

## Lactation Rights for LGBTQAI+ Families\*

Effective January 1, 2016, birth certificates in California no longer identify a mother and father but use parent with checkboxes after each parent's name signifying "mother", "father," or "parent".<sup>81</sup> Parents whose children were born before January 1, 2016 can retroactively change their child's birth certificate.

In California when a legally married couple has a child they are automatically presumed to be the child's legal parents regardless of the parents' gender identity. In California, same-sex parents who have a civil union, or comprehensive domestic partnership are both automatically presumed to be the parents. However, the National Center for Lesbian Rights encourages non-biological and non-adoptive parents get a legal adoption or parentage judgement even if both parents are already named on the child's birth certificate.<sup>82</sup> This provides an additional layer of protection for the parent(s) and child(ren), particularly if they are traveling to other states that might not recognize parentage based on the couple's relationship status at the time of the birth.



### Taking Time off from Work

LGBTQAI+ parents in California have the right to take time off from work to care for a child under several laws. Pregnancy Disability Leave (PDL) applies to a parent who needs time off from work to recover from physical disability related to pregnancy, childbearing or related conditions.<sup>18</sup> Thus any parent who is pregnant or recovering from childbirth, regardless of gender identity, should qualify for time off from work under pregnancy disability leave law. In fact, California PDL has been amended to specifically protect transgender people.<sup>16</sup>

Both parents who have given birth and parents who have not given birth qualify for FMLA/CFRA<sup>74</sup> job-protected leave to care for a child. The California Paid Family Leave program also covers parents regardless of gender identity.<sup>82</sup> LGBTQAI+ parents are also able to use sick leave to care for a child,<sup>77</sup> and qualify for job-protected time off from work to attend school events under the Family-School Partnership Act.<sup>78</sup>

See *Six Key Laws for Working Parents* page 12 for more information.

\* Lesbian, gay, bisexual, transgender, asexual, intersex and others.

# Lactation Rights for LGBTQAI+ Families

## Breastfeeding and Lactation

LGBTQAI+ parents have protections with regards to breastfeeding and lactation. LGBTQAI+ parents may breastfeed or chestfeed\* their child after giving birth or may induce lactation in order to breastfeed or chestfeed\*.<sup>84</sup> The same laws that protect biological breastfeeding mothers who identify as women apply to induced lactation in non-biological mothers, and breast or chestfeeding by parents who do not identify as women.

A parent should work with their healthcare provider and a lactation professional when inducing lactation. Inducing lactation can mean either that a parent who previously breastfed stimulates lactation in order to produce breast milk again, or that a parent who has not breastfed stimulates lactation for the first time. The American Academy of Family Physicians position statement on human milk supports inducing lactation.<sup>77</sup>

## Work and School

In California, all employers must provide breastfeeding workers, regardless of gender, with break time and reasonable accommodations. The same laws that protect the expression of breastmilk at work and school, also apply to LGBTQAI+ parents who choose to induce lactation for their child or to LGBTQAI+ parents who do not identify as women.

If an LGBTQAI+ parent faces discrimination for breastfeeding, chestfeeding or lactation, they should contact one of the legal resources listed in this toolkit.

See *Breastfeeding at Work* page 17 and *Breastfeeding in Education* page 23 for more information.

\* "Some masculine-identified trans people use this term to describe the act of feeding their baby from their chest, regardless of whether they have had chest surgery. Note that others prefer to say breastfeeding or nursing. The choice is individual, and health care providers should ask clients what they prefer."

[www.kellymom.com/bf/got-milk/transgender-parents-chestbreastfeeding](http://www.kellymom.com/bf/got-milk/transgender-parents-chestbreastfeeding)

## Public

In California, breastfeeding parents may breastfeed their children in any location public or private where they are both authorized to be present, except the private home or residence of another. Although the California law refers to "nursing mothers", this law has been interpreted to protect breastfeeding people who do not identify as mothers. See *Breastfeeding in Public* page 42 for more information and for who to contact if facing discrimination for breastfeeding in public.

Breastfeeding without Birthing is a great resource for breastfeeding and chestfeeding as well as for finding lactation consultants who are experienced in assisting parents who would like to induce lactation.

[www.breastfeedingwithoutbirthing.com](http://www.breastfeedingwithoutbirthing.com)

Trevor MacDonald has become an international advocate and educator about transgender individuals and breastfeeding. His blog has additional information and resources at: [www.milkjunkies.net](http://www.milkjunkies.net).