



# Lactation Advocacy

# 101

# TOOLKIT

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## About This Toolkit

Since 1994, BreastfeedLA has served as a trusted resource for breast/chestfeeding information and resources. As the local lactation task force, BreastfeedLA is dedicated to improving the health and wellbeing of infants and families through education, outreach, and advocacy to promote and support breast/chestfeeding.

We receive many calls from people and families whose breast/chestfeeding or lactation rights have been violated. Often our community partners call us with stories of clients whose rights were violated and they don't know how to help. Keeping this in mind, we created this toolkit for anyone who wants to advocate for themselves or others.

Throughout this toolkit, you may see alternative language used when possible, such as below.

<b>Traditional gender-specific terms</b>	<b>Consider using these gender-neutral terms</b>
Mother, mom, father, dad	Parent, birth parent, gestational parent
Pregnant woman	Birthing parent, birthing person, gestating parent, parent carrying the pregnancy
She, her, hers, he, him, his	They/them (if gender is not specified)
Breastfeeding woman	Lactating person, lactating parent, lactating individual
Breastfeeding, nursing	Chestfeeding, breast/chestfeeding, bodyfeeding, chestfeeding, lactating, expressing, pumping, human milk feeding
Breast	Chest, breast/chest, mammary gland
Breastmilk, mother's own milk	Milk, human milk, parent's milk
Born male/female (as applied to people who identify as anything but cisgender)	Noted/recorded/assigned as male/female

Gender plays a large role in our lives whether we realize it or not. Gender is related to sex but is separate. Gender refers to identities and sex refers to biology. Sometimes, the sex assigned to people at birth does not match their sex or gender. Others may reject gender norms. If someone isn't female or a woman, they may still want to provide their milk to their infant and may feel excluded from terms such as breastfeeding or mother. Gender is complex but what we know is no matter how you identify, you matter and are entitled to resources and support.

BreastfeedLA uses the terms "breastfeeding" and "chestfeeding" interchangeably to describe the action of feeding an infant human milk. The term "chestfeeding" is intentionally offered as an alternate term for lactating persons that prefer not to use the term "breast" when referring to their own bodies. This linguistic shift is part of BreastfeedLA's overt commitment to our organizational values of diversity and inclusion. We use gender-inclusive language because breast/chestfeeding and lactation rights apply to everyone. Inclusive language in no way diminishes traditional language or identities. Words matter. Language evolves and it is essential we do as well.

It is encouraged to use gender-neutral terms whenever possible, including both gender-specific/neutral terms and conventional terms. On the individual level, however, all parents should be addressed with their pronouns and whichever gender-specific terms they use themselves.

This toolkit describes many laws, however, these laws are the minimum standards to which organizations must adhere. Organizations can and should provide better accommodations than the law requires.

Please note, this toolkit is intended to be a source of general information only. This toolkit is not a substitute for legal advice. Please consult a lawyer for advice specific to your situation or if you have any questions that are not answered in this toolkit.

We hope that you find this a useful resource!

Sincerely,

BreastfeedLA Board and Staff

In the United States, breast/chestfeeding rights are typically either federal laws, meaning that they apply in every state, or state laws. Because BreastfeedLA is based in California, this toolkit will discuss California state laws. If you are not in California, our laws might give you some ideas about protections that you could win in your state!<sup>2</sup>

Five federal laws provide protections for breast/chestfeeding: Title VII, Title IX, the Family Medical Leave Act (FMLA), the Affordable Care Act (ACA) and the Right to Breastfeed Act.<sup>3</sup> These laws provide protections to breast/chestfeeding people in all 50 states.

**Title VII** is part of the Civil Rights Act of 1964. The Pregnancy Discrimination Act of 1978 amended Title VII to include pregnancy, childbirth and related conditions.<sup>4</sup> The law covers employers with 15 or more employees. It applies to private companies, employment agencies, labor organizations, and state, local and federal government employees, including educational institutions.

This law states that “women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment related purposes.”<sup>5</sup>

For example:

- An employer cannot use pregnancy, childbirth or a related condition as a reason not to hire an applicant.
- If an employee cannot work or needs accommodations due to pregnancy, those needs should be accommodated in the same way that an employee with a temporary disability would be accommodated.
- If an employee requires accommodations for lactation (such as schedule changes or sick leave), those needs should be accommodated in the same way that other employees are accommodated for doctors' appointments or other non-life-threatening medical conditions.<sup>6</sup>

If a person believes that their employer is not following the Pregnancy Discrimination Act of 1978, they can contact the Equal Employment Opportunity Commission (EEOC). The EEOC is responsible for enforcing this law, and can help the person to file a complaint here: <https://www.eeoc.gov/how-file-charge-employment-discrimination><sup>7</sup>

See Lactation at Work for more information.

**Title IX** is part of the Education Amendments of 1972, which are amendments to the Civil Rights Act of 1964.<sup>8</sup> Title IX states that no federally funded education program or activity can discriminate against a person based on their sex. Title IX applies to colleges, universities, elementary and secondary schools as well as any other educational program that receives federal funding. This law has been interpreted as applying to pregnancy, childbirth and related conditions (such as breast/chestfeeding and lactation) because they are related to a person's sex.

If a person believes that their rights under Title IX are being violated, they can contact the Title IX Coordinator at their educational program. It is also possible to file a complaint with the Department of Education. Instructions on how to file a complaint can be found here: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html><sup>9</sup>

For more information about Title IX and breastfeeding and lactation rights, see Lactation in the Education System.

**The Family Medical Leave Act of 1993** provides job protection to an eligible employee and allows up to 12 weeks of unpaid leave for certain family or medical reasons every 12 months. This means that a company is required to hold the individual's job for them until they come back from leave. FMLA is unpaid. In California, there are other programs that may provide compensation for which an employee may qualify, which are discussed in the Six Key Laws for Parents.

Employees can take FMLA leave for their own serious health condition or for the serious health condition of a qualified family member all at once or intermittently. For instance, a new parent can take 12 weeks of leave all together to bond with the new infant or a person whose spouse needs regular doctor's appointments could take off one day a month to take their spouse to the doctor. Under FMLA, baby bonding leave has to be taken in one, continuous length of time unless the employee has permission from their employer to take baby bonding leave intermittently. Whether taken intermittently or all

at once, the full leave must be concluded within twelve months after the birth or placement of a child.

Employees who are eligible for FMLA must:

- Work for a private employer with 50+ employees within 75 miles of where the employee works OR work for a government agency with any number of employees.
- Have worked for the same employer for at least 1 year.
- Have worked at least 1250 hours in the past year.
- Airline pilots and active duty military service members have special requirements under FMLA – see The Employee’s Guide to FMLA for more information about FMLA and special situations.<sup>6</sup>

The **Patient Protection and Affordable Care Act (ACA)** amended the Fair Labor and Standards Act to include the “Break Time for Nursing Mothers Act.” This law requires employers to provide employees with reasonable break time to express their milk after the birth of a child. The amendment also requires that employers provide a place for the employee to express their milk.

This law requires employers to provide:

- Reasonable break time for lactating employees to express their milk for up to one year after the infant’s birth.<sup>10,11</sup> The burden of proof rests on the employer to show that the break time is unreasonable.
- The ability for the employee to use paid break time to express their milk, and to allow for the use of additional unpaid break time as needed.
- A private space that is shielded from and free from intrusion by coworkers and the public – the space **cannot** be a bathroom.

There are some limitations to who is covered by the ACA, however, in California there are stronger state laws that cover these employees, which are described in the California Laws and in Lactation in the Workplace.



Limitations in the federal law include:

- If the employer has fewer than 50 employees and the employer can show that lactation accommodations are causing significant hardship, expense or difficulty.
- Federal law (unlike California law) does not require employers to provide lactation breaks to workers who are exempt employees. Exempt employees are salaried and are not eligible for minimum wage and overtime pay. This includes teachers and administrators. Non-exempt employees are paid hourly.

The law states that an employee cannot be discriminated against for filing a complaint against their employer for noncompliance with the ACA. If a lactating employee feels that they are being discriminated against or were terminated from their job because they took breaks to express human milk, the employee can file an official complaint. The employee may be entitled to remedies such as, “employment, reinstatement, lost wages, and an additional equal amount as liquidated damages.”<sup>11</sup> The U.S. Department of Labor’s Wage and Hour Division Hotline at 1-866-4USWAGE (1-866-487-9243) provides both information and assistance with filing a complaint.

See Lactation at Work for more information.

Another benefit of the Patient Protection and Affordable Care Act is it allows breast/chest pumps and lactation supplies to be tax deductible and requires health insurance plans to cover breast/chestfeeding support, supplies and counseling.

The **Right to Breastfeed Act** protects the right to breast/chestfeed on any federal property. The law defines federal property to include

“any building, land, or other real property owned, leased or occupied by any department, agency or instrumentality of the United States (including the Department of Defense, the United States Postal Service, and any establishment in the legislative or judicial branches of the Government), or any other instrumentality wholly owned by the United States.”<sup>12</sup>

This includes National Parks, airports, bus and train stations.

See Breast/chestfeeding in Public for more information and how to respond if your rights have been violated.

California has the strongest protections for breast/chestfeeding rights in the country. When state and federal law differ, the law with greater protection prevails over the law with weaker protections. In California, protections cover workplace accommodation, housing and employment discrimination, pregnancy discrimination, breast/chestfeeding in public, and the Baby-Friendly Hospital Initiative. This section provides a general overview of some key California laws relating to breast/chestfeeding. These laws are discussed in greater detail in later sections of this guide.

In California all employers are required to provide reasonable break time to employees who need to express human milk. The law states that break times should be as close to regularly scheduled breaks as possible, and any additional break time needed can be unpaid. The law requires the employer to provide a space that is in close proximity to the employee's work area for the employee to express milk in private. The law applies to all employees regardless of the breast/chestfeeding employee's immigration status and an employer who violates this law will face a civil fine of \$100. Employees who feel that their rights to express their milk at work have been violated can contact the California Department of Labor and file a complaint here: <https://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm><sup>13</sup>

See Lactation at Work for more information.

California has additional protections against workplace discrimination based on pregnancy or breast/chestfeeding. The California Fair Employment and Housing Act (CFRA) explicitly defines sex discrimination to include breast/chestfeeding and medical conditions associated with breast/chestfeeding. Additionally, the Pregnancy Disability Regulations include lactation as a, "related medical condition" and require employers to provide reasonable accommodations to lactating employees. The employee must request the accommodations and provide a note from their healthcare provider.

See the handout, *The State of Fair Employment and Housing Handout: Your Rights and Obligations as a Pregnant Employee*,<sup>14</sup> and Lactation at Work for more information about protections under these laws.

California also has some of the most generous pregnancy and family leave laws in the country. A pregnant employee in California who works for an employer with at least five employees is entitled to up to four months of leave for time during which the employee is disabled by pregnancy or childbirth. An employee who meets the eligibility requirements for CFRA leave can take up to 12 weeks of time to bond with a new baby in addition to any time classified as pregnancy disability leave.

See Six Key Laws for Working Parents for more information.

California law also explicitly protects a person's right to breast/chestfeed in public. The law states, "A mother may breastfeed her child in any location, public or private, except the private home or residence of another, where the mother and child are authorized to be present."<sup>15</sup> The law makes no mention of the need to cover up while breastfeeding.

Under California law it is prohibited for employers to retaliate against any person who requests lactation accommodations.

See Breast/chestfeeding in Public for more information.

California passed a law in 2014 that requires all airports with at least 1 million travelers per year to provide a room or space at each terminal to express their milk.<sup>16</sup> The space must be located after the security screening, must have at least an outlet and a chair and must **not** be a bathroom. The law also requires that all new airport terminals built in California include a space to express human milk.

See Lactation and Traveling for more information.

The State of California has made breast/chestfeeding a priority because of its importance to public health. The California Department of Public Health recognizes that workplace lactation accommodations are a key part of reducing breast/chestfeeding disparities.<sup>15</sup> California also passed a state law that requires, "all general acute care hospitals and special hospitals that have a perinatal unit to adopt the, "Ten Steps to Successful Breastfeeding" per the Baby-Friendly Hospital Initiative, or an alternate process that includes evidenced-based policies and practices and targeted outcomes, by 2025."<sup>17</sup>

## Six Key Laws for Working Parents in California

# 1

### Pregnancy Disability Leave Law (PDL): Job-Protected Leave

In California, people who work for employers with 5 or more employees are entitled under California's Pregnancy Disability Leave (PDL) Law to take up to 4 months per pregnancy of **job-protected leave** during the period that they are disabled by pregnancy, childbirth or a related condition, including but not limited to lactation.<sup>19</sup> This includes time off for routine prenatal care, time off for pregnancy complications when medically advisable, and time off to recover from childbirth and any associated complications. In California, the PDL has been amended to cover transgender individuals who are pregnant.<sup>20</sup>

Employees who want to take Pregnancy Disability Leave need to give their employers at least 30 days' notice when the need for the leave is anticipated and as much notice as possible if the need for leave is unexpected.

An employee may also need to provide a doctor's note certifying the need for leave. A note does not need to identify the specific condition, but it should say:

- Anticipated start and end dates of the leave.
- That the condition is related to pregnancy or childbirth.
- That the leave is medically advised due to the employee's inability to perform one or more essential job functions or is unable to do so without undue risk to self, others, or the completion of the pregnancy.<sup>20</sup>

Some workers with pregnancy complications who are unable to work for an extended period of time may exhaust their available pregnancy disability leave before they give birth. To avoid exhausting available leave prior to childbirth, pregnant employees and their healthcare providers should always explore whether a reasonable accommodation would permit the employee to continue working. Detailed resources for employees and healthcare providers relating to pregnancy accommodations can be found at <https://www.pregnantatwork.org>.<sup>21</sup> Most employees in California who have sufficient remaining leave will be able to take around 6-8 weeks of job-protected leave to recover from an uncomplicated vaginal or cesarean section birth.

In California, Pregnancy Disability Leave (PDL) Law also guarantees employees the right to reasonable accommodations of any disability caused by pregnancy, childbirth or a related medical condition. Lactation is specifically defined in the PDL regulations as a, "related medical condition" covered by the law. Lactation without complications is not generally considered a disability

requiring PDL. An employee who is breast/chestfeeding with or without complications is entitled to reasonable accommodations to enable the person to work safely and effectively while breast/chestfeeding.<sup>20</sup> Employees who experience lactation **complications** on the other hand are eligible for PDL leave if they are unable to perform one or more essential functions of their jobs and leave is medically advisable.<sup>20</sup>

See Lactation at Work.

#### Mothers who return to work before six weeks postpartum



## Six Key Laws for Working Parents in California

### 2

#### FMLA/CFRA: Job-Protected Leave

The Federal Family Medical Leave Act (FMLA) provides up to 12 weeks of **unpaid, job-protected leave**.

