

PERSONNEL SERVICES BULLETINS (PSBs)

440-13

Subject: Leave to Express Breast Milk

Supersedes: Personnel Services Bulletin dated September 24, 2019

Source: New York State Labor Law, Section 206-c; New York City Administrative Code §8-107(22)

Date: June 28, 2024

I. BACKGROUND

New York State Labor Law, Section 206-c requires an employer to provide break time for thirty minutes and permit an employee to use existing paid break time or mealtime 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.

New York City Administrative Code §8-107(22) requires an employer, upon an employee's request, to provide the following accommodations to an employee needing to express breast milk: (1) a lactation room in reasonable proximity to such employee's work area; and (2) a refrigerator suitable for breast milk storage in reasonable proximity to such employee's work area.

This Personnel Services Bulletin provides guidance on the application of these provisions of the law.

II. DEFINITIONS

Dedicated Lactation Room: Agencies must provide a room that is:

- Easily accessible and reasonable proximity to the employee's work area;
- A clean space other than a restroom;
- Shielded from view and free from intrusion by others;
- Has at least one electrical outlet, a chair, and a surface, such as a table or counter, where employees can place a breast pump and other personal items;
- The room must be in close proximity to running water and a refrigerator to store breast milk;
- The room may be a space available on a temporary basis for employees to express breast milk; it does not need to permanently remain a lactation space when no employees need to use it for that purpose.

Cooperative Dialogue: Cooperative dialogue is an interactive process by which an employer and an employee who is, or may be, entitled to a reasonable accommodation under the law, engage in good faith in a written or oral dialogue concerning the employee's accommodation needs; potential accommodations that may address the employee's accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the employer. Employers must document the cooperative

dialogue process and provide employees with a written determination to grant or deny the request after the cooperative dialogue process has concluded.

Undue Hardship: In determining whether an accommodation poses an undue hardship, factors that may be considered include, but are not limited to:

- The nature and cost of the accommodation;
- The overall financial resources of the agency; the number of persons employed at such agency; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the agency;
- The overall size of the agency with respect to the number of its employees, the number, type, and location of its facilities; and
- The type of operation or operations of the agency, including the composition, structure, and functions of the workforce of such agency; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the agency.

III. POLICY

A. Time to Express Breast Milk

1. **Mandatory Paid 30 Minutes Break Time:** For three years after the birth of a child, agencies must provide an employee, upon request, thirty minutes of paid break time for, 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.
2. **Other Existing Paid Mealtime or Break Time:** During the first three years following birth of the child, after use of the mandatory thirty minutes of paid break time, and after three years following the birth of the child, the employee may use existing paid meal time or break time as follows:

a. Paid meal period

Agencies are required to permit nursing employees to express breast milk during their meal period if the employee elects to utilize their meal period for this purpose. However, agencies cannot require an employee to use their meal period for this purpose or to use annual leave and compensatory time balances. Employees may elect to express breast milk at other reasonable times during their work shift as paid or unpaid break time.

b. Paid Break Time

Employees may use 30 minutes of paid break time as required instead of, or in combination with, unpaid breaktime or meal periods.

Employees may use 30 minutes of paid break time as required per workday within their basic workweek as well as during any additional time worked,

including overtime shifts.

3. Use reasonable unpaid break time

Employees may elect to use unpaid break time instead of, or in combination with, paid breacktime and meal periods.

Employees may use unpaid break time within their basic workweek as well as during any additional time worked, including overtime shifts.

4. Make up time before or after their shift.

Agencies are required to let employees work before or after their normal shift to make up for unpaid break time used to express breast milk.

5. Charge their annual leave and compensatory time balances during unpaid breaks.

B. Eligibility to Earn Leave Accruals

Agencies must ensure that employees understand the impact on their eligibility to earn leave accruals if they elect to utilize unpaid break time and not charge their leave balances. Therefore, it is critical that agencies advise employees who use unpaid break time and do not charge their leave balances during such unpaid break time, that this may affect their ability to earn monthly annual leave and sick leave accruals.

C. Location to Express Breast Milk

Agencies must provide a room that is easily accessible, that is a clean space, other than a restroom, that is shielded from view and free from intrusion by others, has at least one electrical outlet, a chair, and a surface, such as a table or counter, where employees can place a breast pump and other personal items.

The room must be in close proximity to running water and a refrigerator to store breast milk. It should be easily accessible. The room may be a space available on a temporary basis for employees to express breast milk; it does not need to permanently remain a lactation space when no employees need to use it for that purpose.

If there is no dedicated lactation room, possible alternative locations might include an office or conference room where steps can be taken to ensure that the employee can express breast milk in privacy, free from intrusion. Agencies should ensure that the door of the room has a lock and is shielded from view (i.e., has window shades or privacy screens). If the door cannot have a lock, a "Do Not Disturb" sign or other appropriate sign should be placed on the door or entrance of the space. The sign should be in the language(s) all employees can understand.

In many work locations, space is at a premium and is utilized for multiple purposes. In such cases, scheduling a nursing employee's access to a particular location

may be necessary to comply with both the legislation and the agency's space needs.

