



Breastfeeding-Friendly Workplace Lactation Accommodations Policy Template

1. Purpose

This policy is to establish guidelines for promoting a breastfeeding-friendly work environment and supporting lactating employees at [Company/Agency]. The [Company/Agency] is legally obligated to accommodate lactating employees and legally prohibited from discriminating, harassing, or retaliating against them for expressing breast milk in the workplace.

2. Policy

[Company/Agency] recognizes that the American Academy of Pediatrics (AAP), World Health Organization (WHO), and other major health agencies all recommend exclusive breastfeeding for the first six months of a baby's life, followed by breastfeeding in combination with the introduction of complementary foods until at least 12 months of age, and continuing to breastfeed for as long as mutually desired by breastfeeding parent and baby.

[Company/Agency] supports the legal right and necessity of employees who choose to breastfeed to express milk in the workplace. [Company/Agency] expects employees and management to have a positive and supportive attitude toward employees who need to express milk during the workday.

Discrimination against and harassment of lactating employees in any form is unacceptable, a form of prohibited sex/gender discrimination, will not be tolerated at [Company/Agency], and will be handled in accordance with [Company's/Agency's] policy on discrimination and harassment.

It shall be the policy of [Company/Agency] to provide:

3. Time to Express Milk

a. Employees are entitled to break time to pump breastmilk. Break times shall be established based on the employee's work schedule. If possible, the lactation break is to run concurrently with any break time already provided^{1,2,3}. The time used to travel to and from the employee's work area and the lactation room must be paid time and must not be included in the calculation of time used for the expression of breast milk. Frequency of breaks needed to express breast milk and the duration of each break will vary by employee.

b. For non-exempt employees, lactation time beyond the regular paid rest break time may be unpaid. At management's discretion, beginning or ending work times may be adjusted to accommodate these breaks.

In addition to 3.b, the following is a suggested best practice⁴:

For non-exempt employees, an additional 30 minutes of paid lactation break time is available as a benefit to the employee.

Breastfeeding-Friendly Workplace Lactation Accommodations Policy Template

4. Place to Express Milk

- a. [Company/Agency] will provide an appropriate, private, safe, and clean space for employees to express milk. The private space provided must have the ability to be locked, be shielded from view, and be free from intrusion from co-workers and/or the public. [Company/Agency] will make reasonable efforts to find a location in close proximity to the lactating employee's work area. The space must be equipped with comfortable seating, a table or shelf to place a breast pump or other equipment, and access to a power source to plug in an electric pump.
- b. Lactating employees are permitted to store breast milk in refrigerator and freezer units already otherwise provided to employees by the Company/Agency for the storage of food. Breast milk should be clearly labeled. The Company/Agency, however, will not be responsible for any lost or stolen containers left in the refrigerator or freezer.
- c. If [Company/Agency] does not provide a refrigerator or freezer to its employees, [Company/Agency] must provide the lactating employee with a cooler to store the breastmilk.
- d. [Company/Agency] will provide the lactating employee with a sink that is close to their workstation.
- e. The lactation accommodation may be an office or multipurpose room (e.g., the lactating employee's office, a supervisor's office, or a conference room) , if the room affords adequate privacy and meets all other requirements under the law. If a multipurpose room, such as a conference room, is used as a temporary lactation room, the use of lactation takes precedence over all other uses of the room.
- f. Restrooms are prohibited from being utilized for lactation purposes. However, a separate private anteroom (lounge) or a separate private changing area next to a bathroom may be permissible.
- g. Areas such as closets or storage rooms are usually not appropriate spaces for lactation purposes. Closets or storage rooms that do not contain noxious materials may be converted to be acceptable private spaces assuming they have adequate ventilation and meet the other the requirements under the law.

5. Discrimination and Harassment Related to Breastfeeding or Expressing Milk is Prohibited

Federal and state law expressly prohibit harassment and discrimination on the basis of pregnancy or pregnancy-related conditions, including breastfeeding and lactation. Federal and state law also prohibit retaliation against lactating employees for requesting lactation accommodations or for filing a complaint regarding [Company/Agency's] failure to provide lactation accommodations. Any incident of harassment of or discrimination against a lactating employee will be addressed in accordance with the [Company's/Agency's] policies and procedures

**Breastfeeding-Friendly Workplace
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for harassment and discrimination and in accordance with state law^{5,6}.

