



## Guide to the Rights of Breastfeeding Employees in New York

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

### New York Law:

**[New York Labor Law § 206-c](#).** Right of nursing mothers to express breast milk. An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

Resources:

- [New York State Legislature:](#)
  - [Statutory language:](#) full text of NY Labor Law § 206-c.
- [New York State Department of Labor, Division of Labor Standards:](#)
  - [Guidelines Regarding the Rights of Nursing Mothers to Express Breast Milk in the Work Place](#)

### 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: <a href="#">New York Labor Law § 206-c.</a></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> | All employees who are nursing mothers.                    | 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 | Title VII protects employees of private and state and local government employers with 15 or more employees, labor organizations, |

|  | <b>State: <a href="#">New York Labor Law § 206-c.</a></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>  |
|--|---|--|--|
|  |   | employees may still be covered if the employee's own duties meet certain interstate commerce requirements.             | 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> | Employers are required to provide written notification of the provisions of Labor Law §206-c to employees who are returning to work, following the birth of a child, and their right to take unpaid leave for the purpose of expressing breast milk. Notification often comes in the form of a policy handbook.   |  | 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>                                 | The number of unpaid breaks an employee will need to take for expression purposes varies depending on the amount of time the employee is separated from the nursing infant and the mother's physical needs. In most circumstances, employers shall provide unpaid break time at least once every three hours if requested by the employee. Upon election of the employee, unpaid break time may run concurrently with regularly scheduled paid break or meal periods. This benefit is available to the employee during their basic work week and any overtime or additional hours worked. An employee may be required to postpone scheduled unpaid break time for no more than thirty minutes if she cannot be spared from her duties until appropriate coverage arrives. | As frequently as needed by the nursing mother. The frequency of breaks needed to express breast milk will likely vary. |  |
| <b>Length of Time for Milk Expression Breaks</b>                           | Reasonable unpaid break time is sufficient time to allow the employee to  | Reasonable. The duration of each break will likely vary.   |  |

|   | <b>State: <a href="#">New York Labor Law § 206-c.</a></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> |
|---|--|--|---|
|   | <p>express breast milk. Each break shall generally be no less than twenty minutes. If the room or other location is not in close proximity to the employee's work station (e.g. as in a shared work location with a common lactation room) each break shall generally be no less than thirty minutes. Employees can elect to take shorter unpaid breaks for this purpose.</p>  |  |   |
| <b>Duration of Milk Expression Breaks</b> | 3 years after the child's birth.   | 1 year after the child's birth.  |   |
| <b>Space Requirements</b>                 | <p>The room or location provided by the employer for this purpose cannot be a restroom or toilet stall. An employer may dedicate one room or other location for the expression of breast milk and establish a schedule to accommodate the needs of multiple employees needing access thereto. An employer who is unable to provide a dedicated lactation room or other location under these guidelines, may allow the use of a vacant office or other available room on a temporary basis for the expression of breast milk, provided the room is not accessible to the public or other employees while the nursing employee is using the room for expression purposes. As a last resort, an employer who is unable to provide a dedicated lactation room or other location under these guidelines may make available a cubicle for use by individuals expressing breast milk, provided the cubicle is fully enclosed with a partition and is not otherwise accessible to the public or other employees while it is in use for expression purposes. The cubicle walls shall be at least seven feet tall to insure the nursing employee's privacy. Each room or other location used for the expression of breast milk</p> | <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.</p> |   |

|  | <b>State: <a href="#">New York Labor Law § 206-c.</a></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> |
|--|--|--|---|
|  | <p>under these guidelines shall be well lit at all times through either natural or artificial light. If the room has a window, it shall be covered with a curtain, blind, or other covering to ensure privacy for the mother as she is expressing breast milk. The room shall contain, at a minimum, a chair and small table, desk, counter, or other flat surface. In addition, employers are encouraged to provide an outlet, clean water supply, and access to refrigeration for the purposes of storing the expressed milk. The employer must maintain the cleanliness of the room or location set aside for the use of employees expressing breast milk at work. For the purposes of this provision: "Private" shall mean that the room or other location shall not be open to other individuals frequenting the business, whether as employees, customers, or other members of the public. To insure privacy, the room or location should have a door equipped with a functional lock. If a door with a functional lock is not available (in the case of a fully enclosed cubicle) as a last resort an employer must utilize a sign advising the room or location is in use and not accessible to other employees or the public. Any room or location provided for the expression of breast milk must be in close proximity to the work area of the employee(s) using it for the expression of breast milk. Close proximity means the room or location must be in walking distance and the distance to the location should not appreciably lengthen the break time. Should an employer have more than one employee at a time needing access to a lactation room or other</p> |  |   |

