

SB 142- LACTATION ACCOMODATION BACKGROUND & COMPLIANCE INSTRUCTIONS

I. BACKGROUND

Effective January 1, 2020, California state law mandates workplace lactation spaces for all employees. In compliance with Senate Bill 142 (SB 142), employers are required to provide breaks, and safe private locations, to reasonably accommodate all employees who want to express breast milk at work. SB 142 further requires employers to develop and implement a written lactation accommodation policy in the employee manual (or set of policies distributed to employees), that includes the following:

- Statement of employee's right to request lactation accommodation;
- Instructions on how the employee may request an accommodation from the County;
- The employer's responsibility and protocol for responding to the request;
- The employee's right to file a complaint with the Labor Commissioner for any violation of the law.

SB 142 increases penalties for noncompliance, prohibits discrimination and retaliation against employees who exercise or attempt to exercise their right to lactation accommodation.

Employers must provide a copy of the written policy to new employees and when an employee makes an inquiry about or requests pregnancy and/or parental leave.

II. DESIGNATED LACTATION SPACE

Under SB 142, California employers must provide a "reasonable" amount of break time for employees to express breast milk and provide the use of a private space, other than a bathroom, in "close proximity" to the employee's work area. The employee's normal work area can be used if it allows the employee to express milk in private.

In addition, the room must comply with the following requirements:

- Be safe, clean and free from hazardous materials, as defined in Labor Code Section 6382.
- Provide a surface to place a breast pump and personal items.
- Provide a place to sit.
- Have access to electricity or alternative devices, including, but not limited to, extension cords or charging stations needed to operate an electric or battery-powered breast pump.

Employers must also provide access to a sink with running water and a refrigerator suitable for storing milk. If a refrigerator is not feasible, the employer may provide another cooling device, such as a cooler.

Caveat: "Reasonable" break time is undefined and there is no standard for enforcement. To avoid conflict and guide scheduling and work-productivity

expectations, it is suggested that the employer discuss the request with the employee promptly upon receipt of the written request. Although individual biology and needs vary, 20-30 minutes for a lactation accommodation is consistent with U.S. Breastfeeding Committee guidelines.

Caveat: *“Close proximity” is undefined and may be affected by a number of factors including the architecture of the workspace, stage of breastfeeding, mobility of the employee, etc. For example, an official designated “lactation room” at the opposite end of the building on another floor may not be as convenient to the employee’s comfort and work-productivity as the ability to use a private office or conference room just a few steps down the hall. Communication and flexibility among employers and employees are essential in ensuring compliance.*

A. Temporary Location

While there is no requirement that an employer provide a permanent location designated solely for lactation accommodation by its employees, if a temporary location is utilized because of operational, financial or space limitations, it is subject to the following requirements:

- The temporary location must be private and free from intrusion while an employee expresses milk;
- The temporary location must be used only for lactation purposes while an employee expresses milk; and
- The temporary location must otherwise meet the requirements of state law concerning lactation accommodation.

B. Multipurpose Room or Multi-Tenant Building/Worksite

If the designated lactation room has additional uses, such as an employee break room, the employer’s office, or any other purpose, the room must remain completely private for the time it is in use for lactation purposes. Furthermore, if a multi-purpose room is used for lactation, the use of the room for lactation shall take precedence over other uses for the time it is in use for lactation purposes.

Any employer in a multi-tenant building or multi-employer worksite may comply with providing a shared space among multiple employees within the building if unable to provide a compliant location within the employer’s own workspace.

C. Undue Hardship Exemption

For employers with less than 50 employees, the law includes an undue hardship exemption regarding the location provided for lactation accommodation. This is determined by looking at the difficulty and/or expense of compliance for a specific employer, in comparison to the size, financial resources, and the nature or structure of the employer’s business. An employer who can demonstrate to the Department of Fair Employment and Housing that it is an undue hardship (*i.e.*, not merely an inconvenience to employer or staff) to find a location other than a bathroom *due to

the size, nature, or structure of the business) must instead make reasonable efforts to find a private and close location other than a toilet stall).

As with any accommodation, employers are highly encouraged to comply and/or make reasonable efforts to comply with all aspects of the law.

III. USE OF MEAL AND REST BREAKS

Employees who wish to express breast milk can be required to use the paid rest break time already provided by law. If the employee needs a reasonable amount of additional time for expressing milk beyond the normal paid rest break, the time *must* be provided, but may be unpaid. Employees can also choose to use lunch break time to express breast milk, but this does not relieve employers of their responsibility to provide reasonable additional time, along with rest breaks.