An employee can take FMLA for any of the following reasons:

- To bond after the birth or placement of a child.
- To care for a child, spouse, or parent with a serious health condition.
- The employee's own serious health condition.

Baby bonding leave under FMLA must be taken within one year after the child's birth or placement. Leave to care for a child with a serious health condition does not need to be taken within the first year after birth or placement, but the child must be either a minor or be unable to care for themselves due to a disability.<sup>22,23</sup>

An employee must meet **all three** of the following qualifications to be eligible for FMLA leave:<sup>23</sup>

- Have worked for the employer for at least 12 months (not required to be consecutive).
- Have worked at least 1,250 hours for the employer during the 12 month period immediately preceding the leave.
- Must work at a location where the employer has 50 or more employees within 75 miles.

This means that even if an employee works for a company with 1000 employees but there are only 20 employees at the location where the employee works, that employee is not eligible for FMLA.

An employee who wishes to take FMLA leave to bond with a newborn baby (rather than for their own serious health condition) generally should not have to provide a doctor's note, but does need to provide advance notice to their employer. Notice should be given to the employer at least 30 days in advance when the need for leave is foreseeable and as soon as possible in all other cases.

The California Family Rights Act (CFRA) is the California version of FMLA and is identical in most respects, including leave length. In 2021, the CFRA eligibility requirements have reduced the number of employees to only five. There are, however, some key ways in which CFRA provides more protection to California employees than FMLA. Under FMLA, baby bonding leave has to be taken in one, continuous length of time unless the employer agrees to allow the employee to take it intermittently. Under CFRA, unlike under FMLA, an employee can take baby bonding leave intermittently regardless of the employer's agreement. In general, CFRA leave for baby bonding must be taken in periods of at least two weeks, but an employer can approve requests for shorter increments of CFRA baby bonding leave on up to two occasions.<sup>24</sup> In addition, while FMLA leave runs at the same time as PDL leave, CFRA baby bonding leave is a separate and distinct right from PDL. This means that employees who are eligible for CFRA baby bonding leave can take **both** up to 12 weeks of baby bonding leave **and** up to 4 months of leave under PDL for any time that the employee is disabled by pregnancy, childbirth or a related condition.<sup>25</sup>



**Close to half**  
of all employees report  
they would have taken longer leave  
had they received additional pay<sup>112</sup>



## Six Key Laws for Working Parents in California

### 3

## Paid Family Leave: Wage Replacement

In California, Paid Family Leave (PFL) provides up to eight weeks of partial pay to employees who take time off from work to bond with a new child entering the family (which now includes grandparents, grandchildren, and siblings).

To be eligible for California PFL benefits, the parent must have done all of the following:

- Welcomed a new child into the family in the past 12 months.
- Paid into State Disability Insurance (noted as “SDI” on pay stubs) in the past 5 to 18 months.
- Not already taken the maximum eight weeks of PFL in the past 12 months.

After filing a PFL claim online or by mail, a seven-day waiting period no longer applies and employees may start getting paid their first day off work. The employee must have at least \$300 in wages that are subject to SDI contributions during the 12-month base period of the claim. The employee must provide proof of relationship for bonding claims (birth certificate or record, adoption paperwork, etc.).<sup>27</sup> Eligible workers can receive up to 60-70% of their weekly earnings based on the applicable base period (maximum reimbursement amount is \$1,357 per week) for up to eight weeks within any 12-month period. The eight weeks of Paid Family Leave can be broken up throughout the 12 months and do not have to be taken all at once.

An employee can go to the EDD website for more information and to use a benefits calculator to estimate their weekly paid family leave benefits. The website also has resources for employers. <https://edd.ca.gov/disability/paid-family-leave><sup>28</sup>

### San Francisco Paid Parental Leave Ordinance<sup>29</sup>

People who are employed in the city of San Francisco are eligible to receive additional compensation through the San Francisco Paid Parental Leave Ordinance (SF PPLO). The SF PPLO requires the employer to provide supplemental compensation that is equal to the difference between the employee’s pay and what the employee receives through the California PFL program for eight weeks. The law covers all employers in San Francisco who employ at least 20+ employees.

Employees must meet all of the following requirements to receive SF PPLO:

- The employee has worked for a covered employer for at least 180 days before taking California PFL.
- The employee works for the covered employer for at least 8 hours per week.
- The employee works for the covered employer for at least 40% of their weekly hours.
- The employee is currently receiving CA PFL benefits.

For example, if the employee is receiving 60% of their salary through PFL, but works in the city of San Francisco, the employee will then receive an additional 40% of their income through the SF PPLO program. For more information about this law and how to apply for benefits visit: <https://legalaidatwork.org/wp-content/uploads/2020/07/LAAW-July-2020-update-to-OLSE-PPLO-FAQ.pdf><sup>30</sup>

<https://legalaidatwork.org/wp-content/uploads/2021/03/Lactation-Employee-Employee-Employer-English.pdf><sup>31</sup>

**Note:** It is important to understand that Paid Family Leave is a wage replacement program and *not* a job protection program like FMLA, CFRA and PDL. Being approved for paid family leave does not automatically protect the employee’s job, so it is important for the employee to talk to their supervisor or human resources about whether they qualify for FMLA, CFRA and/or PDL even if the employee has received state approval for Paid Family Leave.

## Six Key Laws for Working Parents in California

# 4

### Using Sick Leave for Family Care: Wage Replacement

California law provides that employees who accrue sick leave are entitled to use up to half of the sick leave they accrue each year to take care of a sick family member or to attend a family member's preventative care appointment (for example, taking a child to a well baby visit).

"Family members" are broadly defined to include:

- Children (including foster children, legal wards, step-children, or children to whom the employee stands *in loco parentis*, meaning that they provide significant financial or caregiving support). **Note:** Unlike CFRA and FMLA, the child can be either a minor or an adult.
- Parents (including biological, adoptive, foster and stepparents, legal guardians, and individuals who stood *in loco parentis* when the employee was a minor child).
- Spouses and registered domestic partners.
- Grandparents.
- Grandchildren.
- Siblings.

Employers may not fire, demote, suspend, or otherwise discriminate against an employee for using or attempting to use up to half of the employee's annual accrued sick leave to care for a sick family member or to attend a family member's preventative care appointment.<sup>33</sup>

**Note:** The City of Los Angeles passed a sick days ordinance that allows *all employees* who work in the city of Los Angeles to take paid sick leave. Employers must provide sick leave either by:

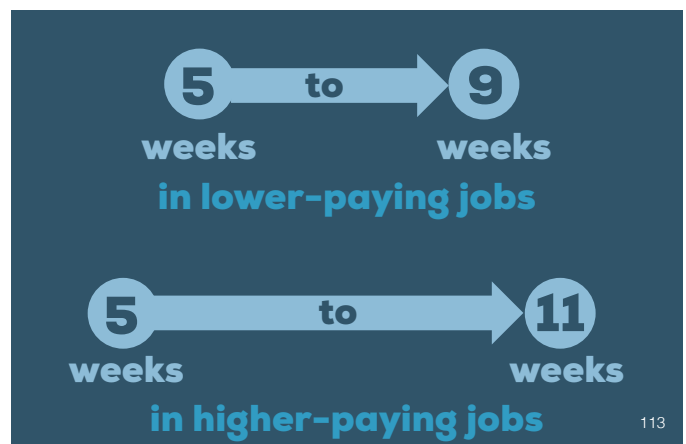
- 1) providing the entire 48 hours to an employee at the beginning of each year of employment, calendar year, or 12-month period (lump-sum/front-loading); or
- 2) providing the employee one hour of sick leave per every 30 hours worked (accrual method).<sup>34</sup>

The employee can begin using the sick leave after 90 days of employment. The employee is eligible to take a maximum of 48 accrued hours of paid sick leave in each calendar year, and any unused sick leave rolls over to the following year.<sup>33</sup> The employer can choose to cap the total number of sick hours at 72 or set a higher cap, or set no cap at all.



## IN CALIFORNIA

The median duration of breastfeeding doubled among new mothers who took family leave. **An increase of:**



## Six Key Laws for Working Parents in California

### 5

#### Family-School Partnership Act: Job-Protected Leave

Employees who work for employers with more than 25 employees working *at the same location* are entitled to take up to 40 hours of **job-protected leave** per year for certain school-related activities. Employees can take a maximum of 8 hours of leave in a single month.

Employees who are eligible for the Family-School Partnership can take **job-protected leave** for the following reasons:

- Finding a school or licensed child care for the employee's child.
- Enrolling a child in a school or licensed child care.
- Participating in the activity of a school or licensed childcare.
- Attending to a school or childcare-related emergency.

“Emergencies” include unexpected closure of a school or child care facility, natural disasters, behavioral and disciplinary problems, or a request by the child care provider that the child be picked up early (e.g. due to illness). According to this law, planned school and child care holidays are not considered emergencies.

An employee must give the employer reasonable notice in order to take time off for school or child care related activities or emergencies.<sup>35</sup>

### 6

#### Lactation Accommodation Provisions of the California Labor Code

In California all employers are required to provide reasonable break time to employees who need to express their milk. The law states that break times should be as close to regularly scheduled paid breaks as possible and employees should be given any reasonable amount of break time to express milk any of that time would be given unpaid. An employer shall provide an employee with the use of a room or other location for the employee to express milk in private. The room or location may include the place where the employee normally works if it meets all the requirements. It shall not be a bathroom, shall be in close proximity to the employee's work area, shielded from view, and free from intrusion while the employee is expressing milk. The room will also be safe, clean, and free of hazardous materials. The room must contain a surface to place a breast/chest pump and personal items, a place to sit, and 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/chest pump. Finally, the employer shall also provide access to a sink with running water and a refrigerator suitable for storing milk in close proximity to the employee's workspace.

The law applies to all employees regardless of the breast/chestfeeding employee's immigration status. An employer who violates this law will face a civil fine of \$100 each day an employee is denied a reasonable break time or adequate space to express milk.

For a more detailed discussion of these laws and the ways that they interact with similar federal laws, see Lactation at Work.

For fact sheets and resources regarding paid family leave, visit: <https://legalaidatwork.org/our-programs/work-and-family-program/><sup>36</sup>

In California, all employers are required to provide reasonable break time to employees who need to express their milk. Unlike federal law, which has restrictions on the age of the child and which employees are covered, California's laws regarding lactation breaks cover all employers and all employees in the state with no upper age limit of the child. The California Labor Code provides that break time for expressing milk should be concurrent with existing paid breaks when possible. Break time that exceeds the length of the employee's existing paid breaks must be offered, but the break time does not have to be paid. California law requires the employer to make reasonable efforts to provide a space that is close to the employee's regular work space for the employee to express milk in private and among other restrictions stated above.<sup>37</sup>

California employees who are nonexempt workers are also protected by the Break Time for Nursing Mothers provisions of the Federal Labor Standards Act (FLSA) in addition to the provisions of the California Labor Code. In general, employees who are eligible for overtime pay are nonexempt and eligible for the protections of the FLSA. In cases where an employee is protected under both the federal and state law, the stronger of the two shall prevail. In some cases, that may be state law and in some, federal.

On the following page is a chart comparing federal and state laws with a summary of legal protections for workers who are eligible for the protections of both the California Labor Code and the FLSA with respect to expressing their milk. Federal law only applies to nonexempt employees. State law applies to both exempt and nonexempt employees.

If an employee feels that their employer is not providing adequate break time and/or a place to express milk, the employee may file a report/claim with the Department of Labor Standards Enforcement (DLSE) Bureau of Field Enforcement (BOFE) either at the BOFE office that is located nearest to the place of employment. Find more information about how to file a claim here: <https://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm>.<sup>13</sup>

Any employee who experiences retaliation for asserting their rights to lactation accommodations or for reporting a violation to the DLSE about their employer's failure to provide lactation accommodations can file a claim with the DLSE<sup>37</sup> and also seek legal advice.

### Reasonable Accommodations

Lactation is considered a condition related to pregnancy and childbirth under the California Pregnancy Disability Leave Law and is, therefore, a basis for reasonable accommodations when accommodations are deemed medically advisable by a person's healthcare provider.<sup>38</sup> Employees who experience substantial impairment in a major life activity because of a breast/chestfeeding complication may also have protections under the federal Americans with Disabilities Act. Employees in California are already entitled to break time to express milk under the California Labor Code, as explained above.

Some workers will need accommodations beyond basic break time and space in order to continue to work and breast/chestfeed due to breast/chestfeeding complications or challenges presented by their particular jobs. Which accommodations will be reasonable for a particular worker is very situation specific and depends on the employee's medical need, the specifics of the employee's job, and the needs of the employer.

Some examples of possible reasonable accommodations include:

- A breast/chestfeeding employee who develops a complication like mastitis may need an accommodation such as time off from work to seek medical treatment and recover.<sup>39</sup>
- An employee whose work involves exposure to smoke, heavy metals, radiation or other toxins that could affect their milk may need reasonable accommodations to reduce exposure. Reasonable accommodations might include use of protective gear (such as gloves, protective clothing or respirators) or, if available, temporary reassignment to a different position. More information about accommodations for breast/chestfeeding workers exposed to potentially hazardous materials is available at: <https://www.cdc.gov/niosh/topics/repro/breastfeeding.html><sup>40</sup>
- Rarely, breast/chestfeeding may be incompatible with an employee's basic job duties. For example, a breast/chestfeeding police officer might be temporarily unable to wear a tight bulletproof vest required to safely perform patrol duties. In this example, the officer might need a reasonable accommodation in the form of a temporary transfer to a light or desk duty position, if the employer offers light duty to other non-breast/chestfeeding workers.

## Lactation Accommodation Issues and Accompanying Laws

Subject	Laws on Subject	Citation
Breaks to Express Milk	California and federal. Both state and federal law require employers to provide reasonable break time for nursing employees who need to express milk.	Cal. Labor Code § 1030; 29 U.S.C. 207(r)(1)(A)
Period During Which Employee Is Entitled to Breaks to Express Milk	California. California has no time limit on how long an employee may take breaks to express milk for an infant child.  Federal. Federal law states that a non-exempt employee is entitled to breaks only until the child is one year old.	Cal. Labor Code § 1030
Provision of Space for Expression of Breastmilk	Federal. Federal law provides that employers shall provide space for non-exempt breastfeeding employees to express milk that is shielded from view and free from intrusion by co-workers and the public.  California. California provides that employers need to make “reasonable efforts” to provide private space to express milk.	29 U.S.C. 207(r)(1)(A)
Location of Milk Expression in Relation to Restrooms	Federal. Federal law states that employers shall provide space for non-exempt breastfeeding employees to express milk that cannot be a bathroom.  California. California law states that employers must make reasonable efforts to find a space that is not a toilet stall.	29 U.S.C. 207(r)(1)(B)
Location of Pumping Space in Relation to Work	California. California law provides that an employer must make reasonable efforts to find a space for any employee to express milk that is close to the employee’s workspace.	Cal. Labor Code § 1031
Exemptions Based on Hardship/Disruption	Federal. Federal law provides that only employers with fewer than 50 employees may claim exemption from compliance based on undue hardship.  California. Under California law, any employer can obtain exemption based on serious disruption to their operations regardless of size.	29 U.S.C. 207(r)(3)

An employee who is having difficulty expressing milk using a pump is entitled under the Labor Code to express milk **each time** there is a need to do so, even if they need to pump more frequently than the average breast/chestfeeding worker. Depending on the nature of the employee's workplace, they may also be able to discuss accommodations that would allow the employee access to their infant so that they can breast/chestfeed rather than pump during some or all of their lactation breaks. (**Note:** Employers may be particularly willing to consider access-to-infant accommodations if granting them will result in shorter or fewer lactation breaks due to the fact that infants are much more efficient than pumps at removing breast/chestmilk.)

