



## Guide to the Rights of Breastfeeding Employees in North Dakota

**Purpose:** This guide was developed to provide an overview of the laws that protect the rights of breastfeeding employees in North Dakota to express breast milk during the workday. The factors that are addressed and the level of protection provided vary widely from one law to another. The chart below details the North Dakota and federal laws that impact breastfeeding employees, and the protections those laws provide for each listed component. Components that are not addressed by the law are shaded in gray.

**How to Use This Guide:** To identify your rights as a breastfeeding employee or obligations as an employer, you must first determine which of the laws apply to you. Then compare each part of the applicable laws. If an employee is covered by more than one law, and those laws address the same component, the employee is entitled to the strongest protection available. If an employer does not provide the required accommodations, a complaint can be filed with the regulatory agency. The agency responsible for enforcement of each law and information on how to file a complaint is included in the chart.

The template was developed to address every component considered in existing state and federal workplace lactation accommodation laws. Some components may not apply to your state.

**Where to Go for Help:** Many breastfeeding coalitions provide support for employees and employers. See the [North Dakota Breastfeeding Coalition website](#) or visit the U.S. Breastfeeding Committee [Coalitions Directory](#) for a list of all breastfeeding coalitions.

**Important Note:** The information provided in this guide is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. Check with a lawyer or the regulatory agency if you believe your rights have been violated.

### North Dakota Law:

#### [North Dakota Cent. Code § 23-12-17. Workplace breastfeeding policies - Infant friendly designation.](#)

1. An employer may use the designation "infant friendly" on its promotional materials if the employer adopts a workplace breastfeeding policy that includes the following:
  - a. Flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for expression of breast milk;
  - b. A convenient, sanitary, safe, and private location, other than a restroom, allowing privacy for breastfeeding or expressing breast milk;
  - c. A convenient clean and safe water source with facilities for washing hands and rinsing breast-pumping equipment located in the private location specified in subdivision b; and
  - d. A convenient hygienic refrigerator in the workplace for the temporary storage of the mother's breast milk.
2. The state department of health shall establish guidelines for employers concerning workplace breastfeeding and infant friendly designations.

#### Resources:

- [North Dakota State Government:](#)
  - [Statutory language:](#) full text of N.D. Cent. Code § 23-12-17.
- [North Dakota Department of Health:](#)
  - [Guidelines for Becoming a Recognized Infant-Friendly Worksite:](#) brochure outlines employer requirements for using the designation "infant friendly" on promotional materials.
  - [Infant Friendly Worksite Application:](#) online application for businesses seeking approval for recognition as a North Dakota Infant Friendly Worksite

### Federal Laws:

### **Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision:**

(r)(1) An employer shall provide—

A. a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

B. 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.

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

Resources:

- [United States Department of Labor Wage and Hour Division](#) (WHD):
  - [Statutory language](#): full text of the "Break Time for Nursing Mothers" law.
  - [Fact Sheet #73](#): includes information on general requirements, time and location of breaks, and coverage and compensation requirements under the "Break Time for Nursing Mothers" law.
  - [FAQs](#): answers many questions about the law.

**Title VII of the Civil Rights Act:** The Pregnancy Discrimination Act, passed in 1978, amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, and related medical conditions. In 2013, the United States Court of Appeals for the Fifth Circuit held that firing a woman because she is lactating or expressing milk is unlawful sex discrimination under Title VII of the Civil Rights Act.

Title VII states:

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

Resources:

- [U.S. Equal Employment Opportunity Commission](#):
  - [The Pregnancy Discrimination Act of 1978](#): statutory language of amendment to Title VII of the Civil Rights Act.
  - [Pregnancy Discrimination](#): webpage detailing prohibited treatment of employees impacted by pregnancy, childbirth, or related medical conditions.
  - [Enforcement Guidance: Pregnancy Discrimination and Related Issues](#): guidance regarding the Pregnancy Discrimination Act and the Americans with Disabilities Act as they apply to pregnant workers. The Enforcement Guidance states that there are various circumstances in which discrimination against a female employee who is lactating or breastfeeding can implicate Title VII. Because lactation is a pregnancy-related medical condition, less favorable treatment of a lactating employee may raise an inference of unlawful discrimination. An employee must have the same freedom to address lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions.

