

California Senate Bill 142 Aims to Expand Lactation Accommodation Requirements

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Existing Law

Currently, employers in California must provide employees with a reasonable amount of break time to express breast milk for an infant child, unless doing so would seriously disrupt business operations. Employees may use their existing breaks for this purpose without any loss in pay, and they may take additional reasonable unpaid breaks. Employers must “make reasonable efforts” to provide employees with a private location, other than a bathroom, near their work area to express milk, unless doing so would be an undue hardship given the size, nature, and structure of an employer’s business. An employee’s existing work space may be sufficient if it meets these requirements, or a temporary space may be provided if the employer is unable to provide a permanent lactation location due to operational, financial, or space limitations. Employers that violate these provisions are subject to a civil penalty of \$100 per violation.

In addition, an employee who is a victim of retaliation for asserting a right to a lactation accommodation can file a retaliation claim with the labor commissioner under California Labor Code Section 98.7.

California's Fair Employment and Housing Act further prohibits harassment and discrimination based on pregnancy, childbirth, and breastfeeding, plus any medically related conditions. Plaintiffs' lawyers have brought such claims based on a company's alleged failure to provide lactation accommodations.

Proposed Lactation Space Requirements

SB 142 proposes amending building codes to require new commercial buildings, as well as those undergoing certain tenant improvements costing over \$1 million, to include designated "lactation spaces" for employees. The number of spaces required would depend on building occupancy (i.e., one space for 50 to 150 employees, two spaces for 151 to 300 employees, etc.) and building layout (each work space would need to have a lactation space within 500 feet of the farthest employee work space or within two adjacent floors). Each lactation space would have to be at least 50 square feet and have electrical outlets for a pump and refrigerator, a sink with hot and cold running water, and a door that can lock from the inside.

For existing commercial spaces, the bill specifies more exacting lactation space requirements than current law: lactation spaces must be shielded from view; be free from intrusion; be located in close proximity to the employee's work area; be "safe, clean, and free of toxic or hazardous materials"; have a place to sit and a surface for a pump and personal items; have access to electricity; and have access to a sink and refrigerator or cooler nearby.

If an employee's office meets these requirements, it would qualify as a sufficient lactation space. A multipurpose room could also be a suitable space if lactation use is given precedence over other uses. Lactation spaces could be shared between multiple employers or tenants in the same building and, as is true under existing law, could be temporary if necessitated by "operational, financial, or space limitations." Finally, under the proposed bill, employers with fewer than 50 employees may apply for an exemption if these requirements would pose a "significant expense or operational difficulty" in consideration of the "size, financial resources, [and] structure" of the business. However, SB 142 forecloses the possibility of any exemption for employers with at least 50 employees.

Proposed Lactation Accommodation Policy and Recordkeeping Requirements

In addition to more stringent lactation space requirements, SB 142 would also require employers to develop and implement a lactation accommodation policy including specific provisions regarding:

- an employee's right to request a lactation accommodation;
- the process for requesting a lactation accommodation;
- an employer's obligation to respond adequately to a lactation accommodation request; and
- an employee's right to file a complaint with the labor commissioner for any violation of lactation accommodation rights.

The bill would require employers to distribute a copy of the policy to new employees and those who inquire about or request parental leave. Employers would also be required to maintain records of any lactation accommodation requests for at least three years, provide written notice of any denied requests, and provide these records to the labor commissioner or employees upon request.

Proposed Penalties for Failure to Comply

In addition to the current \$100 civil penalty, this bill would also equate any violation with a failure to provide a rest period, which may allow employees to obtain an additional one hour of pay for each day that a violation occurs. The bill would also expressly prohibit discrimination or retaliation against an employee requesting lactation accommodation, and allow employees to file a complaint with the labor commissioner or bring a private right of action for actual damages, reinstatement, equitable relief, and attorneys' fees.

Previous Similar Bill

A similar bill, [Senate Bill 937](#), was passed by the state legislature in 2018, but it was vetoed by former governor Jerry Brown as unnecessary in light of existing law. It remains to be seen whether SB 142 will fare any better under current Governor Gavin Newsom.

Key Takeaways

California employers are likely to see a continued expansion of lactation accommodation rights for employees, and they may want to consider taking steps to reinforce and document lactation accommodation policies, including the following:

- Adopting a written accommodation policy that meets all of the requirements of current law
- Providing training for managers and supervisors on the company's policy on providing compliant lactation accommodations, as well as informing managers and supervisors that the company's harassment and discrimination prevention policy expressly prohibits any interference with an employee's request for lactation accommodations
- Providing training for managers and supervisors on lactation accommodation rights, including the following:

Employees have a right to a lactation accommodation during ordinary rest breaks, which must be a "net" 10 minutes and must permit employees to leave the premises or take their rest breaks in designated lactation spaces.

Employees have a right to lactation accommodation breaks in addition to ordinary meal and rest breaks, but such additional breaks do not have to be paid.

Employees cannot be required to submit any documentation regarding their need to express breast milk.

Document all requests for such lactation accommodations, as well as the company's response to each request, which could be in the form of sign-up sheets and schedules of employees who self access a lactation location in the workplace.

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