Examples of this type of accommodation might include:

- Having a caregiver bring the baby to the parent to breast/chestfeed on breaks (rather than pumping).
- Permission to leave work to breast/chestfeed at home or the baby's day care (if nearby).
- Permission to bring baby to work pursuant to a babies-at-work policy.
- Permission to telework (with another caregiver present to watch the baby when the employee is not breast/chestfeeding).

It is important to remember that workers are not entitled to receive their first choice accommodations, and employers generally do not have to change the employee's job duties, hours, or productivity requirements unless they would do so for a non-breast/chestfeeding worker. Employers also do not have to offer accommodations that would create undue hardship for their businesses. Reasonable accommodations may need to be negotiated. **An employee cannot, however, be punished, fired, or penalized in any way for asking for a lactation accommodation, even if the accommodation is ultimately denied.**

### Discrimination and Retaliation

Under both federal and California law, discrimination against employees on the basis of pregnancy, childbirth and related medical conditions is considered a form of sex discrimination and is illegal. The California Fair Employment and Housing Act expressly recognizes discrimination based on lactation as a form of illegal sex discrimination.<sup>19</sup>

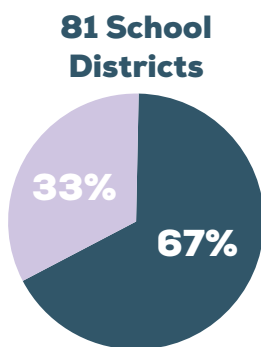
State and federal law also forbid employers from retaliating against employees who oppose sex discrimination, seek reasonable accommodations, or exercise their rights to take job-protected leave.<sup>41,42</sup>

Employees who believe that they have been demoted or fired because they breast/chestfed or expressed milk at work should seek legal counsel and should contact one of the legal resources listed on the front of this toolkit.

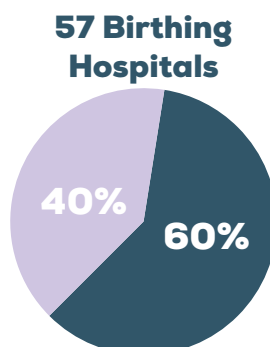
The fields with the highest numbers of women in the workforce are healthcare and education.<sup>65</sup>

### Employee Lactation Accommodation

■ POLICY ■ NO POLICY



**17%** of districts have a pregnant and parenting student policy



**13%** of HR professionals still report that a bathroom is an acceptable location for pumping

## Lactation at Work

### Contract Workers

Some contract workers are assigned to work with a company for a particular project or time frame but are still legally considered employees. This includes most “temp” workers. Temporary workers are entitled to the same legal protections as full-time, permanent workers, even if their work is limited in time or scope.

True independent contractors, on the other hand, are not protected by most of the provisions of the ADA, FEHA, FMLA, CFRA, PDL and Labor Code that are discussed in this guide. True independent contractors are self-employed and should have a high degree of control over the time and manner in which they perform their work. Therefore, a lactating worker who is truly an independent contractor should be able to take breaks to nurse or express milk as needed.

If an employer is exerting control over a worker’s working conditions, that worker may be legally an employee and entitled to the protection of state and federal employment law even if the employer refers to the worker as an “independent contractor.”

If a worker has questions about their status as an employee versus an independent contractor and needs help understanding which legal protections for lactation accommodation apply, the lactating person should seek advice from an attorney or from the Center for WorkLife Law free legal hotline at (415) 703-8276.



### Workers Who Perform Duties Off-Site

If an employee works at one location and is also sent off-site to perform work, both the primary employer and the off-site employer are responsible for providing lactation accommodations. Additionally, if an employee is sent off-site to perform work for a client, it is the responsibility of both the employer and the client to provide lactation

accommodations. For example: if a bookkeeper leaves their primary worksite to go to a client’s office to perform bookkeeping work, both the primary employer and the client are responsible for providing lactation accommodations to the bookkeeper.

Women with adequate break time are

**2.6  
TIMES**

more likely to **breastfeed exclusively** and

**3  
TIMES**

more likely to **breastfeed at all**

**at 6 months postpartum.**

Women with private space at work breastfeed for 1.4 months longer than women with no break time or private space.<sup>114</sup>

## Lactation at Work

### Union Members

Employees who are members of a union may have additional protections beyond what federal and state laws require. Union contracts could include additional benefits such as paid family leave for non full-time employees, extended leave beyond 12 weeks, elimination of the employer's right to automatically apply vacation or sick days to leave, payment of the employee's insurance contributions by the employer during leave, and stronger lactation accommodations. Union members should contact their union and ask for a copy of their contract to find out what protections are included. Union members can also participate in contract negotiations to advocate for additional paid family leave and lactation protections.

Union members have a legal right to have a union representative at any interview or meeting that could result in disciplinary action.<sup>43</sup> If a union member feels that they were retaliated against for taking breaks to express their milk, the union member should contact a union steward or representative. The union may provide guidance about how to file a grievance, may be able to connect the union member to a lawyer, and/or support the union member in taking collective action to resolve the issue.

### Low-Wage Workers

Advocates should bear in mind that low-wage workers experience barriers to breast/chestfeeding that higher wage workers may not, including low job security, lack of health benefits and sick leave, and inflexible work schedules.<sup>44</sup> Low-wage workers may not be able to afford to take the full amount of unpaid leave to which they are entitled under PDL and CFRA and may feel forced by financial constraints to return to work before they have physically recovered from childbirth or established breast/chestfeeding. California's Paid Family Leave program is a step in the right direction toward protecting these workers, but eight weeks of partial pay may not be enough for some workers to take the leave they need to establish a milk supply and bond with a newborn.

Upon returning to work, low-wage workers are less likely to have access to a dedicated lactation room or to their own private locked office in which to express milk. For a construction worker, waitress, factory employee, or farmworker, private space to express milk may be more difficult to locate than for, say, a corporate attorney. Fortunately, the Department of Health and Human Resources, Office of Women's Health has fantastic resources for identifying appropriate pumping spaces for nursing employees in a wide variety of occupations and work environments. The Employer Solutions webpage is available at: <https://www.womenshealth.gov/supporting-nursing-moms-work/resources><sup>45</sup>

CalWORKs is a public assistance program in California that serves all counties in the state. People who participate in the CalWORKs program are required to complete welfare to work activities. California state law provides

that CalWORKs participants are entitled to the same protections as other workers in the state of California such as rest and meal breaks, pregnancy disability and lactation accommodations.<sup>46</sup> Additionally, California law protects CalWORKs participants' right to breast/chestfeed in any public space including county offices.<sup>46</sup>

Some low-wage workers may also be reluctant to advocate for themselves in fear of negative repercussions and loss of employment. Workers should be reassured that retaliation for breast/chestfeeding or expressing milk is illegal. A worker who experiences retaliation or who is terminated for expressing milk or asserting their legal rights should seek legal advice right away and should consider contacting a worker's rights advocacy organization as well. To better understand the relationship between job protected leave, pay and accommodations, check out this handy tool by Legal Aid at Work. <https://legalaidatwork.org/wp-content/uploads/2021/01/Pregnancy-My-Job-in-California-English-1-1.pdf>



Pregnancy Disability Leave is important to allow students to recover from childbirth, establish their milk supply, and bond with their baby. Many students would be surprised to learn that they are legally entitled to leave for medical reasons related to pregnancy and childbirth.

The California Education Code<sup>47</sup> provides some of the most comprehensive and clear student breast/chest-feeding protections in the nation. California students must be provided with a suitable space for expressing milk, storage for their breast/chest pump or milk storage, and break time for expressing milk.

The California Education Code asserts that all pupils have the right to participate fully in the education process, free from discrimination and harassment. It further demands school districts to provide reasonable accommodations for lactating students on a school campus to express their milk, breast/chestfeed, or address other needs that are related to lactation.<sup>47</sup>

**Title IX** is part of the Education Amendments of 1972,<sup>48</sup> which are amendments to the Civil Rights Act of 1964.<sup>8</sup> Title IX states that any education program or activity that accepts federal funding cannot discriminate against a person based on their sex.<sup>49</sup> Title IX applies to colleges, universities, elementary and secondary schools as well as any other educational program that receives federal funding. Federal regulations on Title IX<sup>50</sup> make clear that sex discrimination includes discrimination based on parental status, pregnancy, false pregnancy, abortion, miscarriage, childbirth, recovery and related conditions, such as lactation<sup>51</sup> and breast/chestfeeding. This includes ensuring pregnant and breast/chestfeeding students have equal educational opportunities.

Under the federal regulations on Title IX<sup>50</sup> schools must:

- Allow a student to take leave for as long as medically necessary (medical necessity is determined by the student's physician). The student may be asked to bring in a doctor's note.
- Ensure that a student's educational opportunities aren't diminished due to breast/chestfeeding. To do so would be sex discrimination.

Under this law, **K-12** schools must specifically:

- Provide access to a private, secure room with a power source for breast/chestfeeding or to express milk; and a place for storage (refrigerator or cooler bags).

- Allow lactating students to bring a breast/chest pump to school and store expressed milk.
- Provide reasonable break time or time away from the classroom for lactation without incurring academic penalty and allowing the student to make up work.
- Process student complaints about lactation accommodations through the Uniform Complaint Process (UCP).

In addition, California law protects the right for a person to breast/chestfeed their child in any place where they are authorized to be present.

Within the University of California system as well as California Community Colleges and satellite campuses, accommodations must be provided to lactating students to "express breast milk, breast-feed an infant child, or address other needs related to breast-feeding."<sup>52</sup> Students must also be provided a reasonable amount of time to accommodate these needs. Furthermore, students needed to feed their child or pump cannot be penalized and must be given the opportunity to make up any work missed while doing so.

If a lactating student believes that their rights under Title IX are being violated, the student can contact the Title IX Coordinator at their educational program. By law, the Title IX Coordinator's contact information is required to be easily accessible on the school's website. If the student is unable to find the Title IX Coordinator at their school, they can contact the Human Resources Department or the Center for WorkLife Law at <https://thepregnantscholar.org><sup>53</sup>. The student can also file a complaint with the Department of Education. Instructions can be found here: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html><sup>54</sup>

### Students with children

are especially unlikely to complete a certificate or degree within six years of enrollment, with only:



attaining a degree or certificate in that time.<sup>115</sup>

**4.8 million college students are raising children.**

**Women make up 71% of all student parents.**



**Women of color** are the most likely students to be raising children while pursuing a postsecondary degree.

Nearly half of all black women in college have dependent children (47%).

115

The California Sex Equity in Education Act<sup>55</sup> specifically guarantees leave for graduate student parents. This law allows for graduate students to take leave for longer than what is medically necessary, and return without penalty.

Under this law institutions must provide their graduate students with:

- One academic year of leave for childbirth (one month for parents who haven't given birth).
- At least 12 additional months to prepare for and take preliminary and qualifying exams (one month for parents who haven't given birth).
- At least 12 months towards normative time to degree\* (one month for parents who haven't given birth).
- If a longer term is medically necessary, extensions will be granted (per Title IX, which protects medically necessary leave).

\*Normative time to degree is the number of quarters established for students to complete requirements of their program. Each program may have a different normative time to completion. What these accommodations mean is that a student who is a parent has extra time to complete their degree without penalty.

For more information, visit <https://thepregnantscholar.org/leave-and-absences/>.<sup>56</sup>

**Note:** While the law does not state any specifications for lactation space, the Department of Education Office of Civil Rights suggests administrators, “designate a private room for young mothers to breastfeed, pump milk, or address other needs related to breastfeeding during the school day.”<sup>57</sup>

For more information, see <https://thepregnantscholar.org/know-your-rights-breastfeeding/><sup>58</sup>

## Extracurricular Activities and Athletics:

Title IX protects students from discrimination on the basis of pregnancy and related conditions (like lactation/breast/chestfeeding) both outside and inside the classroom. Under this law:

- A student's participation in a university/college sanctioned club, student group, academic society, etc. cannot be limited because of breast/chestfeeding.
- Pregnant and breast/chestfeeding athletes must be treated as well as any other athlete with a temporary disability.
- The student and their doctor have the final say as to whether the student can compete while pregnant/breast/chestfeeding, not the coach, athletic director, or anyone else.
- The student may only be asked to provide a medical clearance to play if players with other medical conditions are asked to do so as well.
- Scholarships cannot be terminated or altered during the award term based on pregnancy.
- If the school renews athletic awards to injured players who are actively rehabilitating or athletes who stay involved with the team after a career-ending injury, the same must be done in the case of pregnancy. A decision not to renew must be provided in writing by July 1, including the reason for not renewing and the process to appeal.
- If other students who take time off due to an injury/medical condition can apply for a waiver to extend their overall athletic eligibility, athletes who miss time due to pregnancy and related conditions must also be allowed to apply for an extension. The NCAA has allowed these extensions.

For more information, see:

NCAA Pregnancy Toolkit: <http://s3.amazonaws.com/ncaa.org/documents/2021/1/18/PregnancyToolkit.pdf><sup>59</sup>

Pregnant Scholar: <https://thepregnantscholar.org/for-students/extracurriculars-and-athletics/><sup>60</sup>

NWLC FAQs: <https://nwlc.org/resources/faq-pregnant-and-parenting-college-graduate-students-rights/><sup>61</sup>

## Internships

Colleges and universities cannot exclude pregnant or lactating students from participating in university-affiliated internships, externships, or other off-site programming. If a student is completing an internship under the guidance of their university, the school and the internship site have responsibility for providing appropriate accommodations. Interns who work for university credit should seek assistance from the school's Title IX Coordinator if problems arise. Interns who are considered employees of their internship site are entitled to all the same protections as any worker. See Lactation at Work for more information.

## Financial Aid

Merit and need-based scholarships cannot be terminated or altered based on pregnancy or related conditions. Taking off more time than medically necessary may cause a change in student status, scholarships, loans or other financial aid. Students should consult their school's non-medical leave policy for more information.

