

New York State Now Requires Paid Lactation Breaks

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New York employers are now required to provide up to 30 minutes of paid break time each time an employee has a reasonable need to express breast milk. While New York employers have been required to provide breaks to nursing mothers since the passage of the Nursing Mothers in the Workplace Act in 2007, this amendment to the New York Labor Law significantly expands this requirement.

Now found at New York Labor Law Section 206-c(1), the new law specifically provides the following:

An employer shall provide paid break time for thirty minutes, and permit an employee to use existing paid break time or meal time for time in excess of thirty minutes, to allow an employee to express breast milk for such employee's nursing child each time such employee has reasonable need to express breast milk for up to three years following child birth. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

In advance of the effective date, the New York Department of Labor updated its [Frequently Asked Questions](#) to address the new pay requirement, including noting that employees are required to provide advanced written notice if they intend to use the leave, that they may use other break time if they require more than 30 minutes, that employers must reasonably accommodate the number of breaks the particular employee may need, and that employers cannot require employees to make up the paid break time. While the law and guidance are silent on how frequently it would be reasonable for an employee to use this new paid break benefit, previous New York Department of Labor guidance relating to the prior version of this law (that required employers to provide unpaid break time) provides that employees “can take breaks at least once every three hours to pump breast milk.”

In addition, employers are now required to distribute a new [Policy of the Rights of Employees to Express Breast Milk in the Workplace](#), to employees upon hire and annually thereafter, as well as when an employee returns to work following the birth of a child. This policy describes not only this new paid break requirement, but also sets forth existing requirements, including, among other things,

to provide a private room or space for employees to express breast milk (the room or space must contain (1) a chair; (2) a working surface; (3) nearby access to clean running water; and, if the workplace has electricity, (4) an electrical outlet, unless having same presents an undue hardship for an employer).

This amendment comes on the heels of the EEOC's June 18, 2024 interpretive guidance on implementation of the Pregnant Workers Fairness Act (discussed [here](#)), which prohibits employers from seeking supporting documentation for lactation accommodations.

Governor Hochul explained in her push for the new pregnancy protections, unpaid leave has been unsuccessful at targeting the rising infant and maternal mortality rates across the country, particularly for lower income individuals who may be reticent to take unpaid time off. "Mothers and babies are dying unnecessarily across the nation, and right here in New York," Hochul said when announcing the new policy initiative in January. "This could only be called a crisis."

In light of this slew of the ever-changing landscape surrounding pregnancy-related protections, employers should be sure to revisit any policies relating to pregnancy accommodations. The Mintz employment team is available to help employers ensure their policies and procedures remain in compliance with the new regulations.

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