6. Procedure:

- a. To request reasonable accommodations for lactation, an affected employee shall advise their Supervisor and/or the Human Resources Department of their request for lactation accommodations - including requests for a lactation room and reasonable break time to pump - either verbally or in writing, ideally prior to taking pregnancy or parental leave, or upon returning to work. Newly hired employees requiring lactation accommodations shall request accommodations upon or soon after their hire.
- b. Supervisors and the Human Resources Department who receive a request for lactation accommodations will review the request within 24 hours and make accommodations in a timely manner. For non-office sites, the lactating employee, the Supervisor and the Human Resources Department should enter into a good faith interactive process to identify reasonable accommodations.
- c. The [Company/Agency] recognizes that experts recommend that babies be breastfed for at least the first year of life. The duration of breastfeeding and lactation is the personal and individual choice of the lactating employee. Thus, the [Company/Agency] will continue to support and accommodate the lactating employee for as long as the lactating employee chooses to express breast milk for their child.

7. Communication:

- a. A copy of this policy shall be provided to every employee upon adoption of the policy, at new employee orientations or transfers, prior to and upon returning to work from leave, or when requested.
- b. This policy shall be posted in the employee handbook and on the [Company's/Agency's] Human Resources Internet/Intranet page.
- c. This policy will be included in all manager, supervisor, and sexual harassment trainings.

8. Monitoring:

- a. Human Resources [or Company/Agency designee] will periodically monitor for compliance by auditing personnel files, requesting reports, and conducting employee interviews.

9. Employee Benefits:

- a. During annual Open Enrollment periods for health insurance enrollment, Supervisors and the Human Resources Department will advise employee of their employee benefits to support lactation, including health care insurance benefits and/or community resources to support health.
- b. During annual Open Enrollment periods for health insurance enrollment,



Breastfeeding-Friendly Workplace Lactation Accommodations Policy Template

Supervisors and the Human Resources Department will advise the employee that breast pumps are deductible under IRS CODE § 213(d)⁷.

10. Contact for questions:

For further information regarding this policy, please contact: [insert contact]

References

Federal Law:

1. *Patient Protection and Affordable Care Act (P.L. 111- 148, 2010)* amended 29 USC 207 of the Fair Labor Standards Act (FLSA) to require employers to provide reasonable break time for nursing mothers, but applies only to employees who are not exempt from the overtime pay requirements of the FLSA (i.e., classified employees). <http://www.dol.gov/whd/nursingmothers/>

Breastfeeding Support, Services & Supplies are mandated under health care reform:
<http://www.hrsa.gov/womensguidelines/>

2. *EEOC vs. Houston Funding II, LLC* 5th Circuit Federal Court of Appeals Holds that Lactation Discrimination is Sex Discrimination under Title VII.
<http://www.eeoc.gov/eeoc/newsroom/release/5-31-13a.cfm>

California State Law:

3. *Labor Code 1030-1033* applies to all employees. California law preempts Federal Law, therefore all California employees are covered. Furthermore, pursuant to Labor Code 1033, violation of Labor Code 1030-1033 may result in a citation from the Labor Commissioner and/or a civil penalty.
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1030-1033>

4. *The Business Case for Breastfeeding:* Return on investment is \$3 to \$1, in health care cost savings, reduced absenteeism and increased productivity retention. Breaks are predictable, absences aren't.
<http://www.womenshealth.gov/breastfeeding/government-in-action/business-case-for-breastfeeding/>

5. *Fair Employment and Housing Act* defines “sex” to include breastfeeding, and in *DFEH v. Acosta Tacos*, termination of a breastfeeding employee constituted sex discrimination, because “breastfeeding is an activity intrinsic to females.” Lactation is listed as an “other related medical condition” of pregnancy in Pregnancy Disability Regulations.
http://www.dfeh.ca.gov/Publications_FEHADescr.htm

6. *Dept. Fair Empl. & Hous. v. Acosta Tacos* (June 16, 2009) No. 09-03-P, FEHC Precedential Decs. 2009 [2009 WL 2595487 (Cal.F.E.H.C.)].



Breastfeeding-Friendly Workplace Lactation Accommodations Policy Template

http://www.dfeh.ca.gov/res/docs/FEHC%20Pregnancy%20Regs/FINAL_APPROVED_PREG_REGS_CLEAN_1_30_12.pdf

7. *IRS CODE § 213(d)* allows to deduct the costs of durable medical equipment to support lactation.
<http://www.irs.gov/pub/irs-pdf/p502.pdf>

Please consult your legal counsel before denying lactation accommodations for an employee.