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NYC Council Passes Bills Expanding Lactation Room Requirements for Employers

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The New York City Council recently passed two bills that would amend the NYC Human Rights Law to expand the requirements of employers with four or more employees to provide lactation space for breastfeeding employees. The bills have been sent to Mayor Bill de Blasio, who is expected to sign them, for consideration. If enacted, they will take effect 120 days after signing.

The new bills would expand upon the already-existing requirements under the New York State Labor Law to provide reasonable unpaid break time (or permit employees to use paid break time) to express milk in the workplace for up to three years following the birth of a child, and to "make reasonable efforts" to provide a room or other location, other than a restroom, to express milk in private.

Lactation Room Requirements

The first bill, Int. No. 879-A, would require covered employers to provide employees needing to express breast milk with access to a lactation room, as well as to a refrigerator suitable for breast milk storage, "in reasonable proximity" to the employee's work area. A lactation room is defined under the bill 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."

Employers would not be required to create a dedicated lactation room, but if the room designated for lactation is also used for other purposes: (i) the room must be used solely as a lactation room during times when an employee is using the room to express milk, and (ii) the employer must provide notice to other employees that the room is given preference for use as a lactation room.

The bill further provides that, should providing a lactation room as set forth above pose an undue hardship on an employer, the employer is nevertheless obligated to engage in a cooperative dialogue with employees to determine what, if any, alternate accommodation(s) may be available, and to provide a written final determination to employees at the conclusion of the cooperative dialogue process, identifying any accommodation(s) granted or denied.

Lactation Room Policy

The second bill, Int. No. 905-A, would require covered employers to develop and implement a written policy regarding the provision of a lactation room, to be distributed to all new employees upon hire. The policy would be required to include a statement that employees have a right to request a lactation room, as well as identify a process by which employees could request a lactation room. Such process would be required to:

- specify the means by which an employee may submit a request for a lactation room;
- require that the employer respond to a request for a lactation room within a reasonable amount of time not to exceed five business days;
- provide a procedure to follow when two or more individuals need to use the lactation room at the same time, including contact information for any follow up required;
- state that the employer shall provide reasonable break time for an employee to express breast milk pursuant to Section 206-c of the New York State Labor Law; and
- state that if the request for a lactation room poses an undue hardship on the employer, the employer shall engage in a cooperative dialogue, as discussed above.

The bill would further require the New York City Commission on Human Rights, in collaboration with the Department of Health and Mental Hygiene, to develop a model lactation room accommodation policy and request form for use by employers.

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