A student may register as an "independent student" if the child's due date is in the award year (July 1 to June 30) and the student will be providing at least half of the support to the child. When filling out the Free Application for Federal Student Aid (FAFSA) form, the student should count the child toward the household size if the due date is within that award year—even if the child has not been born when the student files. Keep a copy of an ultrasound and other medical records in case FAFSA audits the application.

While they are on the clock, students who are employees of their college/university have the same rights as other workers at the institution. See the section Breast/chest-feeding and Work for more information.

For more information:

NWLC: <https://nwlc.org/resources/faq-pregnant-and-parenting-college-graduate-students-rights/><sup>61</sup>

Pregnant Scholar: <http://thepregnantscholar.org/financial-aid/><sup>62</sup>



### Employees/Teachers/Professors of K-12 Schools and Colleges/Universities

There are specific provisions relating to breast/chestfeeding workers at educational institutions, therefore, employees of educational institutions should review this section *in addition* to the workplace section, which provides information on laws applicable to all workers. This section includes information specific to those employees, including teachers, administrative staff, student workers, graduate student employees, postdoc employees and others. See Lactation at Work for more information.

Teachers, professors, and other educators should look to California state lactation accommodation law in the California Labor Code. The federal Break Time for Nursing Mothers provisions *do not apply* to those workers that have teaching as a primary job duty. This is because the law only protects those workers who are eligible for federal overtime protections. See Lactation at Work for more details.

Title IX: In addition to the resources that other workers have to assist with problems in the workplace, employees at educational institutions are also protected by Title IX. This law prohibits sex discrimination (including discrimination related to pregnancy and childbirth) in educational settings.

Breast/chestfeeding employees that have difficulty arranging the lactation accommodations they need can contact their institution's Title IX Coordinator in addition to Human Resources, Union representatives, or any of the resources listed at the front of this toolkit.

### Campus Specific Policies

In addition to the above laws, the two major university systems within California also have internal policies relating to breast/chestfeeding workers. Additionally, some of these workers may also have protections for lactation accommodations in their union contracts. Workers should assess both policies to make sure that they are receiving all of the accommodations that they are entitled to.

### California State University System<sup>62</sup>

This policy largely mirrors the Federal Break Time for Nursing Mothers Act. The CSU policy *encourages* supervisors to accommodate those employees who are not covered by that law, but does not require it. However, the policy is limiting in that it does not support California legislation which is stronger in some aspects such as no upper age limit of the child and covering exempt employees in addition to nonexempt employees.

### University of California System<sup>63</sup>

The University of California Policy on Lactation Accommodation states that, "the university will provide a private, locked place for nursing mothers to express milk, including appropriate temperature and ventilation, table, comfortable chair, and electrical outlet. Employees will be given a reasonable amount of break time; the pay and accounting for the time varies based on employment classification."<sup>63</sup>

See the full policy: <http://policy.ucop.edu/doc/4000609/PPSM-84><sup>63</sup>

For more information about colleges and universities, please see BreastfeedLA's Breast/chestfeeding 101: Los Angeles County Colleges and Universities report. <http://www.breastfeedla.org/colleges-and-universities><sup>64</sup>

For more information about K-12 schools, please see BreastfeedLA's ABC's of Breast/chestfeeding Report Card found here: <http://www.breastfeedla.org/k-12><sup>65</sup>



## Lactation Rights for LGBTQIA+ Families

### Taking Time Off From Work



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>67</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 judgment even if both parents are already named on the child's birth certificate.<sup>67</sup> Seeking additional legal protection may be required because LGBTQIA+ people continue to be stigmatized and politicized, though they are entitled to equal protection under the law. Some families choose to seek 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.

LGBTQIA+ 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>19</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>20</sup>

Parents who have given birth and parents who have not given birth qualify for FMLA/CFRA<sup>68</sup> job-protected leave to care for a child. The California Paid Family Leave program also covers parents regardless of gender identity.<sup>67</sup> LGBTQIA+ parents are also able to use sick leave to care for a child<sup>69</sup> and qualify for job-protected time off from work to attend school events under the Family-School Partnership Act.<sup>70</sup>

See Six Key Laws for Working Parents for more information.

### Breast/Chestfeeding and Lactation

LGBTQIA+ parents have protections with regards to breast/chestfeeding and lactation. LGBTQIA+ parents may breast/chestfeed their child after giving birth, if they did not give birth but are already lactating (from another pregnancy, for example), or may induce lactation in order to breast/chestfeed.<sup>71</sup> The same laws that protect biologically lactating people who identify as women apply to anyone else who is lactating/breast/chest feeding their infant human milk.

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 breast/chestfed stimulates lactation in order to produce breast/chest milk again, or that a parent who has not breast/chestfed stimulates lactation for the first time. The American Academy of Family Physicians' position statement on human milk supports inducing lactation.<sup>72</sup>

### Work and School

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

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

See Lactation at Work and Lactation in Education for more information.

### Public

In California, breast/chestfeeding parents may breast/chestfeed 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 breast/chestfeeding people who do not identify as mothers. See Breast/chestfeeding in Public for more information and for who to contact if facing discrimination for breast/chestfeeding in public.

Breastfeeding without Birthing is a great resource for breast/chestfeeding as well as for finding lactation consultants who are experienced in assisting parents who would like to induce lactation. <http://www.breastfeedingwithoutbirthing.com><sup>73</sup>

Trevor MacDonald has become an international advocate and educator about transgender individuals and breast/chestfeeding. His blog has additional information and resources at: <http://www.milkjunkies.net>.<sup>74</sup>



All patients have protected rights to receive adequate and appropriate medical care, including during pregnancy, birth, the postpartum period and lactation. The level of personal care and professional support that a breast/chestfeeding parent receives has enormous influence on whether they are able to meet their breast/chestfeeding goals. It is important that care is centered on the patient's goals and patients are offered comprehensive information and support to be able to make autonomous and informed decisions.

Although all patients have the same rights, there are stark disparities in healthcare outcomes among marginalized communities that result from the way the healthcare system is structured.<sup>80,81</sup> Marginalized communities include, but are not limited to, individuals with language barriers, people of color, immigrants, LGBTQIA+ (lesbian, gay, bisexual, transgender, queer, intersex, asexual, and others) people, gender non-conforming persons, religious minorities, disabled persons, people with mental health issues, low income people, unemployed individuals, people with unstable housing, and young parents.

Disparities in breast/chestfeeding rates exist across the Country, including California. To see California's In Hospital breast/chestfeeding rates broken down by hospital, race, and ethnicity, visit <https://www.cdph.ca.gov/Programs/CFH/DMCAH/Breastfeeding/Pages/Data.aspx><sup>80</sup>

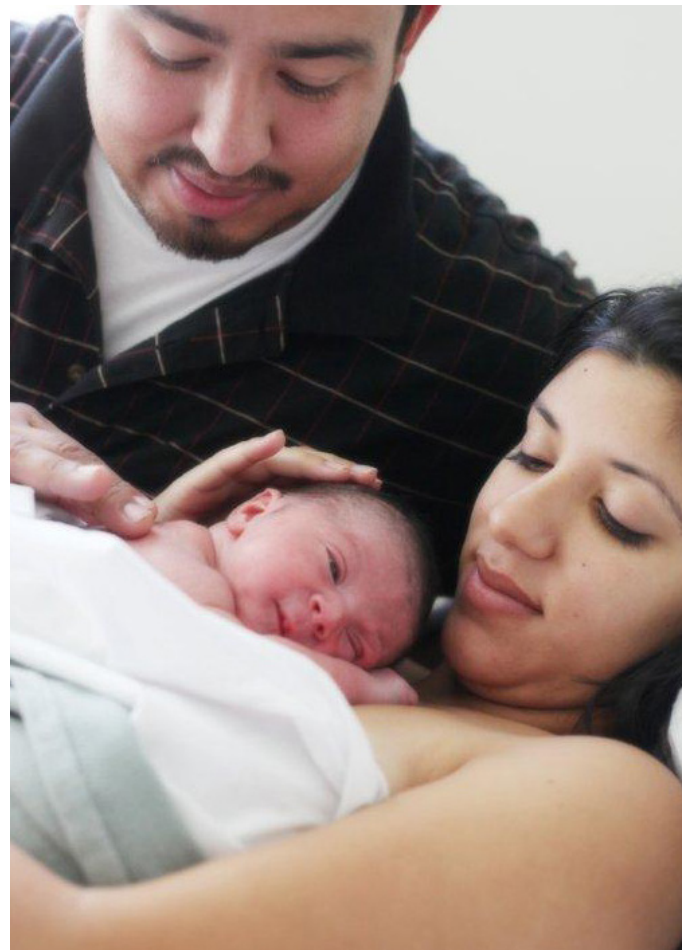
These disparities result from policies and procedures within the healthcare system and our overall society, such as California's Paid Family Leave program, which currently only applies to workers who work for companies with at least 20 employees.

Our society does not distribute resources equitably, which affects breast/chestfeeding rates. For example, there can be high out of pocket costs to hire a lactation consultant, which many people cannot afford. Individual care providers also have implicit biases that affect patient care, such as a healthcare provider assuming a parent already knows how to breast/chestfeed because they have three older children, or assuming that a person of a particular background will not breast/chestfeed.<sup>81</sup> For more information about breast/chestfeeding disparities see the Center for Social Inclusion's Report *Removing Barriers to Breastfeeding*.<sup>82</sup>

These issues require broad policy reform to affect change. For instance, if there was a national paid family leave program that covered everyone, then all parents

would be able to take paid family leave. Similarly, if everyone had affordable health insurance that properly covered lactation support, then more people would be able to see a lactation consultant after hospital discharge. Healthcare providers and patients should advocate for broad policy changes to address breast/chestfeeding disparities.

On an individual level, providers have a responsibility to promote shared decision making and patients have the right to participate in making decisions about their medical care. When healthcare providers strive to provide equitable care and promote shared medical decision making, health care disparities improve. When patients know their rights, have the information to adequately advocate for their care, and receive the support they need, they are more likely to meet their breast/chestfeeding goals.



### 1. Right to informed consent

The California Bill of Patient Rights<sup>83</sup> includes a statement describing a patient's right to informed consent. Informed consent is a process of communication between the patient and the healthcare provider.<sup>84</sup> Informed consent allows a patient to make a voluntary decision about accepting or declining medical care after being properly advised of the relevant medical facts and risks involved. The healthcare provider should give the patient evidence-based information<sup>85</sup> in a non-coercive manner. A patient can give informed consent verbally or by signing a form.<sup>86</sup>

The key information necessary for a patient to give true informed consent about a procedure includes the risks, benefits, alternatives of care and anticipated results.<sup>87</sup> Except in emergency situations, this information should include, "a description of the procedure or treatment, medically significant risks involved, alternative courses of treatment or no treatment, and the risks involved in each, and the name of the person who will carry out the procedure or treatment."<sup>83</sup> The patient has the right to ask questions to obtain as much information about any proposed treatment or procedure as they would like.

Health care providers must give information to the patient in language that the patient can understand. The right to informed consent also includes access to an in-person or electronic interpreter to ensure that the patient can gather all the information they need to make an informed consent or refusal.

One way that patients can participate in medical decisions about their care is to ask questions by using the acronym BRAINS. Intuition is not a legal requirement of informed consent, but is often a part of a patient's decision.

**BENEFITS:** What are the benefits of the proposed treatment?

**RISKS:** What are the risks of the proposed treatment? How common are the risks?

**ALTERNATIVES:** Are there any alternative treatments that could address this problem? What are the benefits and risks of each alternative treatment?

**INTUITION:** What does the patient's intuition say about the proposed treatment? Everyone has different experiences that inform their decisions.

**NOTHING:** What would happen if the patient refused the proposed treatment? What would happen if the patient waited (an hour, a day, a week) before accepting the proposed treatment?

**SECOND OPINION/SHORT BREAK:** The patient can also ask for a second opinion or to take a short break to decide.

Parents can use BRAINS for their own care or to ask questions about their infant's care. As an example, many patients have questions about how medications may affect their breast/chestfed infant. If a doctor has prescribed a particular medication for a lactating parent, they can identify the medication's risks using [Lactmed](https://toxnet.nlm.nih.gov/newtoxnet/lactmed.htm), <https://toxnet.nlm.nih.gov/newtoxnet/lactmed.htm><sup>88</sup> — an online resource that includes the most current evidence about how medications affect a person's milk and milk supply -- before consenting to treatment.

### 2. Right to refuse treatment while pregnant

The American College of Obstetricians and Gynecologists (ACOG) states that "forced compliances" -- or, going against a patient's wishes and forcing a patient to undergo a treatment after it was refused -- "raises profoundly important issues about patient rights, respect for autonomy, violations of bodily integrity and power differentials and gender inequality."<sup>89</sup> Exercised informed consent includes the right to delay standard procedures or recommended treatments, or to decline them altogether.

According to the ACOG policy statement on informed refusal during pregnancy, **a patient is assumed to be able to make their own medical decisions, unless the patient is formally determined to be unable to make their own medical decisions.** Typically it requires a physician evaluation to determine that someone is incapable of making medical decisions for themselves. The policy also states that pregnant patients have the right to refuse treatment, even if that treatment is needed to maintain life.<sup>90</sup> The patient also has the right, "to leave the hospital even against the advice of members of the medical staff."<sup>84</sup>



### 3. Right to a second opinion

According to California Patient Rights, in addition to the right to more information, a person has the right to a timely second opinion regarding a diagnosis and treatment plan.<sup>84</sup>

### 4. Right to interpretation

Shared decision making and informed consent are only possible when a patient has an adequate understanding of the recommended treatment and procedures. According to the ACOG statement on informed consent, physicians can and should help find ways to facilitate communication.<sup>89</sup> This includes access to an in-person and/or electronic translator, awareness of medical illiteracy, handouts in various languages, a visible patient bill of rights, and the presence of the patient's advocate, family, or appointed person.

## Advocating for Best Practices

### Advocating During Emergencies and Natural Disasters

The Centers for Disease Control and Prevention (CDC) advocates that, "breastfeeding remains the best infant feeding option in a natural disaster situation."<sup>91</sup> The American Academy of Pediatrics (AAP) adds that, "the cleanest, safest food for an infant, in disasters or emergencies, is human milk."<sup>92</sup>

The AAP also provides guidance for healthcare professionals to advocate for breast/chestfeeding during disasters and emergencies. <https://downloads.aap.org/AAP/PDF/DisasterFactSheet6-2020.pdf><sup>93</sup>

La Leche League promotes lactation and relactation during disasters and emergencies with these guidelines. <https://www.llli.org/breastfeeding-info/infant-feeding-emergencies-multilingual/><sup>90</sup>

### Advocating for Best Practices During Pregnancy Care

Pregnancy is the ideal time to prepare for successful lactation. Parents can prepare for lactation with their prenatal care providers by:

- Requesting assistance in applying for WIC or other nutritional assistance programs.
- Requesting an order for a breast/chest pump for use postpartum (a covered benefit under most public and commercial insurance plans).
- Attending classes or accessing other educational opportunities about preparing for successful lactation.
- Discussing their return to work or school plan in the context of ongoing lactation.

