

Making it **WORK**

THE WORKSITE LACTATION
ACCOMMODATION LAW



NEW YORK
state department of
HEALTH

New York State
WIC
Together Growing Stronger Families



Making it Work: The Worksite Lactation Accommodation Law

Supporting breastfeeding employees at work is the LAW!
Business managers and employees can comply,
no matter the type or size of your business.
Learn how today!

More than three out of every four women choose to give their baby a healthy start in life through breastfeeding.¹ Once they return to work, they can continue giving their baby the perfect nutrition and protection from disease that breastfeeding provides by expressing their milk every 2-3 hours when they are away from their baby. Both the U.S. and New York State have laws to accommodate nursing mothers in the workplace. Compliance is possible in nearly all settings, and there are many resources to help!

The Federal Break Time for Nursing Mothers Law

The U.S. Patient Protection and Affordable Care Act, signed into law on March 23, 2010, amended Section 7 of the Fair Labor Standards Act (FLSA), requiring employers to provide nursing mothers with reasonable break time and a private, non-bathroom place to express milk during the workday.²

“Reasonable Break Time for an employee³ to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.”

Each woman’s needs are different depending on many factors, including the age of her baby, special needs of her infant, and her own personal milk production. Providing break time for women to express their milk when needed allows them to maintain milk production so they can continue giving life-saving nutrition and antibody protection to vulnerable infants, even after they return to work.

Employers are not required to compensate the employee for breaks to express milk under the reasonable break time provision, though some companies choose to do so. If an employer already provides compensated breaks, however, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time.



¹Centers for Disease Control and Prevention. 2009 National Immunization Survey. Available online at: www.cdc.gov/breastfeeding/data/NIS_data/index.htm.

²Section 4207, Patient Protection and Affordable Care Act. Language of the law detailed at: www.dol.gov/whd/nursingmothers/Sec7rFLSA_btnm.htm

³According to the federal law, only employees who are not exempt from section 7 of the FLSA, which includes the FLSA’s overtime pay requirements, are entitled to breaks to express milk. Therefore only those employees who are eligible for overtime are entitled to break time and space to express milk. However, this federal provision does not apply according to the New York State Labor law, which requires that all women, regardless of overtime status, must be accommodated.



“A place other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

This law does not require the private space to be a designated lactation room, though many companies choose to provide a temporary or permanent lactation room if they have several women who need accommodations. Companies have found many creative ways to provide private space, including the private office of the manager or an employee, a conference or board room, or other small space that is functional for milk expression, and available when needed to express milk. A bathroom is not acceptable since it is prohibited by law.

Restaurants, retail stores, and businesses of all types have found creative ways to provide this space. See “Making it Work: For Employers” for ideas.

“Nothing in this subsection shall preempt a State law that provides greater protection to employees than the protections provided for under this subsection.”

New York State Labor Law 206-c provides greater protection for breastfeeding employees. New York employers should be aware of both the federal and the New York laws.

⁴New York State Department of Labor, Division of Labor Standards. Retrieved from: www.labor.ny.gov/workerprotection/laborstandards/pdfs/guidelinesexpressionofbreastmilkfinal.pdf

⁵American Academy of Pediatrics. (2005). Breastfeeding and the use of human milk. *Pediatrics*, 115(2): 406-506. Available online at: <http://pediatrics.aappublications.org/content/129/3/e827.abstract?sid=079a45be-5dc3-4b8e-91b4-0b5350071220>.

⁶Agency for Health Care Research and Quality. (2007). Breastfeeding and Infant and Maternal Health Outcomes in Developed Countries. Available online at: www.ncbi.nlm.nih.gov/books/NBK38337.



New York State Labor Law

Section 206-c of the New York State Labor Law includes the following provision in the “Right of Nursing Mothers to Express Breast Milk” provision. Items in **BOLD** provide greater protection than the U.S. law and therefore must be accommodated in the State of New York.