If a room designated by an agency to serve as a lactation room is also used for another purpose, the sole function of the room shall be as a lactation room while an employee is using the room to express breast milk. The agency must give notice to employees that preference is given to employees who wish to use that room for lactation purposes and that such room must be used solely as a lactation room during times when an employee is using the room to express breast milk.

When more than one employee needs to use the designated lactation room, the agency should discuss various options that may be available with all parties to determine appropriate accommodations that meet all employees' needs. The agency should use signage and/or a scheduling system so that the room can accommodate employees at different times of the day.

If the provision of a lactation room in accordance with these requirements should pose an undue hardship on the agency, the agency must engage in a "cooperative dialogue" with the employee or employees to identify an alternative accommodation that will accommodate the need to express breast milk while working.

An agency cannot require an employee to use a lactation room to express breast milk. An employee who wishes to express breast milk at their usual workspace shall be permitted to do this so long as it does not create an undue hardship for the agency. Discomfort expressed by a coworker, client, or customer generally does not rise to the level of "undue hardship" for the agency. However, the agency's EEO Office must review and make an individualized assessment.

IV. PROCEDURE

A. Employees who want to express breast milk at work must notify their agency in advance – preferably before they return to work from childcare leave. An agency must respond promptly to a request, no later than within five (5) business days. This request should be reviewed as a reasonable accommodation request and both the agency EEO and Personnel Offices should collaborate in providing any necessary information that can facilitate the review and implementation process.

B. Agencies should provide an employee with information about their right to lactation accommodations and information about the agency's policy on lactation accommodations before an employee starts parental leave, if possible. Employees may also request a lactation accommodation at any time. This may include communicating to the agency, orally or in writing, that they will need a lactation room or space, and/or scheduling adjustments to account for time to express breast milk.

C. Agencies should notify affected employees currently on childcare leave and affected employees who have recently returned to work after childcare leave that they are entitled to this benefit.

D. All employees upon being hired must be informed of their right to a lactation accommodation and of the agency's written policy on lactation accommodations. In the case of an employee who is returning from childcare leave, agencies should

already have sufficient documentation in connection with the employee's request for childcare leave to establish eligibility for this benefit. In the case of a new employee, appropriate documentation must be provided.

E. If the request for an accommodation poses an undue hardship for the agency, the employee and agency must engage in a cooperative dialogue to identify an accommodation that meets the employee's needs and does not impose an undue hardship on the agency.

F. At the conclusion of the cooperative dialogue, the agency must notify the employee of the agency's decision in writing. This includes notifying the employee's supervisor of the approved accommodation so that the supervisor can plan for appropriate coverage and review that the employee has made the applicable entries in the timesheets.

G. When making a request to utilize this benefit, employees must specify whether they plan to use paid break time, unpaid break time, paid meal period, charge their annual leave or compensatory time balances during the unpaid breaks, or a combination of these. Employees with no accrued annual leave or compensatory time balances may be advanced annual leave to be charged against future annual leave accruals.

H. Time required to express breast milk includes the time required for the nursing employee to reach and return from the location identified by the agency for expressing breast milk.

I. The amount of time needed to express breast milk may vary and there is no set limit on the number of breaks provided per day. They must, however, be reasonable and approved by the agency.

J. Employees are not entitled to leave their work areas to express breast milk without prior approval. Prior approval should normally be obtained at the time the initial arrangements are made and a schedule is agreed upon. When an employee needs to change a previously agreed upon schedule, the employee must obtain approval to do so.

K. In work settings where coverage is an issue, agencies are obligated to schedule adequate support staff to ensure that the operations of the agency and services to the public are not adversely affected. Immediate supervisors must cooperate in arranging for coverage. Employees are expected to verify that the coverage is in place prior to leaving their work areas to express breast milk.

L. Agencies should make every effort to accommodate an employee's schedule when doing so does not pose an undue hardship. (See IV.E above if an undue hardship arises.) If an undue hardship arises, as part of the cooperative dialogue, the employees may be asked to consider adjusting a scheduled time to express breast milk.

M. Agencies cannot use the difficulty in arranging time or location as a means of denying employees access to this statutory benefit.

N. This benefit is available to employees within the basic workweek as well as during any additional time worked, including overtime shifts.

V. AGENCY LACTATION POLICY

Agencies must implement a written lactation room policy and provide a copy to all new hires and annually thereafter and to employees returning to work following the birth of a child. This policy must include a statement that employees have a right to request a lactation room and identify the process for doing so.

Agency policies must: (1) specify the means by which an employee may submit a request for a lactation room; (2) specify that the agency will respond to a request for a lactation room within a reasonable amount of time not to exceed five business days; (3) provide a procedure to follow when two or more individuals need to use the lactation room at the same time, including contact information for any follow-up required; (4) state that the agency shall provide reasonable break time in addition to 30 minutes of paid break time as required for an employee to express breast milk; and, (5) state that if the request for a lactation room poses an undue hardship on the agency, the agency shall engage in a cooperative dialogue with the employee to identify an alternative accommodation that will accommodate the employee's need to express breast milk while working.

VI. PROHIBITION OF DISCRIMINATION

An agency may not discriminate or retaliate in any way against an employee who chooses to express breast milk in the workplace.

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