|  | <b>State: <a href="#">New York Labor Law § 206-c.</a></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>  |
|--|--|---|--|
|  | <p>location, the employer may dedicate a centralized location for use by all such employees, provided however, that the employer shall make every effort to locate such space at a reasonable distance from the employees using it. Employers located in shared work areas such as office buildings, malls, and similar premises may cooperate with one another to establish and maintain a dedicated lactation room, provided however, that such rooms must be located at a reasonable distance from the employees using the room. Each employer utilizing such common dedicated lactation room will retain individual responsibility for ensuring that it meets all the requirements of these guidelines with regard to their employees. Use of a common dedicated lactation room pursuant to this paragraph will not reduce, mitigate, or otherwise affect the employer's obligations under these guidelines.</p> |   |  |
| <b>Pay Requirement</b>   | <p>Employees must be allowed to use paid or unpaid break time to express breast milk.</p>  | <p><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.</p> |  |
| <b>Are Employers Required to Notify Employees of Their Rights?</b> | <p>Employers shall provide written notification of the provisions of Labor Law §206-c to employees who are returning to work, following the birth of a child, and their right to take unpaid leave for the purpose of expressing breast milk. Such notice may either be provided individually to affected employees or to all employees generally through publication of such notice in the employee handbook or posting of the notice in a central location.</p>  |   | <p>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></p> |

|                                   | <b>State: <a href="#">New York Labor Law § 206-c.</a></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>Requirements for Employees</b> | An employee wishing to avail herself of this benefit is required to give her employer advance notice. Such notice shall preferably be provided to the employer prior to the employee's return to work following the birth of the child in order to allow the employer an opportunity to establish a location and schedule leave time amongst multiple employees if needed.   |  |   |
| <b>Exemption</b>                  | <p>Reasonable effort to provide a private room or other location for the purpose of expression of breast milk must be made so long as it is neither significantly impracticable, inconvenient, or expensive to the employer to do so. Relevant factors in determining significant impracticability, inconvenience, or expense include but are not limited to:</p> <ol style="list-style-type: none"> <li>1. The nature of work performed at the business;</li> <li>2. The overall size and physical layout of the business;</li> <li>3. The type of facility where the business is housed;</li> <li>4. The size and composition of the employer's workforce;</li> <li>5. The business' general hours of operation and the employees' normal work shifts;</li> <li>6. The relative cost of providing a room or other space for the dedicated purpose.</li> </ol> <p>There are no exemptions for providing break time.</p> | 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 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>               | Employers are encouraged, but not required, to provide access to refrigeration for the purposes of storing expressed milk. An employer is not responsible for insuring the safekeeping of  |  |   |

|  | <b>State: <a href="#">New York Labor Law § 206-c.</a></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>  |
|--|---|--|--|
|  | expressed milk stored in any refrigerator on its premises. The employee is required to store all expressed milk in closed containers, regardless of the method of storage and to bring such milk home with her each evening.  |  |  |
| <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> | Upon election of the employee, an employer shall allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid break time(s) so long as the additional time requested falls within the employer's normal work hours. |  |  |
| <b>Discrimination/ Retaliation</b>   | No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace.  | 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 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>  | Encouraging or allowing a work environment that is hostile to the right of nursing  |  | Employers are required to provide a <a href="#">work environment free of</a>   |

|   | <b>State: <a href="#">New York Labor Law § 206-c.</a></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>   |
|---|--|--|---|
|   | mothers to take leave for the purpose of expressing breast milk could constitute discrimination within the meaning of this section of the guidelines.                      |  | <a href="#">harassment</a> based on pregnancy, childbirth, or related medical conditions, including breastfeeding.  |
| <b>Agency Responsible for Enforcement</b>                                 | New York State Department of Labor, <a href="#">Division of Labor Standards</a> and <a href="#">New York State Attorney General</a> .                                      | 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 with the <a href="#">New York State Department of Labor/Division of Labor Standards</a> . For more information, contact the Department at 1-888-469-7365. | 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 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. | <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.  |
| <b>Do Employees Have Private Action Rights?</b>                           | No.  | Yes.   | Yes, but employees are first required to file a charge with the EEOC.   |
| <b>Worksite Designation Program</b>                                       |  |  |   |

|                             | <b>State: <a href="#">New York Labor Law § 206-c.</a></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>Additional Resources</b> | <p>New York Statewide Breastfeeding Coalition: <a href="#">Workplace Support</a></p> <p>New York Department of Health and New York WIC Program: <a href="#">Making It Work Toolkit</a></p> <p><a href="#">Worksites for Wellness</a></p> <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.Y. Exec. L. §§ 292, 296</a> provides a right to reasonable accommodation for “a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques,” and thus could be implicated in a failure to accommodate lactation claim, depending on whether lactation would be found to constitute a qualifying condition under this definition. <a href="#">File a complaint</a> with the New York State Division of Human Rights.</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 New York Statewide Breastfeeding Coalition. New York Labor Law § 206-c content was reviewed by the New York State Department of Labor, Division of Labor Standards in March 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.