### Advocating for Best Practices During Labor and Birth

Certain labor and birth practices can hinder optimal initiation of lactation. The following practices have been known to impact breast/chestfeeding and should be avoided if possible:<sup>94</sup>

- Intravenous fluids in larger amounts (greater than 2,500mL or what a birthing person might receive in a day) can lead to newborn weight loss and breast/chest swelling which can both impact lactation.<sup>95</sup>
- Cesareans are associated with higher risk of formula use and late initiation of breast/chestfeeding.<sup>96</sup>
- Oxytocin use may delay breast/chestfeeding initiation and impact breast/chestfeeding longevity.<sup>97</sup>
- Higher dose epidurals and intravenous narcotics may negatively impact lactation.<sup>98,99</sup> Induction of labor can be associated with decreased lactation duration.<sup>100</sup>

IF  
**90%**

of LA County families were to breastfeed  
**exclusively for 6 months** the savings to LA County  
would amount to:



**\$1.1 BILLION** per year



106,107

## Advocating for Best Practices in the First Days of Life

The following are evidence-based best practices for breast/chestfeeding initiation in the first days of life. Hospitals in California will be required to implement many of these steps by 2025.<sup>101</sup> Parents can advocate for these practices if their hospital does not already have these policies in place.

- **Uninterrupted Skin-to-Skin:** Direct skin contact between mother and baby immediately following the birth and until at least the first breast/chestfeed.<sup>102</sup>
- **Delayed Newborn Procedures:** Nonurgent newborn shots and tests be delayed for up to two hours until after breast/chestfeeding has been initiated.<sup>102</sup>
- **Delayed First Bath:** Delaying baby's first bath for at least several hours has been shown to support breast/chestfeeding initiation.<sup>103</sup>

- **Rooming-In:** The baby stays in the room with the nursing parent and does not leave for tests, feedings, or to sleep in the nursery.<sup>102</sup> The goal is that infants spend no less than 23 out of 24 hours rooming-in.
- "Give no pacifiers or artificial nipples to breastfeeding infants"<sup>102</sup> until milk supply has been established about 3-4 weeks post delivery.<sup>104</sup>
- "Give infants no food or drink other than human milk unless medically indicated."<sup>103</sup>
- Breast/chestfeeding whenever the infant shows feeding cues, or on-demand.<sup>10</sup>

## Recommendations for Healthcare Providers

Healthcare providers play a crucial role in lactation support. Parents expect their healthcare providers to have the knowledge and clinical skills to assist them with common breast/chestfeeding concerns. A lack of lactation knowledge among healthcare providers can mean that patients receive inappropriate or conflicting information, which contributes to the difficulties parents face with learning to breast/chestfeed and early weaning.<sup>105</sup>

The Centers for Disease Control have issued guidelines about how different health care providers can support breast/chestfeeding.<sup>107</sup> ACOG has also issued practice guidelines for healthcare providers to best support breast/chestfeeding initiation and duration in underserved communities.<sup>107</sup> Healthcare providers can look to the Baby-Friendly Hospital Initiative<sup>102</sup> and the Nine Steps to Breastfeeding Friendly Guidelines for Community Health Centers and Outpatient Care Settings<sup>108</sup> for best practices that support breast/chestfeeding.

Healthcare providers can support breast/chestfeeding by:

- Providing coordinated, culturally and linguistically appropriate care "that involves practitioners, family members, and child care providers, obstetrician-gynecologists that can help those underserved overcome obstacles and obtain the benefits of breastfeeding for themselves and their infants."<sup>107</sup>
- Increasing the interprofessional collaboration between obstetrician/gynecologists, pediatricians, Internationally Board Certified Lactation Consultants, and nurses.
- Providing an environment in the hospital, clinic, or office that promotes, advocates, and supports lactation (close follow-up in the early postpartum period (24 - 48h) and good communication between the OBGYN, the nurses and the pediatricians).
- Emphasizing, "the benefits of breastfeeding, as well as patient education, counseling, and support strategies [...] during training of residents in obstetrics and gynecology, family medicine, and pediatrics."<sup>107</sup>
- Promoting ongoing education, "for all reproductive health care providers and hospital staff involved in childbirth."<sup>107</sup>
- Providing resources so lactating people can know where to seek assistance after discharge from the hospital.

## Lactation and Rights in Medical Care

### Policy Recommendations

The California Insurance Commissioner should adopt the USBC Model Payer Policy,<sup>109</sup> which describes best practices for insurers to provide breast/chestfeeding support, supplies and counseling.

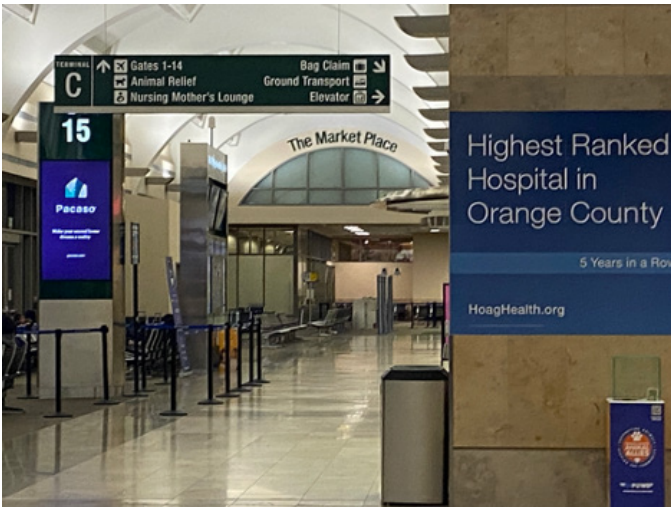
Advocates should press the California Insurance Commissioner to conduct an audit of all California health plans to determine if their lactation coverage is adequate. If health insurance plans are found to be insufficient, the best practices outlined in the USBC model policy should be implemented.

All counties in California should require that MediCal managed care plans clearly define “breastfeeding support, supplies and counseling coverage.” MediCal managed care plans should also provide a complete list of lactation providers and durable medical equipment providers. Monterey County’s policy<sup>110</sup> can serve as a model for other counties throughout the State.



# Lactation In Public Spaces

## While Traveling by Plane



Breast/chestfeeding and lactating people have rights while traveling. Forty-nine states, the District of Columbia, and the Virgin Islands have public accommodation for breast/chestfeeding laws that protect a parent's right to breast/chestfeed in any public or private location. (The only state that does not have a specific public breast/chestfeeding law is Idaho.)<sup>11</sup> Under the "Right to Breast-feed Act," lactating people are allowed to breast/chest-feed on any federal property, including National Parks.<sup>12</sup> Therefore, individuals should be able to breast/chest-feed in most airports, train stations, bus stations, and rest locations throughout the nation without incident.

A breast/chestfeeding parent has different needs when traveling with their baby than when they travel without their baby. When pumping, the parent needs a private, clean, space to express their milk. A parent may breast/chestfeed their child in any location, public or private, where they are otherwise authorized to be present. See Breast/chestfeeding in Public for more details.

In California, airports with more than one million travelers per year must provide a room or other location at each airport terminal for travelers to express their milk. The area must be located after the airport security screening area, must be private, have a chair and an electrical outlet. The space provided must not be a public restroom.<sup>16</sup>

### Airport Security

Travelers can bring their milk through security in their carry-on luggage. Unlike other liquids, their milk is allowed to be in containers larger than 3.4 ounces or 100 milliliters and does not need to fit in a quart sized bag.<sup>112</sup> **A person does not need to be traveling with their child to bring their milk.**

When traveling, it is best for the lactating person to inform the TSA officer at the beginning of the screening process when carrying their milk in excess of 3.4 ounces in their carry-on bag. Any human milk should be removed from the carry-on bag to be screened separately.

It is important for travelers to know that the TSA has alternate screening procedures for human milk and that human milk does not have to be X-rayed or opened in order to be screened. Travelers should notify the TSA officer if they would prefer for their milk not to be X-rayed.

According to the TSA website, "TSA officers may need to test liquids for explosives or concealed prohibited items. Officers may ask to open the container and/or have a small quantity of the liquid transferred to a separate empty container or dispose of a small quantity, if feasible. The TSA officer should be informed if the person does not want their milk to be X-rayed or opened. Additional steps will be taken to clear the liquid and you or the traveling guardian will undergo additional screening procedures, to include a pat-down and screening of other carry-on property."<sup>113</sup> The TSA cannot ask you to taste it.

If the traveler is bringing ice packs to keep their milk cold and the ice packs are partially frozen, the ice packs are subject to the same screening process described above. Travelers can also bring breast/chest pumps either in their carry on or in their checked luggage.

## Expressing Milk While on an Airplane

Although it is best to pump before boarding to avoid pumping on the plane, sometimes it can't be avoided. On longer or international flights, a traveler may need to pump in their seat. Ask the flight attendants if they can suggest a pumping location. The flight attendants can also help to keep people from disturbing the passenger while pumping in their seat.

## Storage and Transport of Breast/chestmilk

Travelers can request a refrigerator when booking a hotel. Many hotels will deliver a refrigerator to the room for medical reasons, including storage of human milk if requested.

If opting to ship human milk home, some employers provide reimbursement for shipping expenses when traveling for business. If travelling for work, check with the human resources department for their policies.

## Recommendations and Resource

Print out and carry a copy of the TSA's official guidelines on traveling with human milk. <https://www.tsa.gov/travel/special-procedures/traveling-children><sup>112</sup>

## TSA Contact Center

<https://www.tsa.gov/contact/customer-service113>  
1-866-289-9673

If a traveler feels that the TSA is restricting the amount of human milk that they are able to carry onto the plane, they should ask for a supervisor or manager or contact TSA directly.

## TSA Cares

(855) 787-2227 (Federal Relay: 711), Weekdays: 8 a.m. to 11 p.m. ET, Weekends/Holidays: 9 a.m. to 8 p.m. ET

TSA Cares is a helpline that breast/chestfeeding and lactating travelers can call 72 hours before traveling to ask questions about the screening process or to ask for additional assistance during the security checkpoint. The helpline also provides information about screening policies and procedures as well as what to expect at the security checkpoint. While at the airport, travelers can also ask a TSA agent for special support or assistance.

A Legislative Solution: A reason for new lactation spaces is bipartisan legislation called "The Friendly Airports for Mothers (FAM) Improvement Act," introduced by Sen. Tammy Duckworth (D-Ill.) which was signed into law October 30, and requires small airports to have designated lactation spaces by 2023. <https://www.congress.gov/116/plaws/publ190/PLAW-116publ190.pdf><sup>114</sup>

## While Traveling by Bus/Train

In California, certain transit stations—including those that serve as a stop or transfer point between intercity rail or high-speed rail and local or regional rail or bus service—that began initial construction or renovations on or after January 1, 2021 must provide a lactation room for travelers to express their milk. The lactation space

cannot be located in a public restroom. It must include a chair, an electrical outlet, and a surface other than the floor upon which equipment used to express milk can be placed. To read more about this law visit, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB752](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB752)<sup>166</sup>

## While Visiting Federal Buildings

In addition to other federal and state laws that provide rights to breast/chestfeeding and lactating people while traveling, the Fairness For Breastfeeding Mothers Act of 2019 requires certain public federal buildings that have public bathrooms (such as federal courthouses) to provide a lactation space for visitors to express milk. Like other similar laws, the lactation space cannot be a bath-

room. It must be a hygienic, private space that includes a chair, working surface, and an electrical outlet for a pump. Upon arrival to the courthouse or other federal building, the parent should ask the court clerk or other employee for the location of the building's lactation room. To read more about this law visit, <https://www.congress.gov/bill/116th-congress/house-bill/866><sup>167</sup>

## Lactation In Public Spaces

### Breast/Chestfeeding in Public

California law<sup>14</sup> states that, “a mother may breastfeed her child in any location, public or private, except the private home or residence of another, where the mother and the child are otherwise authorized to be present.” The law makes no mention of needing to cover up while breastfeeding. The law refers to “nursing mothers,” but it has generally been interpreted as applying to any breast/chestfeeding person, regardless of whether or not the person identifies as a mother.



Recommendations for how to respond if refused service for breast/chestfeeding or harassed for breast/chestfeeding in public:

1. Take a deep breath.
2. Ask, “Are you refusing me service because I am breast/chestfeeding?” or “Are you telling me I must leave because I am breast/chestfeeding?”
3. Give the other person a chance to respond.
4. Immediately document everything that was said.
5. If you are asked to leave or refused service, advise them that under California Law, you have the right to breast/chestfeed in public.
6. Advise the other party that California State Law protects the right to breast/chestfeed in public.
7. Let them know that by refusing service and/or being asked to leave their business, you will be filing a sex discrimination complaint under the Unruh Civil Rights Act.<sup>75</sup> [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=51](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=51).<sup>77</sup>

If the other party continues to refuse to follow California State Law, see *Advocating for Yourself* for ideas about other strategies.

## Lactation Accommodations for Jury Duty

California law<sup>115</sup> allows a lactating parent to delay jury duty for up to one year, with the option of delaying again in one-year increments for as long as the parent is breast/chest feeding. The law also requires that the exemption for breast/chestfeeding be part of the standard jury duty summons so that all lactating persons are aware of this protection.<sup>115</sup>

Whether lactating parents have the right to lactation accommodations in the courthouse depends on whether they are in a state courthouse or federal courthouse.

In a federal courthouse, lactating parents have access to a lactation room that is private and contains a chair, surface, and electric outlet.<sup>116</sup> Upon arrival to the courthouse, the parent should ask the court clerk for the location of the court's lactation room.

In a state courthouse, lactating parents must advocate for themselves. Upon arrival to serve as a juror, parents should immediately notify the court clerk and request accommodations for pumping. Lactating parents can ask the court clerk where lactating employees go to express their milk and can ask to use the same space. Lactating parents can remind the court clerk that California law requires them to provide a place for court employees to express their milk that is not a bathroom.

There is not a specific state law that governs lactation accommodations, such as pumping breaks during jury duty. If the parent runs into resistance from the court when requesting lactation accommodations, the parent could cite the Unruh Civil Rights Act<sup>75</sup> and the government's anti-discrimination provision,<sup>117</sup> which require public accommodations and government actors, respectively, to accommodate lactating people.

While serving jury duty, the parent can also request that someone bring their child to the courthouse for the purpose of breast/chestfeeding, because California Civil Code 43.3 protects the right to breast/chestfeed in public.<sup>118</sup>

See Breast/chestfeeding in Public for more information.



