

Mother's Milk: NYC Braces for New Workplace Lactation Room Requirements

Article By:

Tyler Z. Bernstein

Employers in New York City should begin to immediately take steps to ensure compliance with two new local laws that, beginning March 18, 2019, will impose stricter requirements on employers to accommodate nursing mothers. The new bills passed by the New York City Council became law on November 17, 2018, after Mayor Bill de Blasio failed to sign or veto the two pieces of legislation. While the new laws provide employers with a 120-day grace period, employers would be wise to utilize this short time period to understand the new requirements and undertake whatever efforts are necessary to be in compliance when the new requirements take effect this Spring.

On October 17, 2018, the New York City Council passed two new bills designed to better accommodate nursing, working mothers. The first bill, [Int. 879-A](#), requires employers with at least four employees to provide a dedicated lactation room, as well as refrigerators, in reasonable proximity to employee work areas for the purposes of expressing and storing breast milk. A qualifying "lactation room" is a sanitary place (not a restroom) that provides a private place for working mothers to express breast milk. The lactation room must include, at a minimum, (1) an electrical outlet; (2) a chair; (3) a surface upon which to place a breast pump or other personal items; and (4) nearby access to running water. If the designated lactation room also serves another purpose, the sole purpose of the room shall be a lactation room while an employee is using the room to express breast milk. To ensure that the room is solely used for expressing milk, an employer must give notice to other employees that the room is given preference for use as a lactation room.

The only exception is where the implementation of the above-described lactation room requirement poses an "undue hardship" on the employer. The bill does not explain or attempt to describe what qualifies as an undue hardship. Nevertheless, in such a circumstance, the employer claiming the undue hardship must engage in a "cooperative dialogue" with affected employees to determine what, if any, reasonable alternative accommodations may be available.

Operating in tandem with Int. 879-A is [Int. 905-A](#), which the City Council also passed on October 17, 2018. Int. 905-A requires employers to establish, and distribute to all new employees, policies describing lactation room accommodations, including the process by which an employee can request such accommodation. The bill also requires the New York City Commission on Human Rights to establish and make available a model lactation room accommodation policy. The policy will need to (1) specify the means by which an employee may submit a request for a lactation room; (2) require

the employer to respond to a request within five business days; (3) establish a procedure for when two or more individuals need to use the lactation room at the same time; (4) state that the employer shall provide reasonable break time for an employee to express milk; and (5) state that if a request for a lactation room would pose an undue hardship on the employer, the employer must engage in a cooperative dialogue with the impacted employees.

Take-Aways

Int. 879-A and Int. 905-A will take effect March 18, 2019, 120 days after they were enacted. Employers have an opportunity get out ahead of the new laws to locate the dedicated lactation room and determine whether the new requirements will create an undue hardship. It is not enough to simply assume that compliance with existing state law concerning lactation rooms ensures that the employer is compliant with the new local laws. Existing state law does not require employers to provide a dedicated lactation room, which they will have to provide effective March 18, 2019. Moreover, employers should be thoughtful and thorough in putting together their soon-to-be-required lactation room policy.

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