



Guide to the Rights of Breastfeeding Employees in Texas

Purpose: This guide was developed to provide an overview of the laws that protect the rights of breastfeeding employees in Texas 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 Texas 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 [Texas 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.

Texas Laws:

[Texas Government Code § 619 Right to Express Breastmilk in the Workplace](#)

Sec. 619.001. DEFINITION.

In this chapter, "public employer" means:

- (1) a county, a municipality, or another political subdivision of this state, including a school district; or
- (2) a board, a commission, an office, a department, or another agency in the executive, judicial, or legislative branch of state government, including an institution of higher education.

Sec. 619.002. RIGHT TO EXPRESS BREAST MILK.

An employee of a public employer is entitled to express breast milk at the employee's workplace.

Sec. 619.003. POLICY ON EXPRESSING BREAST MILK.

(a) A public employer shall develop a written policy on the expression of breast milk by employees under this chapter.

(b) A policy developed under Subsection (a) must state that the public employer shall:

- (1) support the practice of expressing breast milk; and
- (2) make reasonable accommodations for the needs of employees who express breast milk.

Sec. 619.004. PUBLIC EMPLOYER RESPONSIBILITIES.

A public employer shall:

- (1) provide a reasonable amount of break time for an employee to express breast milk each time the employee has need to express the milk; and
- (2) provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.

Sec. 619.005. DISCRIMINATION PROHIBITED.

A public employer may not suspend or terminate the employment of, or otherwise discriminate against, an employee because the employee has asserted the employee's rights under this chapter.

Sec. 619.006. NO CAUSE OF ACTION CREATED.

This chapter does not create a private or state cause of action against a public employer.

Resources:

- [Texas Constitution and Statutes](#):
 - [Statutory language](#): full text of Texas Government Code 619 Right to Express Breastmilk in the Workplace

[Texas Health and Safety Code Sec. § 165.003 Business Designation As "Mother-Friendly"](#).

(a) A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses the following:

- (1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;
- (2) the provision of accessible locations allowing privacy;
- (3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and
- (4) access to hygienic storage alternatives in the workplace for the mother's breast milk.

(b) The business shall submit its breast-feeding policy to the department. The department shall maintain a list of "mother-friendly" businesses covered under this section and shall make the list available for public inspection.

Resources:

- [Texas Constitution and Statutes](#):
 - [Statutory language](#): full text of Texas Health and Safety Code § 165 Breast-feeding (including Sec. § 165.003 Business Designation As "Mother-Friendly")
 - [Texas Administrative Code Title 25, Part 1, Chapter 31, Subchapter A Rule §31.1 Register of Mother-Friendly Businesses](#): administrative rules for the Texas Mother-Friendly Worksite Program
- [Texas Mother-Friendly](#):
 - [Texas Directory](#): lists all the designated Texas Mother-Friendly Worksites; worksites must agree to be listed in order to receive designation under the law
 - [Apply for Your Texas Mother-Friendly Worksite Designation](#): application for worksite designation

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.

	State: Texas Government Code § 619 Right to Express Breastmilk in the Workplace	State: Texas Health and Safety Code Sec. § 165.003	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
Eligible Employees	All employees of public employers who need to express breast milk. In this chapter, "public employer" means: (1) a county, a municipality, or another political subdivision of this state, including a school district; or (2) a board, a commission, an office, a department, or another agency in the executive, judicial, or legislative branch of state government, including an		Nursing mothers who are employees covered by the Fair Labor Standards Act (FLSA) 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.

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	institution of higher education.			
Are Employers Required to Have a Policy on Breastfeeding Employees?	<p>Yes, public employers are required to develop a written policy on the expression of breast milk by employees. The policy must state that the public employer shall:</p> <p>(1) support the practice of expressing breast milk; and</p> <p>(2) make reasonable accommodations for the needs of employees who express breast milk.</p>	<p>A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses the following:</p> <p>(1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;</p> <p>(2) the provision of accessible locations allowing privacy;</p> <p>(3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and</p> <p>(4) access to hygienic storage alternatives in the workplace for the mother's breast milk.</p> <p>(b) The business shall submit its breast-feeding policy to the department. The department shall maintain a list of "mother-friendly" businesses covered under this section and shall make the list available for public inspection.</p> <p>To be designated mother-friendly, a worksite must:</p> <p>(1) adhere to the definition of a mother-friendly business (Definition: A worksite that actively promotes and</p>		<p>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.</p>