## Lactation, Divorce, and Custody Cases

If a breast/chestfeeding parent is negotiating custody with the other parent, it is important to create a custody plan that acknowledges the importance of breast/chestfeeding as well as shared parenting. A custody plan that moves from frequent shorter visits to longer visits as the child gets older can balance the needs of breast/chestfeeding and secure attachment to both parents.

The following resources may be helpful in establishing a fair custody plan. It is important to balance both shared parenting, the benefits to human milk, and the physiology of maintaining milk supply when creating a shared parenting plan.

### Recommendations

- Talk to other parents who have faced similar kinds of issues.
- If at all possible, come to a shared custody agreement parent to parent without involving the courts. Parents can use attorneys and mediation to come to a shared custody agreement.
- Consult with an attorney who is experienced in creating shared custody agreements or if the attorney is not aware of the importance of breast/chestfeeding, educate the attorney about the importance of breast/chestfeeding.
- Consider seeking a court report written by a lactation consultant should the non-lactating parent request lengthy custody hours that conflict with a child's human milk feeding schedule or demand early weaning. Reasons often given by the non-lactating parent are the child's being "too old" to breast/chestfeed, inconvenience to the non-lactating parent, or other non-evidence-based reasons. The expert's report should stress the importance of breast/chestfeeding and the health costs of early weaning.<sup>119</sup>
- Consult with a lactation professional who can help support continued breast/chestfeeding and help to maintain milk supply during any separations.

### Breast/Chestfeeding Protections in California Laws

In the United States, breast/chestfeeding rights are typically either federal laws or state laws. Because BreastfeedLA, ACLU SoCal, and California Women's Law Center are based in California, this toolkit will discuss California state laws. If you are not in California, our laws might give you some ideas about protections that you have or could win in your state.

At least five federal laws provide protections for breast/chestfeeding: Title VII, Title IX, the Family Medical Leave Act (FMLA), the Affordable Care Act (ACA), and the Right to Breastfeed Act. These laws provide protections to breast/chestfeeding people in all 50 states.

California has the strongest protections for breast/chestfeeding rights in the country. When state and federal law differ, typically the law with greater protection prevails over the law with weaker protections.

California protections include:

- Work: employers must provide a private lactation room with a chair, table, and access to a power source that's in close proximity to a fridge and sink.
- Middle and high school: public schools must provide a private lactation room with a power source and storage space.
- California community colleges and California State University system: the school must provide a private lactation room with a chair, table, and access to a power source.
- Public: a lactating parent may breastfeed in any location in which they and their infant are authorized to be.
- Jury duty: California jurors may request a postponement of jury service during the period of time that they are lactating.

These laws reflect that California's wider statutory scheme strongly supports breast/chestfeeding.

### Breast/Chestfeeding in Custody Plans

If a lactating parent is negotiating custody with the other parent, it is important to create a custody plan that acknowledges the importance of human milk feeding and direct breast/chestfeeding, as well as shared parenting. A custody plan that moves from frequent shorter visits to longer visits as the child gets older can balance the needs of human milk feeding and secure attachment to both parents.

The following resources may be helpful in establishing a fair custody plan. It is important to balance both shared parenting, the benefits to human milk, and the physiology of maintaining milk supply when creating a shared parenting plan.



## Recommendations

- Talk to other parents who have faced similar kinds of issues.
- If at all possible, come to a shared custody agreement parent-to-parent without involving the courts. Parents can use attorneys and mediators to come to a shared custody agreement.
- Consult with an attorney who is experienced in creating shared custody agreements; and if the attorney is not aware of the importance of breast/chestfeeding, educate the attorney about the importance of breast/chestfeeding using the resources provided in this toolkit.
- If the non-lactating parent requests lengthy custody hours that conflict with a child's human milk feeding schedule or demands early weaning, consider seeking a court report written by a lactation consultant. Reasons often given by the non-lactating parent include the child being "too old" to breast/chestfeed, inconvenience to the non-lactating parent, or other non-evidence-based reasons. The expert's report should stress the importance of breast/chestfeeding and the health costs of early weaning.<sup>120</sup>
- Consult with a lactation professional who can help support continued breast/chestfeeding and help to maintain milk supply during any separations.

## How to Create a Plan for Children Under 3 Years Old

Los Angeles County Family Court Services has issued guidelines for creating a parenting plan for children under 3. The following information has been adapted from the Los Angeles County Family Court Services.<sup>121</sup>

As infants, children learn to trust and love through developing attachments to those who care for them. Consistent responses from their caregivers in the day-to-day activities of feeding, changing, bathing, and holding foster this sense of security that is the cornerstone for later development. Parents who have participated in these routines are also more attuned to the child's needs and cries and are more able to soothe and comfort the child when distressed.

When parents separate during a child's early years, it is especially important for them to consider the patterns of caregiving prior to the separation when planning for custody to minimize the stress on the child. If one parent

has been more involved in an infant's care, the parents may wish to maintain that arrangement in the short term, but ensure that the other parent has frequent contact as suggested in the sample schedules below.

For families in which all parents have been highly involved in the hands-on care of the child, these patterns of care should be maintained as much as possible and may include overnight time for the child in all parents' homes. Maintaining a regular sleeping and feeding cycle in both homes will help the child feel more secure. It is critical that an infant be afforded ample opportunity to maintain and develop reciprocal attachments to all parents through these measures.

Infants and young children have not yet developed a sense of time so they have a limited ability to recall persons not directly in front of them. An infant should not be separated from any parent for long periods of time. At some points, infants may show little resistance to transitions between caregivers, while at other points, they may cry or cling to one caregiver. These behaviors are typical and not necessarily indicative of problems in the relationship with a parent.

While protecting children from exposure to parental conflict is important for all ages, this age group is especially vulnerable to physical injury and emotional trauma if exposed to domestic violence. Often parents are unaware of how deeply affected these very young children are by exposure to tension and arguing between their parents."<sup>120</sup>

Consider the following factors when creating a parenting plan for children in this age group:

- Provide your child the opportunity to bond with all parents.
- Protect your child from exposure to adult conflict.
- Learn how to soothe your infant when they are distressed and especially at the transitions between caregivers.
- Create a plan that ensures all parents have the opportunity to participate in the child's day-to-day care.
- Maintain a similar sleeping and feeding schedule in all homes.<sup>120</sup>
- When co-parents physically separate, they should make every effort to live in close proximity. This will allow for frequent but brief custodial visits.

## Sample Schedule

These examples, adapted from the Los Angeles County Family Court Services, serve as a reference for two-parent families in which the infant has a history of care with one parent primarily and the parents are seeking to ensure that the other parent has an opportunity to deepen their bond with the child.<sup>120</sup> Since very young children have less capacity to remember, the focus of visits by the non-lactating parent should be frequent, not longer. This is why we recommend three short visits per week instead of one longer visit per week.

### BIRTH THROUGH AGE 6 MONTHS

<b>Suggested schedule</b>	Three non-consecutive days per week for two hours each day.
<b>Justification</b>	At this age, babies feed every 1 ½ to 2 hours. They also sleep often. Newborns wake only to feed, while 2 - 6 months old nap 2 or 3 times a day.
<b>Recommendations</b>	<p>If at all possible, time with the non-residential parent should aim at not disrupting the infant's nap and feeding pattern.</p> <p>If the co-parents are amicable, it will maximize the time that the non-residential parent has if the lactating parent can breast/chestfeed the child at the start and end of the custody time.</p>

### AGE 7 MONTHS THROUGH 12 MONTHS

<b>Suggested schedule</b>	<p>Three non-consecutive days per week for three hours each day.</p> <p>Overnight, if appropriate.</p>
<b>Justification</b>	Babies do not typically sleep through the night (which is considered 5-6 hours). Therefore, they are not ready for overnights until they can sleep through the night without feeding.
<b>Recommendations</b>	<p>If a parent has not been involved in caregiving previously, these short and frequent visits will help to develop a mutually secure relationship and allow the parent to master the tasks and sensitivity required to care for an infant.</p> <p>As the caregiving skills are mastered, the parent-child bond strengthens and the time with the infant may increase.</p>

### AGE 13 MONTHS THROUGH AGE 18 MONTHS

<b>Suggested schedule</b>	<p>Three non-consecutive days each week for three to four hours each day.</p> <p>One weekend day for up to eight hours.</p> <p>Overnight, if appropriate.</p>
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### AGE 13 MONTHS THROUGH AGE 18 MONTHS, CONT'D

<b>Justification</b>	<p>Although most children breast/chest-feed for their first 12 months, many continue beyond this date. Premature and/or abrupt weaning is not recommended at the expense of the child.</p> <p>Some babies still wake at night to feed during this period but can adapt. The key is to not force it.</p> <p>Children at this age still require a predictable and consistent daily routine. Communication between the parents about the infant's routine and any new developments is essential to enhance the infant's adjustment.</p>
<b>Recommendation</b>	Focus on quality time instead of long time.

### AGE 19 MONTHS THROUGH 36 MONTHS

<b>Suggested schedule</b>	<p>One weekend day for ten hours.</p> <p>One mid-week day for three hours.</p> <p>Overnight, if appropriate.</p>
<b>Justification</b>	Children of this age go through many changes, such as weaning from the bottle, toilet training, beginning preschool, and adjusting to new siblings.
<b>Recommendation</b>	Parents should avoid choosing a plan that requires the child to change routines frequently.

### BEYOND 36 MONTHS

<b>Suggested schedule</b>	<p>Two mid-week days for three hours (such as an early dinner)</p> <p>48 hours on alternating weekends.</p> <p>No more than two consecutive 24-hour days at a time.</p> <p>Alternate weekends such as Friday afternoon - Sunday morning</p>
<b>Justification</b>	At this age, children generally breast/chestfeed for comfort. Human milk also continues to support a healthy immune system. They may be able to go longer than one or two days without breast/chestfeeding but they shouldn't be forced if they are not ready. Many custody plans for toddlers recommend no more than two consecutive days for developmental reasons. <sup>121</sup>
<b>Recommendation</b>	If parents are amicable, the non-residential parent can put the child to bed in the residential parent's home.

## Tips to Make Your Parenting Plan Successful

- Communicate. Keep each other informed of your child's needs.
- Make your best effort to create similar routines in both households.
- Allow your child to take a favorite blanket or teddy bear when going between the households.
- Shield your child from any conflict between you and the other parent.
- Stick to the schedule. Last-minute changes should be minimized.
- If the co-parent is unable to see the child during their scheduled time, they should not be cared for by another person without first offering that time back to the residential parent (also known as "right of first refusal").
- Consider holidays, Mother's/Father's Day, birthdays, and vacations when creating the schedule.



## Template Letter for a Child Under One

The following template letters have been adapted from the Michigan Breastfeeding Network.<sup>122</sup>

Letter to a Judge: Breastfeeding Support in Child Custody

[Date]  
[Judge's Name]  
[Address of the Court]  
[Child Name]  
[Court Case Number]

Dear Honorable Judge [Insert Name Here]:

I am writing to you as a parent on behalf of my child who is currently breastfeeding. The intention of this letter is to ask you to protect and preserve the breastfeeding relationship when determining allocation of parenting time. I have briefly outlined some information that may be helpful to you in this case.

Breastfeeding is a public health issue for parents and children. Numerous health organizations including The World Health Organization (WHO)<sup>1</sup>, UNICEF<sup>2</sup>, the U.S. Surgeon General<sup>3</sup>, American Academy of Pediatrics<sup>4</sup>, The American Academy of Family Physicians<sup>5</sup>, and the Academy of Breastfeeding Medicine<sup>6</sup> recommend exclusive breastfeeding for the first six months of life and that breastfeeding continue throughout the first year of life based on the considerable benefits breastfeeding imparts to the child.

The benefits of breastfeeding include both nutrition<sup>7</sup> and disease protection for as long as it continues<sup>8</sup>. Breastfeeding supports the immune system<sup>9,10</sup> through the cells, hormones, and antibodies found in breastmilk. Additionally, these immunity benefits improve the longer a child breastfeeds. An additional benefit of human milk is its ability to protect against COVID-19. Human milk produced by infected or vaccinated lactating parents contains antibodies that neutralize SARS-CoV-2<sup>11</sup> and pass on immunity to protect breastfeeding infants and children from acquiring the disease.

Lengthy separations are difficult to navigate for both the lactating parent and child and puts the breastfeeding relationship into jeopardy. For families going through difficult changes, especially with the impacts of the COVID-19 pandemic, breastfeeding is a loving connection that offers security and stability to the child.<sup>12</sup>

[Insert personal story here, including how long you've been breast/chestfeeding, how long you hope to continue, and why it is important to you.]

Limiting the other parent's access to their child, however, is not the intent of this request. I ask the court to support the irreproducible breastfeeding relationship and recommend shorter periods of separation from me, including no overnight visits until after the child has weaned. I ask that you please consider the research presented within when making recommendations on the custody agreement for this particular case. Thank you for your time and consideration.

Sincerely,

[Insert name here]

## References For Template Letter

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## Template Letter for Extended Breastfeeding

[Date]  
[Judge's Name]  
[Address of the Court]  
[Child Name]  
[Court Case Number]

Dear Honorable Judge [Insert Name Here]:

We write herein today to urge you to consider [child's name] breastfeeding schedule in creating a custody schedule.

Numerous health organizations including The World Health Organization (WHO)<sup>1</sup>, UNICEF<sup>2</sup>, the U.S. Surgeon General<sup>3</sup>, and American Academy of Pediatrics (AAP)<sup>4</sup>, recommend breastfeeding beyond the first year of life based on the importance of breastfeeding. The AAP recommends "exclusive breastfeeding for six months, with complementary foods introduced around six months and supports continued breastfeeding until two years or beyond, as mutually desired by mother and child". The AAP further states, "there is no upper limit to the duration of breastfeeding and no evidence of psychological or developmental harm from breastfeeding into the third year of life or longer."<sup>4</sup> Experts have described the natural age of weaning to be anywhere from about 2.5 years to around 7 years old.<sup>5</sup>

After one year, the nutritive value of breastmilk continues to deliver protein, calcium, fat, and vitamin A among other nutrients.<sup>6</sup> Breast milk provides substantial amounts of nutritive value for the developing toddler.<sup>7</sup> Parents typically see an increase in acute illness when their baby begins daycare, so the immunity in human milk continues to protect against this exposure.<sup>8</sup>

As a child gets older, the composition of breastmilk continues to change to meet their nutritional needs. In addition, breastfeeding supports the immune system through the cells, hormones, and antibodies found in breastmilk.<sup>9</sup> Children who breastfeed have decreased incidences of illness and lower mortality rates. These immunity benefits improve the longer a child breastfeeds and the child is less likely to develop ear infections<sup>10</sup> and upper respiratory infections.<sup>11</sup> Breastfed children also have fewer allergies<sup>12</sup> and increased protection against asthma<sup>12</sup> and obesity.<sup>13</sup>

In addition to these physiological benefits, nursing children are well-adjusted socially.<sup>14</sup> There is a significant link between the duration a child is breastfed and the more socially adjusted they are as 6- to 8-year olds.<sup>15</sup> For children going through enormous changes, this connection is very important in the life of a child.

