employees who pump during work hours. This includes the following lactation accommodation policy administered by _____ [name of relevant department].² This policy will be distributed to all current employees and all new employees at the start of their employment. This policy will be posted in the workplace and on the intranet if one exists.

In accordance with the New York City Human Rights Law, the Company provides reasonable accommodations for employees' pregnancy, childbirth, or related medical conditions, including accommodations for lactation. Before an employee returns from parental leave, the Company will seek to discuss with the employee whether the employee needs a reasonable accommodation to express breast milk at work.

The Company will not tolerate discrimination or harassment against any employee based on the request for or usage of lactation accommodations.

Any discrimination, harassment, or other violations of this policy can be reported to _____ [name of relevant department].³

Multi-Purpose Space Available for Use for Lactation

- The Company has designated _____ [insert room here] as a lactation room when employees are using the room to express breast milk. The Company will notify other employees that the room will be prioritized as a lactation room and may only be used for expressing breast milk during the time(s) when employees need the space and will post proper signage to ensure that it is free from intrusion and shielded from view of others while being used as a lactation room.⁴
- The employees who need the room for pumping will be given priority use of the room and their pumping needs will determine the availability of the room for other purposes.⁵
- The Company will ensure that the multi-purpose room can be locked from the inside so that the employee pumping can do so without intrusion.
- The Company will ensure that the multi-purpose room is clean, free from intrusion, and meets as many of the following requirements as possible: contains at least one electrical outlet, a surface to place a pump and other personal items, and a chair;⁶ and is near running water and a refrigerator to store breast milk. If the Company does not have a refrigerator and cannot provide one because of an undue hardship,⁷ the Company will discuss alternative options for where the employee may store their breast milk, which may include, for example, providing a cooler and ice packs.
- When more than one employee needs to use the multi-purpose room to express breast milk, the Company will discuss alternative options with all employees who use the shared space to determine what arrangement addresses their needs. Options may include: finding an alternative space; sharing the space among multiple users with screens, curtains, or other privacy measures; or creating a schedule for use.
- If the multi-purpose room is unavailable for use as a lactation room when an employee needs it, the Company will provide _____ [name alternative space] for temporary use as a lactation room.
- Even if the multi-purpose room is available, an employee who wishes to pump at their usual workspace will be permitted to do this so long as it does not create an undue hardship for the Company.⁸

30 Minutes Paid Break Time to Express Breast Milk

- The Company will provide 30 minutes of paid break time, and must further permit an employee to use existing paid break time or meal time for time in excess of 30 minutes to express breast milk and will not unreasonably limit any additional time needed or the frequency that an employee expresses breast milk.⁹ The Company will speak with the employee to determine a schedule of breaks that reasonably accommodates the pumping needs of the employee.
- The Company does not require the employee to work while pumping. However, if the employee works while pumping, the employee will be paid at their regular rate for that time.

Lactation Accommodation Request Process

- Before an employee returns from parental leave, the Company will send this policy to the employee in writing (electronically or by mail) and request information from the employee regarding the need for a reasonable accommodation to express breast milk at work.
- Employees may also independently request a lactation accommodation by contacting _____ [name of relevant department/name of individual]. A request may be made orally or in writing to _____ [name of relevant department/name of individual] and should indicate that the employee will need accommodations for expressing breast milk at work. If the employer has a request form, the employee may complete it and submit it to the employer in a manner designated by the employer.

_____ [Name of relevant department/name of individual] will respond to a request for a lactation accommodation as quickly as possible. Under no circumstances will this amount of time exceed five (5) business days.¹⁰ During the time it takes to respond to a request and/or engage in a cooperative dialogue to determine the accommodation, the Company will provide a temporary accommodation to the employee so that the employee can pump in a manner that meets the employee's immediate needs, unless that poses an undue hardship for the employer.¹¹

The Company recognizes that employees' lactation accommodation needs may change over time. Employees may request changes to their existing lactation accommodation at any point.

Undue Hardship¹²

- If the Company believes that the lactation accommodation requested poses an undue hardship on the Company, we will discuss reasonable alternatives with the employee to accommodate the employee's needs, initiating a cooperative dialogue¹³ as quickly as possible, but absolutely no later than five (5) business days from the date of the request.¹⁴ The conversation between the Company and the employee will be in good faith, may occur orally or in writing, and will conclude with a final written determination of the accommodation granted or denied. This process gives the employee an opportunity to have an open discussion with the Company about their needs, and the Company has an opportunity to hear its employee and work with them to come up with an appropriate accommodation for the employee.
- There is no exception or undue hardship allowance to the obligations to provide 30 minutes of paid break time or to allow employee use of existing paid break and meal time in excess of 30 minutes.
 - Employers must provide 30 minutes of paid break time for lactation purposes without exception, and cannot claim undue hardship for this requirement. Additionally, employees must be allowed to use any existing paid break and meal periods beyond this 30-minutes.

During the time it takes to respond to a request and/or engage in a cooperative dialogue to determine the accommodation, the Company will provide a temporary accommodation to the employee so that the employee can pump in a manner that meets the employee's immediate needs unless doing so poses an undue hardship.

¹ It is the employer's responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

(a) The nature and cost of the accommodation;
(b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

² Employees who are nursing have additional rights under the New York State Labor Law (N.Y. Lab. Law § 206-c), information available at <https://dol.ny.gov/expressing-breast-milk-workplace>. Federal law also has protections for expressing breast milk in the workplace, information available at <https://www.dol.gov/agencies/whd/pump-at-work>. For additional information on the New York City Human Rights Law, visit <http://www.NYC.gov/HumanRights>.

³ N.Y.C. Admin. Code § 8-102. If the lactation room is not near the employee's workspace, [Name of Employer] will discuss alternative options.

⁴ Discomfort expressed by a coworker, client, or customer generally does not rise to the level of "undue hardship" for the employer. It is the employer's responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

(a) The nature and cost of the accommodation;
(b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

⁵ It is the employer's responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

(a) The nature and cost of the accommodation;
(b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

⁶ It is the employer's responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

(a) The nature and cost of the accommodation;
(b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.