“An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child **for up to three years** following child birth. The employer shall make reasonable efforts to provide a room or other location, **in close proximity to the work area**, where an employee can express milk in privacy. **No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace. This law is applicable in all public and private employers in New York State, regardless of the size or nature of their business.**”

- **Up to three years:** While the federal law requires employers to provide lactation accommodations for up to one year, the New York State law extends this protection for up to three years. The American Academy of Pediatrics recommends that infants be breastfed for at least a year, and thereafter, for as long as the mother and baby wish,⁵ and numerous studies have shown that breastfeeding duration is linked to better health outcomes in infants and mothers.⁶
- **Close proximity to the work area:** Providing space in close proximity (walking distance) to the employee’s work station will minimize the amount of time needed for milk expression breaks.
- **Non discrimination:** The New York State Department of Labor interprets this provision to mean that a work environment that is hostile to the right of nursing mothers to express milk constitutes discrimination.
- **Applicable in all public and private employers, regardless of size or nature of the business:** The New York State law makes it clear that no employer is exempt from the provisions of the law, regardless of the number of employees, and all employees have the right to basic lactation accommodations of time and space.

Guidelines for Interpreting the Law

The U.S. Department of Labor has issued guidelines and interpretations of the federal break time for nursing mothers law.

“Fact Sheet #73: Break Time for Nursing Mothers under the FLSA”

www.dol.gov/whd/regs/compliance/whdfs73.htm

“Frequently Asked Questions: Break Time for Nursing Mothers”

www.dol.gov/whd/nursingmothers/faqBTNM.htm

The New York State Department of Labor, Division of Labor Standards, has issued the additional guidance for employers in New York: “Guidelines Regarding the Rights of Nursing Mothers to Express Breast Milk in the Work Place” www.labor.ny.gov/workerprotection/laborstandards/pdfs/guidelinesexpressionofbreastmilkfinal.pdf

Resources for Employers

- *Making it Work: For Employers:* www.breastfeedingpartners.org
Simple steps for New York businesses establishing worksite lactation accommodations, with creative options for non-office settings. Published by the New York State Department of Health.
- *The Business Case for Breastfeeding:*
www.womenshealth.gov/breastfeeding/government-in-action/business-case-for-breastfeeding (download) or www.ask.hrsa.gov (to order) Free resources for businesses with bottom-line benefits for employers establishing comprehensive lactation support programs, easy steps for implementing, options for space, time, education, and support, reproducible templates that can be tailored to the business, and employee education materials. Published by the U.S. Department of Health and Human Services Maternal and Child Health Bureau.
- New York State Department of Health: www.health.ny.gov/prevention/nutrition/wic/breastfeeding
Resources and information from the Special Supplemental Program for Women, Infants and Children (WIC) for employers, families, and health care providers.
- New York Statewide Breastfeeding Coalition: www.nysbreastfeeding.org/index.html
Links to resources and national and state laws, as well as a listing of local coalitions across New York with experts who can assist businesses with setting up a lactation support program.
- United States Breastfeeding Committee: www.usbreastfeeding.org
Links to numerous national resources and a directory of state breastfeeding coalitions.
- International Lactation Consultant Association: www.ilca.org
“Worksite Lactation Support Directory” lists lactation consultants available to assist businesses with an employee lactation support program and a “Find a Lactation Consultant Directory” for education and support with breastfeeding.
- Surgeon General’s *Call to Action to Support Breastfeeding:* www.surgeongeneral.gov.

Resources for Breastfeeding Employees

- *Making it Work: For Moms and Making it Work: For Family Members:* www.breastfeedingpartners.org
Published by the New York State Department of Health.
- *Employees' Guide to Breastfeeding and Working:* www.womenshealth.gov/breastfeeding/government-in-action/business-case-for-breastfeeding
Published by the U.S. Department of Health and Human Services Maternal and Child Health Bureau.
- New York State WIC Breastfeeding Partners: www.breastfeedingpartners.org
Website with breastfeeding information and resources for mothers and their families.
- International Lactation Consultant Association: www.ilca.org
"Find a Lactation Consultant Directory" lists lactation consultants available to help new moms.



For more information or to file a complaint:

Breastfeeding employees are encouraged to work with their employer to discuss their needs and explore solutions. Creative options exist for nearly every situation! The local breastfeeding coalition may also be a helpful resource. If a woman still finds that her lactation accommodation needs under the law are not being met, or are not reasonable for her situation, she can file a formal complaint.

New York State Department of Labor/Division of Labor Standards:
www.labor.ny.gov/equal-opportunity/how-to-file-a-discrimination-claim.shtm

New York Civil Liberties Union:
www.nyclu.org/regions





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New York State prohibits discrimination based on creed, marital status and sexual orientation. Persons who believe they have been discriminated against based on the New York State Human Rights Law should call the Growing Up Healthy Hotline at 1-800-522-5006, or write to the WIC Program Director, NYSDOH, Riverview Center, 6th Floor West, Room 650, 150 Broadway, Albany NY 12204.

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