[Insert personal story here, including how long you've been breastfeeding, how long you hope to breastfeed, and why breastfeeding is important to you.]

More time with the child is needed for the breastfeeding parent for a myriad of reasons. Breast milk production is dependent on frequent removal of milk (no less than every 2–3 hours).<sup>16</sup> Holding one's child for extended periods of time stimulates milk producing hormones, which is essential to the lactating parent's milk supply.<sup>17</sup> Pumping is not an effective or efficient replacement for direct breastfeeding.<sup>18</sup>

I ask that you please consider the research presented when making recommendations on the custody agreement for this particular case. We recommend a graduated plan that includes more time with the lactating parent until the child is naturally weaned.

Sincerely,

[Insert name here]

## References For Template Letter

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### THE POWER OF SELF-ADVOCACY

We eventually agreed to a 50/50 custody plan with a transition plan so our daughter could slowly spend nights away. **I was able to advocate for this transition plan and the benefits of continuing to breastfeed my daughter.** Every time I would pick her up from her father's house I'd nurse her in the car before we'd drive away. She always asked for it. I was determined to continue expressing my milk while she was away, at times as long as 5 days, and I'd still hand express for her, crying while I did it, missing her, and knowing that I was still doing the best for her. I continued to nurture her and our breastfeeding relationship this way, and to my surprise she never weaned. My daughter and I have both become advocates for what others call "extended breastfeeding." To us- it's just breastfeeding.



### THE POWER OF CHILD-LED WEANING

My two-year-old son had been nursing several times a day when his father and I separated. I had hoped he would self-wean sometime before his third birthday, but because of this momentous change, I didn't want to force weaning. So much had been taken from him in our separation that I didn't want the connection and comfort to be ripped from him at the same time. Our son (and our six-year-old daughter) acclimated to the 2-2-alternate weekend schedule we initiated. Fortunately; he wanted to breastfeed after his time with his dad. I never expected to nurse for another 2 ½ years, but somehow it worked out well. **I'm happy that we were able to wean on our child's terms.** In retrospect, I would have advocated for a schedule with more frequent visits instead of longer duration. I don't think he was ready for five days without me or his dad every other week.



### THE POWER OF PERSISTENCE

My daughter immediately took to breastfeeding when she was born. I had a very good supply of milk and a wonderful support system that encouraged breastfeeding. However, throughout the separation, the father consistently tried to make it look as if breastfeeding was damaging our daughter stating the "child is allergic to her mother's breast milk and must immediately be put on formula" and that I was unable to provide enough pumped breastmilk for his visitation and our child should be switched to formula so she would not suffer. Upon reaching our daughter's first birthday, she was still breastfeeding.

After the court weighed out all the evidence, the court created a schedule that did not include overnights until our daughter was past 2 ½ years. They also stated that the father was required to return any breast milk that was not used if needed and put in special clauses that supported breastfeeding. **I conjecture that it was because it was clear that I both supported the father's parenting time and was also acting in the best interest of our daughter by continuing breastfeeding.** The Family Court judge advised that he could not make the mother of the child not breastfeed an infant, and in his opinion, breastfeeding was in the minor child's best interest.

To read the full version, please see [BreastfeedLA's Custody Toolkit](#).



# Lactation Rights for Adoptive and Foster Parents

## Taking Time Off From Work

Adoptive and foster parents qualify under several California and federal laws to take time off from work to care for a child. Adoptive parents qualify for FMLA<sup>68</sup> and CFRA job-protected leave after the placement or adoption of a child. FMLA can also be used prior to placement if the parent needs to, “attend counseling sessions, appear in court, consult with their attorney or the birth parent’s representative, submit to a physical examination, or travel to another country to complete an adoption before the actual date of placement.”<sup>76</sup> California’s paid family leave program<sup>124</sup> provides wage replacement for adoptive and foster parents while they take FMLA/CFRA leave. Adoptive and foster parents are also able to use sick leave to take time off from work to care for their children.<sup>69</sup> The Family-School Partnership Act allows adoptive and foster parents to take time off from work to attend school events.<sup>70</sup>

The birth parent would be able to take Pregnancy Disability leave in order to recover from childbirth. Pregnancy disability leave provides time off from work to a person who is physically disabled by pregnancy, childbirth or related conditions.<sup>19</sup>

See Six Key Laws for Working Parents for more information.

## Breast/Chestfeeding and Lactation Rights

An adoptive parent may choose to induce lactation in order to breast/chestfeed an adopted child. An adoptive parent should work with their healthcare provider and a lactation professional when inducing lactation. Inducing lactation can mean either that a parent who previously breast/chestfed stimulates lactation in order to produce their milk again, or that a parent who has not breast/chestfed stimulates lactation for the first time. The American Academy of Family Physicians’ position statement on human milk supports inducing lactation.<sup>72</sup>

## Parent Resources on Inducing Lactation and Relactating

- La Leche League USA offers specific recommendations. <https://llusa.org/induced-lactation-and-relactation/><sup>124</sup>
- La Leche League has a Facebook support group for individuals inducing lactating and relactating. <https://www.facebook.com/groups/llinducinglactation><sup>125</sup>
- Dr. Jack Newman’s blog offers suggestions from a medical perspective. <https://ibconline.ca/induction/><sup>126</sup>

If the birth parent chooses to express their milk for the infant after the infant is placed for adoption, then the birth parent is entitled to lactation accommodations and protections.

### Considerations:

Parents should consider staying connected with a parent support community throughout their relactation or induced lactation journey.

At this time there are no clear legal guidelines for a foster parent who wants to breast/chestfeed. The La Leche League blog featured one foster parent’s experience in December of 2016.<sup>127</sup>

According to Mother’s Milk Bank San Jose, foster care is an acceptable diagnosis for receiving pasteurized donor human milk from a milk bank.

## Work and School

The same laws that protect the expression of breast/chestmilk at work and school should also apply to adoptive parents who choose to induce lactation for their child and to birth parents who express milk after placing their child for adoption. If the parent is facing discrimination for breast/chestfeeding or lactation at work, school, employer, or employee would like additional information, they should contact one of the legal resources listed in this toolkit.

See Lactation at Work and Lactation in Education for more information.

## Lactation Rights in Surrogacy

When parents welcome a new child into the family by working with a surrogate, both the surrogate and the intended parents have protections under California law. A surrogate is a person who agrees to carry and birth a child for another person or family. The intended parents will be the legal parents of the child when they are born. The state of California has a specific law that regulates surrogacy agreements<sup>128</sup> and establishing of parental rights for the intended parents.<sup>128</sup> For more information about parental rights, please consult with an attorney who is familiar with surrogacy agreements.

### Taking Time Off From Work

Pregnancy disability leave provides time off from work to a person who is physically disabled by pregnancy, childbirth or related conditions.<sup>19</sup> This means that a surrogate would be able to take time off from work to recover from childbirth under pregnancy disability leave. See Six Key Laws for Working Parents for more information about pregnancy disability leave.

Once the intended parents establish legal parental rights for their child, the intended parents qualify to take time off from work to care for a child under a number of laws. FMLA/CFRA<sup>68</sup> provides job-protected leave so that parents can take job-protected leave to care for their child after their child is born. The California Paid Family Leave program provides wage replacement for parents who need to take FMLA/CFRA leave. Parents are also able to take sick leave to care for a child.<sup>68</sup> The Family School Partnership Act provides that parents can take job-protected leave from work in order to attend school events.<sup>68</sup>

See Six Key Laws for Working Parents for more information about these laws.

### Breast/Chestfeeding and Lactation

In a surrogacy situation, the intended parent may choose to induce lactation and breast/chestfeed their baby or the surrogate may choose to pump breast/chest milk for the baby. An intended parent should work with their health-care provider and a lactation professional when inducing lactation. Inducing lactation can mean either that a parent who previously breast/chestfed stimulates lactation in order to produce breast/chest milk again, or that a parent who has not breast/chestfed stimulates lactation for the first time. The American Academy of Family Physicians position statement on human milk supports inducing lactation.<sup>72</sup>

### Work and School

The same laws that protect the expression of their milk at work, should also apply to intended parents who choose to induce lactation for their child and to surrogates who express milk after the birth of the child. If the parent or surrogate is facing discrimination for breast/chestfeeding or lactation at the school, employer, or employee would like additional information, they should contact one of the legal resources listed in this toolkit.

See Lactation at Work and Lactation in Education for more information.

### Considerations:

Parents should consider staying connected with a parent support community throughout their relactation or induced lactation journey.

### Parent Resources on Inducing Lactation and Relactating

- La Leche League USA offers specific recommendations. <https://llusa.org/induced-lactation-and-relactation/><sup>124</sup>
- La Leche League has a Facebook support group for individuals inducing lactating and relactating. <https://www.facebook.com/groups/llinducinglactation><sup>125</sup>
- Dr. Jack Newman's blog offers suggestions from a medical perspective. <https://ibconline.ca/induction/><sup>126</sup>



# Lactation Rights While Incarcerated

## Incarceration in Jails and Prisons

People who are incarcerated in jails, prisons, and immigration detention while they are breast/chest feeding or lactating have the right to lactation accommodations during their incarceration. These rights can be difficult to enforce, but there have been a number of cases in which a lactating individual who was denied lactation accommodations was able to win accommodations through a combination of legal action and community support.<sup>130</sup>

If an individual is incarcerated in jail, prison, or immigration detention and needs lactation accommodations or other reproductive health services, contact ACLU SoCal at 213-977-9543 as soon as possible.

### Community-Based Alternatives to Incarceration

One option to explore in California is whether there is a community-based alternative to incarceration for those individuals who are pregnant, postpartum, lactating, or parenting. The ACLU Report *Reproductive Health Behind Bars in California*<sup>131</sup> describes numerous health benefits to community-based alternatives to incarceration for both the incarcerated person and their child.

Contact ACLU of Southern California for more information about community-based alternatives to incarceration. <https://www.aclusocal.org/en/contact-us><sup>114</sup>

### Lactation Accommodations

Jails and prisons in California must provide lactation accommodations to incarcerated people who need them.

Since January 1, 2020, all jails in California are required to have an infant and toddler breast/chestfeeding program in which the incarcerated person pumps their milk, the jail stores and tracks the pumped milk, and a loved one on the outside picks up the milk for the infant or toddler. You can find a model policy here <https://californiabreastfeeding.org/><sup>131</sup> The model policy includes resources for the program administrators such as a milk tracker, a program intake form, resources about the benefits of breast/chest feeding, guidance for traveling with human milk, and a checklist of equipment.

If an incarcerated person is not being accommodated or allowed to express breast/chestmilk, this could pose a serious medical risk to both the incarcerated person and to the child. Mastitis, a breast/chest infection, can occur in lactating people who are not able to frequently express breast/chestmilk. If the incarcerated person is forced to

wean earlier than intended, artificial feeding also poses health risks to the child. If a facility does not afford necessary lactation accommodations, the facility is in violation of California law.<sup>132</sup> (If a facility is not providing accommodations, please contact the ACLU of Southern California.)

A 24-bed facility in Pomona allows children younger than six-years-old to live with their incarcerated parents while they serve out their sentences. See citation for additional details about this program.<sup>133</sup>

### Reproduction Health Services During Incarceration in Jails and Prisons

Incarcerated people have a constitutional and statutory right to reproductive care, including but not limited to:

- Prenatal screening, testing, and care
- Prenatal diet and vitamins
- Postpartum care and treatment
- Treatment for chronic conditions, including mental health disorders and infectious diseases
- Treatment for opioid use while pregnant
- Access to birth control and abortion care
- Free menstrual products
- Lower bunk assignments when pregnant
- Support person in the delivery room while giving birth
- Prohibition on shackling when pregnant, postpartum, and giving birth
- Prohibition of tasing, pepper spraying, and using chemical weapons on pregnant people



## Recommendations if the facility does not provide appropriate lactation accommodations or reproductive health services<sup>134</sup>

- Contact the ACLU of Southern California and Breast-feedLA.
- Contact the Sheriff's department or facility.
- See the model policy for Breast/Chestfeeding During Incarceration. <http://californiabreastfeeding.org/wp-content/uploads/2021/10/cbc-supporting-lactation-in-jails-DRAFT-5.pdf>.<sup>131</sup>

- Request an electric breast pump, see model policies for how best to accommodate the lactating person.
  - If an electric breast pump is unavailable, request a manual hand pump.
  - If the facility refuses to provide an electric or manual pump, the lactating person should be taught hand expression for immediate relief and to help prevent infections, while advocating for more appropriate accommodations.
  - The lactating individual should be given a private place to express breast milk.

## Immigration Detention

### Pregnancy While in Immigration Detention

As part of their arrival process to either ICE or CBP detention, female detained persons must undergo an initial health assessment that is supposed to inquire, in part, whether they are pregnant or lactating.<sup>135</sup> A pregnancy test may also be used to confirm an individual's pregnancy status. These screenings are to determine whether certain people who are detained, such as those with physical disability or with previous sexual trauma, should be considered and labeled as "at [higher] risk" than the general population.<sup>136</sup>

Pregnant people should receive obstetrical health care,, "consistent with recognized community guidelines for women's health services," including prenatal and specialized care; and pregnant people should receive "close medical supervision" if a detainee is confirmed by a healthcare professional to be pregnant.<sup>137</sup>

If a detained person is not being accommodated or allowed to express breast/chestmilk, this could pose a serious medical risk to both the incarcerated person and to the child. Mastitis, a breast/chest infection, can occur in lactating people who are not able to frequently express breast/chestmilk. If the detained person is forced to wean earlier than intended, artificial feeding also poses health risks to the child. If a facility does not afford necessary lactation accommodations, the facility is in violation of California law.<sup>132</sup> (If a facility is not providing accommodations, please contact the ACLU of Southern California.)