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		<p>supports breastfeeding by its employees and that maintains a written worksite lactation support policy that is regularly communicated to employees.);</p> <p>(2) provide work schedule and work pattern flexibility to, at a minimum, accommodate a reasonable break time for an employee to express breast milk for her nursing child or breastfeed each time such employee has need to express the milk or breastfeed for one year or longer after the child's birth;</p> <p>(3) provide employees a private, accessible area, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, for either expressing breast milk or breastfeeding each time such employee has need to express breast milk or breastfeed;</p> <p>(4) provide access to a clean, safe water source and a sink; and</p> <p>(5) provide access to a hygienic place to store expressed breast milk.</p>		
Frequency of Milk Expression Breaks	<p>Each time the employee has need to express breast milk.</p>	<p>A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses work</p>	<p>As frequently as needed by the nursing mother. The frequency of breaks needed to express breast milk will likely vary.</p>	

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		<p>schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk.</p> <p>To be designated mother-friendly, a worksite must provide work schedule and work pattern flexibility to, at a minimum, accommodate a reasonable break time for an employee to express breast milk for her nursing child or breastfeed each time such employee has need to express the milk or breastfeed for one year or longer after the child's birth.</p>		
<p>Length of Time for Milk Expression Breaks</p>	<p>Reasonable amount of break time for an employee to express breast milk.</p>	<p>A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk.</p> <p>To be designated mother-friendly, a worksite must provide work schedule and work pattern flexibility to, at a minimum, accommodate a reasonable break time for an employee to express breast milk for her nursing child or breastfeed each time such employee</p>	<p>Reasonable. The duration of each break will likely vary.</p>	

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		has need to express the milk or breastfeed for one year or longer after the child's birth.		
Duration of Milk Expression Breaks	No limit.	A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk for one year or longer after the child's birth	1 year after the child's birth.	
Space Requirements	A place other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.	<p>A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses the provision of accessible locations allowing privacy, and access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment.</p> <p>To be designated mother-friendly, a worksite must provide employees a private, accessible area, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, for either expressing breast milk or breastfeeding each time such employee</p>	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.	

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		has need to express breast milk or breastfeed; provide access to a clean, safe water source and a sink; and provide access to a hygienic place to store expressed breast milk.		
Pay Requirement	Unpaid, unless concurrent with paid breaks.	One possible criteria for Silver or Gold level designation is payment for time taken for breastfeeding and/or breast milk expression as work time.	Unpaid , unless concurrent with paid breaks . 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.	
Are Employers Required to Notify Employees of Their Rights?		To be designated mother-friendly, a worksite must adhere to the definition of a mother-friendly business: A worksite that actively promotes and supports breastfeeding by its employees and that maintains a written worksite lactation support policy that is regularly communicated to employees.		Employers are required to post the "EEO is the Law" English poster . <i>Note: This notice does not specifically address the rights of breastfeeding employees.</i>
Requirements for Employees				
Exemption			All employers covered by the FLSA , regardless of the size of their business, are required to comply with this provision. However, employers with 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	

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			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.	
Milk Storage		A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses access to hygienic storage alternatives in the workplace for the mother's breast milk. To be designated mother-friendly, a worksite must provide access to a hygienic place to store expressed breast milk.		
Does Unpaid Break Time Impact Full Time Status and/or Eligibility for Health Insurance?				
Is Unpaid Break Time Expressly Separated from Paid Leave or Paid Time Off?				
Are Employers Required to Consider Providing Additional Accommodations for Breastfeeding Employees?		The department may recognize mother-friendly businesses that implement additional best practice policies and program activities to promote and support breastfeeding by their employees that exceed the minimum standards in subsection (b) of this section with silver or gold designation of those worksites.		

