

New York State Expands Workplace Protections for Nursing Employees

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New York Governor Kathy Hochul signed into law an [amendment to the NY State Labor Law](#) that will expand workplace protections for nursing employees, effective May 31, 2023. The new law builds upon already-existing requirements under the 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.

Under the amended law, employers are required to provide break time to nursing employees “each time such employee has reasonable need to express breast milk” for up to three years following the birth of a child. In addition, upon request, employers are required to designate a room or other location (other than a restroom or toilet stall) which can be used by nursing employees to express breast milk. Such room or other location must be a place that is: (i) in close proximity to the employee’s work area; (ii) well lit; (iii) shielded from view; and (iv) free from intrusion from other persons in the workplace or the public. The room or other location must also provide, at a minimum, a chair, working surface, nearby access to clean running water and, if the workplace is supplied with electricity, an electrical outlet. If the workplace has access to a refrigerator, employees must be permitted to access the refrigerator for the purposes of storing expressed milk.

Employers will be required to provide notice to all employees as soon as practicable once a room or other location has been designated for use by employees to express breast milk. If the sole purpose or function of the room or other location is not dedicated for use by employees to express breast milk, it must be made available to such a nursing employee when needed and cannot be used for any other purpose or function while in use by a nursing employee.

If compliance with these requirements would impose an undue hardship on an employer “by causing significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer’s business,” the employer is required to make “reasonable efforts to 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.”

The law requires employers to maintain a written policy regarding the rights of nursing employees, including specifying the means by which a request may be submitted to an employer for a lactation room, and requiring the employer to respond to such request within a reasonable timeframe, not to exceed five business days. Employers are required to provide the policy to all employees upon hire, annually thereafter, and to employees upon return to work following the birth of a child.

In advance of the law’s effective date, employers in New York State should review their existing nursing employee policies to ensure they comply with these new requirements. Employers with operations in New York City must also be mindful of [similar requirements](#) under local law. We will continue to report on further developments with regard to this law, including publication of the state’s model policy.

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Related Professionals

- **Evandro C. Gigante**
Partner
- **Laura M. Fant**
Special Employment Law Counsel
- **Arielle E. Kobetz**
Associate