



Guide to the Rights of Breastfeeding Employees in Montana

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

Montana Laws:

Mont. Code Ann. § 39-2-215 et. Seq Public employer policy on support of women and breastfeeding -- unlawful discrimination.

(1) All state and county governments, municipalities, and school districts and the university system must have a written policy supporting women who want to continue breastfeeding after returning from maternity leave. The policy must state that employers shall support and encourage the practice of breastfeeding, accommodate the breastfeeding-related needs of employees, and ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their children. At a minimum, the policy must identify the means by which an employer will make available a space suitable for breastfeeding and breast pumping for a lactating employee, including the provision of basic necessities of privacy, lighting, and electricity for the pump apparatus. The space does not need to be fully enclosed or permanent, but must be readily available during the term that the employee needs the space.

(2) It is an unlawful discriminatory practice for any public employer:

- (a) to refuse to hire or employ or to bar or to discharge from employment an employee who expresses milk in the workplace; or
- (b) to discriminate against an employee who expresses milk in the workplace in compensation or in terms, conditions, or privileges of employment unless based upon a bona fide occupational qualification.

Resources:

- [The Montana Legislature:](#)
 - [Statutory language:](#) full text of Mont. Code Ann. § 39-2-215

Montana Human Rights Act:

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference, as provided for in 2-18-111 and 18-1-110, may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section:

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents; or

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse.

(6) The provisions of this chapter do not apply to a business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise required by a contract or other agreement under which preferential treatment may be given to an individual based on the individual's status as an Indian living on or near a reservation.

Resources:

- [The Montana Legislature:](#)
 - [Statutory language:](#) full text of Mont. Code Ann. § 49-2-303
- [Montana Secretary of State:](#)
 - [Rule Subchapter: 24.9.12:](#) Administrative rules relating to maternity leave state that "disability as a result of pregnancy" includes any condition certifiable by a medical doctor as disabling, whether the condition arises as a result of the normal course of pregnancy, or as a result of abnormal medical conditions which occur in the course of a pregnancy, and may cover the time period beginning with conception through termination of gestation and a reasonable period for recovery therefrom. Disabilities as a result of a pregnancy, childbirth or related medical condition are for all job-related purposes, temporary disabilities and shall not be treated less favorably than other temporary disabilities under any health, medical, or temporary disability insurance plan or sick leave plan maintained by employer.

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: Montana Code Ann. § 39-2-215	State: Montana Human Rights Act	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
Eligible Employees	Breastfeeding women who are employees of state and county governments, municipalities, school districts and the university system.	All employees.	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	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

	State: Montana Code Ann. § 39-2-215	State: Montana Human Rights Act	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
			interstate commerce requirements.	to employees in the federal sector.
Are Employers Required to Have a Policy on Breastfeeding Employees?	Public employers must have a written policy supporting women who want to continue breastfeeding after returning from maternity leave. The policy must state that employers shall support and encourage the practice of breastfeeding, accommodate the breastfeeding-related needs of employees, and ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their children. At a minimum, the policy must identify the means by which an employer will make available a space suitable for breastfeeding and breast pumping for a lactating employee, including the provision of basic necessities of privacy, lighting, and electricity for the pump apparatus.	No policy is required under the Montana Human Rights Act. However, no written or unwritten employment policies or practices whatsoever, whether formal or informal, shall be applied to disability due to pregnancy, on terms or conditions less favorable than those applied to other temporary disabilities. Disability as a result of pregnancy includes any condition certifiable by a medical doctor as disabling, whether the condition arises as a result of the normal course of pregnancy, or as a result of abnormal medical conditions which occur in the course of a pregnancy, and may cover the time period beginning with conception through termination of gestation and a reasonable period for recovery therefrom.		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.
Frequency of Milk Expression Breaks	Breastfeeding-related needs of employees must be accommodated.		As frequently as needed by the nursing mother. The frequency of breaks needed to express breast milk will likely vary.	