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Discrimination/ Retaliation	A public employer may not suspend or terminate the employment of, or otherwise discriminate against, an employee because the employee has asserted the employee's rights under this chapter.		It is a violation for any person to discharge or in any other manner discriminate against 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 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.
Protection from Harassment				Employers are required to provide a work environment free of harassment based on pregnancy, childbirth, or related medical conditions, including breastfeeding.
Agency Responsible for Enforcement		Texas Department of State Health Services.	U.S. Department of Labor, Wage and Hour Division.	U.S. Equal Employment Opportunity Commission.
How to File a Complaint		If your employer is using the designation, but is not meeting the criteria. Contact the Texas Department of State Health Services at info@texasmotherfriendly.org . Technical assistance is available. <i>Note: designation is</i>	File a complaint by calling the WHD toll-free at 1-800-487-9243 or visiting www.dol.gov/whd . 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 EEOC's 53 field offices . You may call 1-800-669-4000 or visit the EEOC website for more information on filing a

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		<i>not required under Texas law.</i>		charge and filing deadlines. Important Note: Federal sector employees have a different complaint process.
Is the Agency Required to Monitor and Compile Enforcement Reports?		The department shall maintain a list of "mother-friendly" businesses covered under this section and shall make the list available for public inspection.		Yes.
Sanctions for Non-Compliance			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 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.	Remedies may include 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.
Do Employees Have Private Action Rights?	No. This chapter does not create a private or state cause of action against a public employer.		Yes.	Yes, but employees are first required to file a charge with the EEOC.
Worksite Designation Program	Texas Mother-Friendly Worksite Program. <i>Note: designation is not required under Texas law.</i>			

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Additional Resources	<p>Texas Department of State Health Services (DSHS):</p> <ul style="list-style-type: none"> • BreastmilkCounts.com: one-stop breastfeeding resource from the DSHS Texas WIC Breastmilk: Every Ounce Counts Campaign. <ul style="list-style-type: none"> ◦ Working moms • Statewide Lactation Support Hot Line: 855-550-MOMS (6667) <ul style="list-style-type: none"> ◦ Breastfeeding support, including information about combining working and breastfeeding • Texas Mother-Friendly Worksite Program: find out how easy it is to create a mother-friendly worksite environment in any work setting, and get recognized in the process! The website is chock full of information and tools to support employers to develop comprehensive, sustainable worksite lactation support programs. For individualized technical assistance, please email info@TexasMotherFriendly.org. <p>Texas Breastfeeding Coalition: Existing Legislation & Legislative Efforts</p> <p>U.S. Department of Labor Women’s Bureau: Employment Protections For Workers Who Are Pregnant or Nursing</p> <p>Tex. Labor Code Ann. §21.106 prohibits discrimination based on pregnancy, childbirth, or related medical conditions or to fail to provide reasonable accommodation.</p> <p>Texas Health and Safety Code Sec. § 165.002 provides that a mother is entitled to breast-feed her baby in any location in which she is authorized to be.</p>	<p>Office on Women’s Health:</p> <ul style="list-style-type: none"> - Supporting Nursing Moms at Work: Employer Solutions - Business Case for Breastfeeding <p>U.S. Breastfeeding Committee:</p> <ul style="list-style-type: none"> - Resource and Referral Guide for Breastfeeding Employees and their Employers - Online Guide: “What You Need to Know About the “Break Time for Nursing Mothers” Law <p>Especially see Online Guide sections:</p> <ul style="list-style-type: none"> - How should you store your breast milk? - What are the space requirements ? <p>Wage and Hour Division: Family and Medical Leave Act</p> <p>Center for WorkLife Law:</p> <ul style="list-style-type: none"> - Pregnant @ Work - Guide for doctors on writing work notes for nursing mothers 	<p>Equal Employment Opportunity Commission:</p> <ul style="list-style-type: none"> - Guidance: Questions and Answers about the EEOC’s Enforcement Guidance on Pregnancy Discrimination and Related Issues - Press release: Fifth Circuit Holds Lactation Discrimination is Unlawful Sex Discrimination <p>National Women’s Law Center: Fact Sheet: The Pregnancy Discrimination Act and the Amended Americans with Disabilities Act: Working Together to Protect Pregnant Workers</p> <p>American Civil Liberties Union: Federal Law and Pregnant, Post-Partum and Breastfeeding Workers</p> <p>A Better Balance: Babygate</p>	

This document was developed in partnership with the Texas Breastfeeding Coalition. Texas Health and Safety Code Sec. § 165.003 content was reviewed by the Texas Department of State Health Services in November 2016. Texas Government Code § 619 Right to Express Breastmilk in the Workplace content was reviewed by the Center for WorkLife Law, University of California, Hastings College of the Law in April 2017. 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.