	<b>State: North Dakota Cent. Code § 23-12-17</b>	<b>Federal: <a href="#">Break Time for Nursing Mothers Law</a></b>	<b>Federal: <a href="#">Title VII of the Civil Rights Act</a></b>
<b>Eligible Employees</b>		Nursing mothers who are <a href="#">employees covered by the Fair Labor Standards Act (FLSA)</a> and not exempt from FLSA overtime pay requirements. Important note: if an employer is not covered by the FLSA, its employees may still be covered if the employee's own duties meet certain interstate commerce requirements.	Title VII protects employees of private and state and local government employers with 15 or more employees, labor organizations, employment agencies, and apprenticeship and training programs. Title VII also applies to employees in the federal sector.
<b>Are Employers Required to Have a Policy on Breastfeeding Employees?</b>	A policy is required, and must be approved by the North Dakota Department of Health for an employer to use the designation "infant friendly" on its promotional materials. The employer must adopt a workplace breastfeeding policy that includes the following: a. Flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for expression of breast milk; b. A convenient, sanitary, safe, and private location, other than a restroom, allowing privacy for breastfeeding or expressing breast milk; c. A convenient clean and safe water source with facilities for washing hands and rinsing breast-pumping equipment located in the private location specified in subdivision b; and d. A convenient hygienic refrigerator in the workplace for the temporary storage of the mother's breast milk.		No policy is required under Title VII. However, if an employer allows employees to take breaks, change their schedules, or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances. Or, if an employer freely permits employees to use break time for personal reasons, it would violate Title VII to deny break time for expressing breast milk.
<b>Frequency of Milk Expression Breaks</b>	Employers are not required to provide break time, however an employer may use the designation "infant friendly" on its promotional materials if the employer adopts a workplace breastfeeding policy that includes flexible work scheduling, including scheduling breaks and permitting work patterns	As frequently as needed by the nursing mother. The frequency of breaks needed to express breast milk will likely vary.	

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	that provide time for expression of breast milk.		
<b>Length of Time for Milk Expression Breaks</b>	Employers are not required to provide break time, however an employer may use the designation "infant friendly" on its promotional materials if the employer adopts a workplace breastfeeding policy that includes flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for expression of breast milk.	Reasonable. The duration of each break will likely vary.	
<b>Duration of Milk Expression Breaks</b>		1 year after the child's birth.	
<b>Space Requirements</b>	Employers are not required to provide a pumping space, however an employer may use the designation "infant friendly" on its promotional materials if the employer adopts a workplace breastfeeding policy that includes a convenient, sanitary, safe, and private location, other than a restroom, allowing privacy for breastfeeding or expressing breast milk; and a convenient clean and safe water source with facilities for washing hands and rinsing breast-pumping equipment located in the private location or nearby.	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. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mothers' use, it must be available when needed in order to meet the statutory requirement. Of course, employers may choose to create permanent, dedicated space if they determine that is the best way to meet their obligations under the law.	
<b>Pay Requirement</b>		<a href="#">Unpaid</a> , unless concurrent with <a href="#">paid breaks</a> . If a nursing employee is not completely relieved from duty during a break to express breast milk, the time must be compensated as work time.	
<b>Are Employers Required to Notify Employees of Their Rights?</b>			Employers are required to post the <a href="#">"EEO is the Law" English poster</a> . <i>Note: This notice does not specifically address the rights of breastfeeding employees.</i>
<b>Requirements for Employees</b>			
<b>Exemption</b>		All <a href="#">employers covered by the FLSA</a> , regardless of the size of their business, are required to comply with this provision. However, employers with	

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		fewer than 50 employees are not subject to the FLSA break time requirement if the employer can demonstrate that compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, or structure of the employer's business.	
<b>Milk Storage</b>	Milk storage is not required, however an employer may use the designation "infant friendly" on its promotional materials if the employer adopts a workplace breastfeeding policy that includes a convenient hygienic refrigerator or other storage options, such as a personal cooler, in the workplace for the temporary storage of the mother's breast milk.		
<b>Does Unpaid Break Time Impact Full Time Status and/or Eligibility for Health Insurance?</b>			
<b>Is Unpaid Break Time Expressly Separated from Paid Leave or Paid Time Off?</b>			
<b>Are Employers Required to Consider Providing Additional Accommodations for Breastfeeding Employees?</b>			
<b>Discrimination/Retaliation</b>		It is a violation for any person to <a href="#">discharge or in any other manner discriminate against</a> an employee who files a complaint or cooperates with the investigation of a complaint.	Firing a woman or taking other adverse employment action against her because she is lactating or expressing milk is unlawful sex discrimination. An employer may not discriminate against an employee because of her breastfeeding schedule. Women breastfeeding and lactating must be able to take breaks as other employees who take