### Lactation While in Immigration Detention

ICE standards state that women who are in custody should have access to lactation services. ICE has also issued a memorandum "to exercise discretion during arrests by releasing nursing mothers from detention unless they presented a national security or public safety risk."<sup>138</sup>

The American Bar Association (ABA) recommends that ICE avoid detaining nursing mothers and that the unique needs of nursing mothers and "other vulnerable populations" be met while in immigration detention.<sup>139</sup>

ICE standards incorporate those issued by the National Commission on Correctional Health Care (NCCFC) that recommend detention centers, "devise systems to enable postpartum women to express breastmilk for their babies and to breastfeed them directly."<sup>140</sup>

### Recommendations if the facility does not provide appropriate lactation accommodations or pregnancy care

- Review the ACLU of California report "Barriers to Reproductive Justice While Detained."<sup>141</sup>
- Consult with an immigration attorney.
- Contact the ACLU of Southern California and Breast-feedLA.
- Request an electric breast pump, see model policies for how best to accommodate the lactating person.
  - If an electric breast pump is unavailable, request a manual hand pump.
  - If the facility refuses to provide an electric or manual pump, the lactating person should be taught hand expression for immediate relief and to help prevent infections, while advocating for more appropriate accommodations.
  - The lactating individual should be given a private place to express breast milk.

All lactating individuals have rights. If a person believes that their rights have been violated, they can do something about it. They are not alone. Community-based organizations like BreastfeedLA, government agencies, legal advocates, unions and worker centers, and others are here to support them.

While all people have rights, some individuals may face additional barriers in exercising their parental or lactating rights due to discrimination based on race, ethnicity, sexual orientation, gender identity, employment status, immigration status, or language barriers. Retaliating against a person for asserting their lactation rights is illegal. Community and legal support may be beneficial to determine effective strategies to minimize retaliation or discrimination and how to proceed should this occur.

Actions to take to advocate for yourself or others if you feel that your rights have been violated.

### Prepare

**Write:** Write down everything about the incident as soon as possible after it has happened. Where did it occur? Who was involved? What was said or done?

**Save:** Save all relevant documentation (e.g. pay stubs, copies of HR manuals, calendar or personal journal entries, photos) or emails (or other electronic messages, like texts or instant messenger).

**Contact:** Contact the local Breast/chestfeeding Coalition and ask for support on which law may apply. To find a listing of local coalitions, go to <http://californiabreastfeeding.org/coalition-information/> or reach out to BreastfeedLA, who can connect to other advocates and legal support.

### Strategize

**Outcome:** What is the best possible outcome from the complaint?

**Evidence:** Is there clear evidence that a violation of the law occurred?

**Risk:** Assess risk. Retaliation for a person asserting their lactation rights is illegal under California law. If a person believes that they are at risk for retaliation or discrimination for asserting their rights, they should contact legal support and community organizations right away.

**Community Support:** What family and community resources can support them during a complaint process?

### Take Action

**Reminder:** for example: reminding a restaurant owner of the right to breast/chestfeed in public, reminding your supervisor that it's time for your lactation break.

**Direct Advocacy:** for example: a direct conversation followed up with an email to your supervisor about California's law requiring lactation accommodations at work, writing a letter to a store to ask them to notify employees of your right to breast/chestfeed in public.

**Official Complaint:** for example: filing a complaint with a government agency, it might be helpful to talk to a legal advocate to learn which agency is responsible for enforcing the law that was violated.

**Legal Action:** for example: working with a lawyer and filing a legal complaint against the employer or another entity.

**Sharing Your Story:** for example: talking to the media, speaking out about your experience at a public event or when meeting with a legislator.

**Collective Action:** for example: organizing a protest, organizing a meeting with your coworkers about violations of lactation accommodations at work, organizing a town hall or educational event where many people share their experiences with similar issues and decide how to take action.

### Re-evaluate and Determine Next Steps

**Outcome:** Did the action achieve the desired results?

**Re-evaluate:** If the action did not achieve the desired outcome, would a different strategy be more effective?

**Legal Support:** If discrimination or retaliation occurred as a result of the action taken, document what happened and contact one of the legal support organizations listed in this toolkit right away.

## Advocating for All

As we look toward the future, it is important to recognize how far we have come in the protection, promotion, and support of an individual's right to breast/chestfeed. While we celebrate the incredible work of the many individuals that have contributed to the laws and protections set forth in this toolkit, we also collectively acknowledge the work is far from done.

The future vision for BreastfeedLA is to realize infant feeding equity. This means every expectant or new parent has access to *information, resources, and support* that facilitate informed decision making. Infant feeding equity also means that every new parent has *the ability* to feed and maintain feeding their infant in the way they determine is safest, healthiest, and most fitting for their lives. Infant feeding is a progression after pregnancy and birth and is situated within the same historic and current contexts that belittle reproductive freedom. Infant feeding equity means transforming the context, redistributing resources and power to bring forth a foundation of parenthood that is rooted in justice, respect, self-determination and, ultimately, the health of future generations.

Realizing infant feeding equity means our continued demand for legal protections and provisions that transform this context, redistribute necessary resources, and disrupt oppressive power dynamics that undermine a foundation of parenthood that is rooted in justice, respect, self-determination and, ultimately, the health of future generations. This means that as infant feeding equity advocates we must stand in solidarity with other social, racial, gender and economic justice movements. No one parents in isolation, and all systems that oppress us stand in the way of every new parent being able to achieve their infant feeding goals.

How would you like to be a part of changing our culture and our laws to better reflect the kind of lactation support you would like to see? What do you want the public to understand about lactation rights?

If you are interested in being a change agent for your community, contact BreastfeedLA and join our Advocacy Committee!

**BreastfeedLA Advocacy Committee Members** are volunteers who:

- Created this toolkit and Breastfeeding Advocacy 101 Training.
- Visit State and federal Legislators in Southern California, Sacramento, and Washington D.C. to advocate for lactation-friendly legislation.
- Write letters to federal and California policymakers.
- Educate their communities and employers about breast/chestfeeding laws.
- Share BreastfeedLA policy positions, action alerts and messages.

To share your ideas for what we should do next and to join the committee, please contact: [info@breastfeedla.org](mailto:info@breastfeedla.org).<sup>142</sup>

**60%**  
of women

**stop breastfeeding  
earlier than they would like**<sup>165</sup>

#### **ACLU (American Civil Liberties Union) of Southern California**

<https://www.aclusocal.org/en/issues/reproductive-rights-gender-equity><sup>143</sup>

The ACLU of Southern California works to ensure equal access to comprehensive, quality, affordable, and confidential reproductive health care, in which personal decisions about sexual activity and childbearing are informed, respected, supported, and attainable.

#### **Birth Rights Bar Association**

<https://birthrightsbar.org/resources/Documents/4-9-20-birth-rights-guide.pdf><sup>144</sup>

The Birth Rights Bar Association is a part of a growing global movement to ensure the human rights of people seeking reproductive health services, with special attention to childbirth, are respected and integrated into care provision. They contribute to this international effort by developing the capacity of members to identify and respond to the human rights component of perinatal care by providing continuing legal education, networking, research, and collaborate on institutional legal advocacy efforts. The Birth Rights resource guide developed with the National Advocates for Pregnant Women is a resource for everyday people to defend human rights during labor and birth.

#### **California Women's Law Center**

<https://www.cwlc.org><sup>145</sup>

CWLC works to break down barriers and advance the potential of women and girls in California through transformative litigation, policy advocacy and education. Since 1989, CWLC has advocated for and achieved policy change on a wide range of issues affecting gender discrimination and equality, Title IX enforcement, women's health and reproductive justice, economic security and violence against women.

#### **Center for WorkLife Law**

<http://worklifelaw.org><sup>146</sup>

<https://pregnantatwork.org><sup>21</sup>

<https://thepregnantscholar.org><sup>53</sup>

The Center for WorkLife Law has a free legal hotline at (415) 703-8276. The Center for WorkLife Law is a research and advocacy organization at UC Hastings College of the Law that seeks to advance gender and racial equality in the workplace and in higher education. They provide an online resource center that provides tools and educational materials about accommodating pregnant workers and students.

#### **Elephant Circle**

<https://www.elephantcircle.net><sup>147</sup>

Elephant Circle is a Colorado-based birth justice organization that brings an intersectional, feminist, reproductive justice, design thinking approach to birth justice. Inspired by elephants who give birth within a circle of support, their vision is to ensure all people have a circle of support for the entire perinatal period.

#### **Legal Aid at Work**

<https://legalaidatwork.org/our-programs/work-and-family-program><sup>148</sup>

Toll Free in California: 415-593-0033.

Legal Aid at Work protects the rights of pregnant people, new parents, and caregivers to time off work, paid leave, and workplace accommodations. They provide free confidential advice through their Work and Family Helpline, represent low-wage workers, engage in community education, and advocate for policy changes to expand work and family rights.

#### **Public Counsel Women & Girls Rights Project**

<https://publiccounsel.org/wgr>

Intake line: 213-385-2977 x 410

The Women & Girls Rights Project at Public Counsel provides free legal services for women, girls, transgender and non-binary individuals experiencing sex discrimination, harassment, and other legal problems at work or school, including pregnancy/parenting issues, lactation rights, family medical leave, disability rights, Covid-19 issues, and sexual assault. Contact WGR if you have questions about your rights as a pregnant, parenting, or lactating worker or student, or to apply for legal services. All services are free of charge to eligible low-income clients in Los Angeles County.

#### BreastfeedLA

<https://www.breastfeedla.org/><sup>149</sup>

BreastfeedLA is dedicated to improving the health and wellbeing of infants and families through education, outreach, and advocacy to promote and support lactation. The Advocacy Committee focuses on addressing breast/chestfeeding and healthcare disparities through grassroots organizing including legislative visits, creation of this advocacy toolkit and Advocacy Days. BreastfeedLA also helps employers with workplace lactation training and policy creation.

#### California Breastfeeding Coalition

<http://californiabreastfeeding.org/advocate-voices/%20guidelines-and-instructions/><sup>150</sup>

The purpose of the CBC Advocate Voices Blog is to provide breast/chestfeeding and lactation advocates throughout California a platform to share expertise and opinions that will inspire others to join our collaborative efforts to improve the health and wellbeing of Californians by protecting, promoting, and supporting lactation, thereby removing all barriers to lactation in California. The blog features coalition activities, evidence-based practices, legislation, news, commentary and reflections related to lactation.

#### California Work & Family Coalition

<https://www.workfamilyca.org/><sup>151</sup>

The CWFC supports expanding job-protected leave, making paid family leave affordable for low-income workers, expanding access to paid sick days, and other policies that help California workers preserve their jobs and fulfill their caregiving responsibilities. CWFC organizes local and statewide legislative advocacy efforts.

#### MomsRising

<https://www.momsrising.org/><sup>152</sup>

MomsRising combines the best of American innovation and ingenuity. They are a transformative on-the-ground and online multicultural organization of more than a million members and over a hundred aligned organiza-

tions working to increase family economic security, to end discrimination against women and mothers, and to build a nation where both businesses and families can thrive.

#### The Restaurant Opportunities Center of Los Angeles

<https://rocunited.org/losangeles/><sup>153</sup>

(ROC-LA) is a multi-racial, grassroots organization dedicated to winning improved working conditions and raising industry standards for all Los Angeles restaurant workers.





## Resource List

### Government Agencies

#### California Department of Fair Employment and Housing

<https://www.dfeh.ca.gov/><sup>154</sup>

Failure to provide lactation accommodations is also unlawful under the Fair Employment and Housing Act (FEHA). Under FEHA, California employees can make a complaint to the Department of Fair Employment and Housing (DFEH). Complaints must be made within one year. To learn more about the complaint process, visit their website.

#### California Department of Industrial Relations, Labor Commissioner's Bureau of Field Enforcement

[https://www.dir.ca.gov/dlse/Lactation\\_Accommodation.htm](https://www.dir.ca.gov/dlse/Lactation_Accommodation.htm)<sup>155</sup>

If an employer is not following California Labor Code 1030-1033, 156 the employee can make a complaint to the California Department of Industrial Relations, Labor Commissioner's Bureau of Field Enforcement (BOFE) office nearest to the place of employment. To make a complaint, see <https://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm><sup>13</sup> The Labor Commissioner's website has a page dedicated to lactation accommodation frequently asked questions. You can find it at the link above.

#### Employee Development Department

<https://edd.ca.gov/disability/paid-family-leave/><sup>157</sup>

Find more information and learn how to file a claim for paid family leave benefits here.

#### Office on Women's Health, U.S. Department of Health and Human Services

<https://www.womenshealth.gov/supporting-nursing-moms-work/resources><sup>45</sup>

A great resource for breast/chestfeeding at work for both employers and employees.

#### U.S. Department of Labor, Wage and Hour Division

<https://www.dol.gov/agencies/whd/contact/complaints><sup>58</sup>

If the employer is covered by section 7 of the Fair Labor Standards Act<sup>10</sup> and is not providing lactation accommodations, an employee can file a complaint with the U.S. Department of Labor, Wage and Hour Division (WHD). Visit the WHD website above to file a complaint. They also have a toll-free information and helpline, available 8:00 a.m. to 5:00 p.m. at 1-866-4USWAGE (1-866-487-9243).



### BreastfeedLA Resource Directory

<https://www.breastfeedla.org/resources-map/><sup>159</sup>

Find breast/chestfeeding resources and support in the Los Angeles area, including Baby-Friendly Hospitals, free support groups, WIC lactation support, and providers who accept Medi-Cal.

### Breastfeeding Without Birthing

<https://alyssaschnellibclc.mykajabi.com/><sup>73</sup>

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

### Breastfeeding USA

<https://breastfeedingusa.org/><sup>160</sup>

Breastfeeding USA, Inc. provides evidence-based information and support, and promotes breastfeeding as the biological and cultural norm. They accomplish this through a network of accredited breast/chestfeeding counselors and comprehensive resources for the benefit of birthing peoples and babies, families, and communities.

### International Lactation Consultant Association

<https://ilca.org/><sup>161</sup>

ILCA works to “advance the International Board Certified Lactation Consultant® (IBCLC®) profession worldwide through leadership, advocacy, professional development, and research.” Their website has a search feature to find local IBCLCs.

### KellyMom

<https://kellymom.com/><sup>162</sup>

KellyMom was developed to provide evidence-based information on breastfeeding and parenting. Written by International Board Certified Lactation Consultants (IBCLC), their library of informative and encouraging articles cover practically every topic related to lactation, as well as many parenting topics.

### La Leche League International

<https://www.llli.org/><sup>163</sup>

La Leche League volunteers offer free breast/chestfeeding support groups all over the world. Their website is a treasure trove of evidence-based lactation information.

### Women, Infants and Children (WIC) Program

<https://myfamily.wic.ca.gov/><sup>164</sup>

WIC helps families by providing nutrition education, breast/chestfeeding support, vouchers for healthy foods, and referrals to healthcare and other community services. WIC serves babies and children up to age five, pregnant people, and new parents. Grandparents, foster parents of young children, and working families are also welcome at WIC.

### Breast/Chestfeeding helplines in Los Angeles County:

Antelope Valley	661-726-6393
City of Long Beach	562-570-4242
Northeast Valley Health Corp.	818-837-6349
Pasadena Public Health Department	626-744-6520
PHFE	888-278-6455
South LA Health Projects	323-905-1248
Watts Healthcare Corp.	323-568-3070



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