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Length of Time for Milk Expression Breaks	Breastfeeding-related needs of employees must be accommodated.		Reasonable. The duration of each break will likely vary.	
Duration of Milk Expression Breaks	No specific time limit, but a reasonableness standard applies.		1 year after the child's birth.	
Space Requirements	A space suitable for breastfeeding and breast pumping for a lactating employee, including the basic necessities of privacy, lighting, and electricity for the pump apparatus. The space does not need to be fully enclosed or permanent, but must be readily available during the term that the employee needs the space.		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.	
Pay Requirement	Unpaid, unless concurrent with paid breaks.		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?				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 Seeking Accommodation				
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	

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			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.	
Milk Storage				
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?				
Discrimination/Retaliation	It is an unlawful discriminatory practice for any public employer to refuse to hire or employ or to bar or to discharge from employment an employee who expresses milk in the workplace, or to discriminate against an employee who expresses milk in the workplace in compensation or in terms, conditions, or privileges of employment unless based upon a bona fide occupational qualification.	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	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

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		prohibited from firing, demoting, harassing or otherwise retaliating against an employee because she has complained of discrimination or participated in an employment discrimination proceeding.		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	There is no public enforcement agency for MCA § 39-2-215. However, violation of the law resulting in termination of employment could support a claim under Montana's Wrongful Discharge From Employment. See MCA § 39-2-901, et seq.	Montana Human Rights Bureau.	U.S. Department of Labor, Wage and Hour Division.	U.S. Equal Employment Opportunity Commission.
How to File a Complaint	To file a complaint call the Montana Department of Labor and Industry's Human Rights Bureau at 1-406-444-2884 or 1-800-542-0807 for an intake appointment. A person only has 180 days from when an adverse act happened (or when it was discovered) to have a written complaint filed with the Bureau. This time may be extended, but only in limited circumstances.	To file a complaint call the Montana Department of Labor and Industry's Human Rights Bureau at 1-406-444-2884 or 1-800-542-0807 for an intake appointment. A person only has 180 days from when an adverse act happened (or when it was discovered) to have a written complaint filed with the Bureau. This time may be extended, but only	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 charge and filing deadlines. Important Note: Federal sector employees have a different complaint process.

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		in limited circumstances.		
Is the Agency Required to Monitor and Compile Enforcement Reports?				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?	Yes.	No.	Yes.	Yes, but employees are first required to file a charge with the EEOC.
Worksite Designation Program				
Additional Resources	<p>Montana Breastfeeding Coalition:</p> <ul style="list-style-type: none"> • MT Breastfeeding Laws • Know your rights <p>U.S. Department of Labor Women’s Bureau: Employment Protections For Workers Who Are Pregnant or Nursing</p> <p>Montana WIC Program</p> <p>Mont. Code Ann. § 50-19-501 states that the breastfeeding of a child in any location, public or private, where the mother otherwise has a right to be is legal and cannot be considered a nuisance, indecent exposure, sexual conduct, or obscenity.</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 	<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 	

	State: Montana Code Ann. § 39-2-215	State: Montana Human Rights Act	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
	<p>Montana Department of Labor and Industry: Legal Rights of Pregnant Employees</p> <p>Mont. Code Ann. § 49-2-310 states that it is unlawful for an employer to terminate employment because of the woman's pregnancy, refuse to grant a reasonable leave of absence for the pregnancy, deny compensation to which the employee is entitled, or require a mandatory maternity leave for an unreasonable length of time.</p> <p>Mont. Code Ann. § 49-2-311 states that upon signifying an intent to return at the end of a pregnancy-related leave of absence, the employee must be reinstated to the employee's original job or to an equivalent position.</p>		<p>- Online Guide: "What You Need to Know About the "Break Time for Nursing Mothers" Law</p> <p>Especially see Online Guide sections: - How should you store your breast milk? - What are the space requirements?</p> <p>Wage and Hour Division: Family and Medical Leave Act</p> <p>Center for WorkLife Law: - Pregnant @ Work - Guide for doctors on writing work notes for nursing mothers</p>	<p>Unlawful Sex Discrimination</p> <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 Montana Breastfeeding Coalition. Montana Code Ann. § 39-2-215 and Montana Human Rights Act content was reviewed by the Montana Department of Labor and Industry's Human Rights Bureau in December 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.