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			breaks for other medical or personal reasons. Employers are prohibited from firing, demoting, harassing or otherwise retaliating against an employee because she has complained of discrimination or participated in an employment discrimination proceeding.
<b>Protection from Harassment</b>			Employers are required to provide a <a href="#">work environment free of harassment</a> based on pregnancy, childbirth, or related medical conditions, including breastfeeding.
<b>Agency Responsible for Enforcement</b>	The <a href="#">North Dakota Department of Health</a> is charged with establishing guidelines and reviewing applications for employers applying for the infant friendly designation.	U.S. Department of Labor, <a href="#">Wage and Hour Division</a> .	<a href="#">U.S. Equal Employment Opportunity Commission</a> .
<b>How to File a Complaint</b>		File a complaint by calling the WHD toll-free at 1-800-487-9243 or visiting <a href="http://www.dol.gov/whd">www.dol.gov/whd</a> . You will then be directed to your nearest WHD office for assistance.	You may file a charge of employment discrimination at the EEOC office closest to where you live, or at any one of the <a href="#">EEOC's 53 field offices</a> . You may call 1-800-669-4000 or <a href="#">visit the EEOC website</a> for more information on filing a charge and filing deadlines. Important Note: <a href="#">Federal sector employees have a different complaint process</a> .
<b>Is the Agency Required to Monitor and Compile Enforcement Reports?</b>			Yes.
<b>Sanctions for Non-Compliance</b>		An employee whose rights are denied can file a complaint with the Wage and Hour Division, which can go to court to obtain an order requiring the employer to comply. In addition, any employee who is "discharged or in any other manner discriminated against" because, for instance, he or she has filed a complaint or cooperated in an investigation, may file a retaliation complaint	<a href="#">Remedies may include</a> reinstatement, compensatory damages, punitive damages, back pay for lost wages where someone has been terminated, and requiring an employer to take certain actions to prevent future discrimination.

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		with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including, but not limited to, employment, reinstatement, lost wages and an additional equal amount as liquidated damages.	
<b>Do Employees Have Private Action Rights?</b>		Yes.	Yes, but employees are first required to file a charge with the EEOC.
<b>Worksite Designation Program</b>	<a href="#">Infant Friendly Worksite Designation</a> . <i>Note: designation is not required under North Dakota law.</i>		
<b>Additional Resources</b>	<p><a href="#">North Dakota Breastfeeding Coalition</a>:</p> <ul style="list-style-type: none"> <li>• <a href="#">Workplace Support For Employers</a></li> <li>• <a href="#">For Mothers</a></li> </ul> <p>U.S. Department of Labor Women’s Bureau: <a href="#">Employment Protections For Workers Who Are Pregnant or Nursing</a></p> <p><a href="#">N.D. Cent. Code Ann. §§ 14-02.4-02, 14-02.4-03</a> provides rights to accommodation for pregnant women, though does not explicitly provide right to accommodation for childbirth or related conditions. It also prohibits discrimination on the basis of sex, defined to include “pregnancy, childbirth, and disabilities related to pregnancy and childbirth.” Therefore failure to accommodate lactation could potentially implicate section 14-03.4-03.</p> <p><a href="#">North Dakota Women, Infants, and Children (WIC) program</a></p>	<p>Office on Women’s Health:</p> <ul style="list-style-type: none"> <li>- <a href="#">Supporting Nursing Moms at Work: Employer Solutions</a></li> <li>- <a href="#">Business Case for Breastfeeding</a></li> </ul> <p>U.S. Breastfeeding Committee:</p> <ul style="list-style-type: none"> <li>- <a href="#">Resource and Referral Guide for Breastfeeding Employees and their Employers</a></li> <li>- <a href="#">Online Guide: “What You Need to Know About the “Break Time for Nursing Mothers” Law</a></li> </ul> <p>Especially see Online Guide sections:</p> <ul style="list-style-type: none"> <li>- <a href="#">How should you store your breast milk?</a></li> <li>- <a href="#">What are the space requirements?</a></li> </ul> <p>Wage and Hour Division: <a href="#">Family and Medical Leave Act</a></p> <p>Center for WorkLife Law:</p> <ul style="list-style-type: none"> <li>- <a href="#">Pregnant @ Work</a></li> <li>- <a href="#">Guide for doctors on writing work notes for nursing mothers</a></li> </ul>	<p>Equal Employment Opportunity Commission:</p> <ul style="list-style-type: none"> <li>- Guidance: <a href="#">Questions and Answers about the EEOC’s Enforcement Guidance on Pregnancy Discrimination and Related Issues</a></li> <li>- Press release: <a href="#">Fifth Circuit Holds Lactation Discrimination is Unlawful Sex Discrimination</a></li> </ul> <p>National Women’s Law Center: <a href="#">Fact Sheet: The Pregnancy Discrimination Act and the Amended Americans with Disabilities Act: Working Together to Protect Pregnant Workers</a></p> <p>American Civil Liberties Union: <a href="#">Federal Law and Pregnant, Post-Partum and Breastfeeding Workers</a></p> <p>A Better Balance: <a href="#">Babygate</a></p>

This document was developed in partnership with the North Dakota Breastfeeding Coalition and was reviewed by the North Dakota Department of Health in September 2016. Title VII of the Civil Rights Act content is based on Equal Employment Opportunity Commission publications. Break Time for Nursing Mothers law content was reviewed by the U.S. Department of Labor, Wage and Hour Division in May 2016.