

San Francisco Imposes New Lactation Accommodation Requirements

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By [Charles L. Thompson, IV](#)



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Federal and state law. In 2010, the Affordable Care Act amended the federal Fair Labor Standards Act to require that employers provide reasonable break time for employees to express breast milk for one year after a child's birth. The employer also must provide "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."

California Labor Code Section 1030 also requires employers to provide reasonable break time for expressing breast milk. The employer must make "reasonable efforts to provide the employee with the

use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private.”

San Francisco lactation breaks. San Francisco's ordinance also requires employers to provide reasonable break as a lactation accommodation. The lactation break may be unpaid if it does not run at the same time as the state's mandatory rest periods for nonexempt employees.

San Francisco lactation room requirements. San Francisco's new lactation accommodation ordinance imposes more exacting standards for lactation rooms. It requires that the room (1) be safe, clean, and free of toxic or hazardous materials; (2) contain a surface to place a breast pump and personal items; (3) contain a place to sit; and (4) have access to electricity. The employer also must provide access to a sink with running water and a refrigerator in close proximity to the employee's work space. Some undue hardships compliance exemptions exist under the ordinance.

Written employer lactation accommodation policy. Beginning January 1, 2018, all San Francisco employers must implement a written lactation accommodation policy that (1) specifically states that employees have a right to request lactation accommodation; (2) tells employees *how* they can request lactation accommodation; (3) informs employees that the employer will respond within five business days to the request; (4) requires an interactive process to determine the appropriate breaks and lactation location; and (5) warns against retaliation.

The employer must distribute this policy to all employees upon hire *and* when an employee requests either pregnancy leave or parental leave. If the employer has an employee handbook, the handbook must include the lactation accommodation policy.

Recordkeeping. Employers must maintain the following information for three years: (1) the name of the employee who requested lactation accommodation; (2) the date of his or her request; and (3) a description of the request's resolution.

No retaliation. The ordinance prohibits retaliation and requires that an employer's written lactation accommodation policy include a no-retaliation provision. The ordinance presumes retaliation if the employer takes an adverse employment action against an employee within 90 days of the employee engaging in protected ordinance activity. To rebut the presumption, the employer must present clear and convincing evidence that the employer took the action *solely* for nonretaliatory reasons.

City enforcement. The ordinance charges the San Francisco Office of Labor Standards Enforcement (OLSE) with enforcement. From January 1, 2018 to December 31, 2018, the OLSE may issue only warnings and notices to correct. Beginning January 1, 2019, the OLSE may issue administrative penalties of \$500.00 per violation *and* \$50.00 per day for each employee to whom the violation occurred.

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