The Labor Commissioner may issue a citation for violations of this law/provision, subjecting the employer to a civil penalty of one hundred dollars (\$100) for each violation, in addition to any fines or penalties for missed rest breaks.

IV. LENGTH OF ACCOMMODATION; RECORDKEEPING REQUIREMENTS

California law has no time limitation. All employers must reasonably accommodate nursing mothers if they request the accommodation, even if it is beyond one (1) year.

A special form is not required; however, there must be a written memo to the employee noting the parameters of the agreement regarding lactation breaks and spaces, along with follow-up memos outlining any future discussions of needs, is adequate, so long as it is filed and retained according to the employer's record retention policy.

All written request and denial records must be maintained for three (3) years from the date of written request. If for some reason the employer is unable to provide a break time or location that complies with the policy, the employer must provide a written response to the employee.

Employers should consult legal counsel prior to claiming an undue hardship or denying an employee's request for lactation accommodation.

V. COMPLIANCE

Penalties for noncompliance with the new law are similar to those imposed for missed meal and rest breaks. The Labor Commission may issue a citation to the employer, subjecting them to a fine of one hundred dollars (\$100) per day, for each day an employee is denied reasonable break time or adequate space to express milk, *in addition* to any fines or penalties for missed meal or rest breaks.

[_____] COUNTY
LACTATION ACCOMMODATION POLICY

I. POLICY

Effective January 1, 2020, California state law mandates workplace lactation spaces for all employees. _____ County ("County") recognizes that breast milk is the optimal food for growth and development of infants, and seeks to promote a breastfeeding-friendly work environment that supports the legal right and necessity of employees who choose to express milk in the workplace. In accordance with Senate Bill 142 ("SB 142"), the County has developed and implemented this written Lactation Accommodation Policy to provide breaks, and safe private locations, to reasonably accommodate all employees who desire to express breast milk at work.

II. NOTICE

A copy of this policy will be provided to every newly hired employee, and to any employee who requests or inquires about pregnancy or parental leave.

The written request form is attached below and should be completed by the employee and submitted to _____ at least five (5) business days prior to the start date of the requested accommodation. The County will respond to an employee's written request for lactation accommodation within five (5) business days.

III. USE OF MEAL AND REST BREAKS

The County will provide a reasonable amount of break time to accommodate an employee's need to express breast milk or accommodate any medical condition related to breast-feeding. The break time should, if possible, be taken concurrently with other rest and meal break periods already provided.

Nonexempt employees should clock out for any time taken that does not run concurrently with normally scheduled periods, and such time will be unpaid.

IV. LACTATION SPACE

The County will provide breastfeeding employees with space in close proximity to the employee's work area that is shielded from view and free from intrusion from co-workers and the public, to express breastmilk. The room or location may include the place where the employee normally works if it otherwise meets the requirements of the lactation space. Restrooms are prohibited from being utilized for lactation purposes.

The designated lactation space will:

- Be safe, clean and free of toxic or hazardous materials (as defined in Labor Code § 6382);
- Contain a place to sit and a surface to place a breast pump and personal items;
- Have access to electricity; and
- Have access to a sink with running water and a refrigerator in close proximity to the employee work area.

Multi-purpose rooms may be used as lactation space if they satisfy the above requirements; however, use of the space for lactation purposes shall take precedence over other uses for the time it is in use for lactation purposes.

V. RETALIATION RELATED TO BREASTFEEDING OR EXPRESSING MILK IS PROHIBITED

The County expressly prohibits retaliation against lactating employees for exercising their rights granted by the law. Examples of employer-prohibited conduct includes:

- The denial or reasonable break time or adequate space to express milk;
- Discharge of an employee;
- Discrimination or retaliation, in any manner, against an employee who exercises, or attempts to exercise, any right protected under the law.

An employee may report a violation of this chapter to the Labor Commissioner's field enforcement unit.

VI. RECORDKEEPING

For a period of three (3) years from the date of written request, the County will maintain a record of the written requests for Lactation Accommodation that includes the name of the employee, the date of request, and a description of how the request was resolved.

All written denials by the County must also be maintained for a period of three (3) years from the date of the written request.

____ COUNTY
REQUEST FOR LACTATION ACCOMODATION FORM

Date of Request: _____

Name of Employee: _____

Department/Address of Worksite: _____

Contact Phone: _____

Start Date for Requested Accommodation: _____

Requested Number of Breaks per Day: _____

Proposed Lactation Break Schedule- Dates and Times:

Employee Signature: _____

Date: _____

****Please return this form to _____ at least five (5) business days before the
start of request for Lactation Accommodation. ****

Received by:

Authorized _____ County
Date: _____

Signature: _____