

MODEL LACTATION ACCOMMODATION POLICY

Workplaces with Multi-Purpose Space for Lactation

[If there is no dedicated lactation room but it is not an undue hardship¹ for an employer to make available a multi-purpose space (other than a restroom) for lactation and prioritize its use for that purpose, use this model policy.]

[Name of Employer] provides accommodations to employees who pump during work hours. This includes the following lactation accommodation policy administered by [name of relevant department].² Starting March 2019, this policy will be provided to all current employees and all new employees at the start of their employment.

In accordance with the New York City Human Rights Law, [Name of Employer] provides reasonable accommodations for employees' pregnancy, childbirth, or related medical conditions, including accommodations for lactation. Before an employee returns from parental leave, [Name of Employer] will seek to discuss with the employee whether the employee needs a reasonable accommodation to express breast milk at work.

¹ It is the employer's responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

- (a) The nature and cost of the accommodation;
- (b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
- (d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

² Employees who are nursing have additional rights under the New York State Labor Law (N.Y. Lab. Law § 206-c, information available at <https://www.labor.ny.gov/workerprotection/laborstandards/pdfs/guidelinesexpressionofbreastmilkfinal.pdf>), and federal Break Time for Nursing Mothers Law (Fair Labor Standards Act of 1938 (29 U.S.C.A. § 207), information available at <http://www.dol.gov/whd/nursingmothers>). For additional information on the New York City Human Rights Law, visit <http://www.NYC.gov/HumanRights>.

[Name of Employer] will not tolerate discrimination or harassment against any employee based on the request for or usage of lactation accommodations. Any discrimination, harassment, or other violations of this policy can be reported to [name of relevant department].³

Multi-Purpose Space Available for Use for Lactation

- [Name of Employer] has designated [insert room here] as a lactation room when employees are using the room to express breast milk. [Name of Employer] will notify other employees that the room will be prioritized as a lactation room and may only be used for expressing breast milk during the time[s] when employees need the space and will post proper signage to ensure that it is free from intrusion and shielded from view of others while being used as a lactation room.⁴
- The employees who need the room for pumping will be given priority use of the room and their pumping needs will determine the availability of the room for other purposes.⁵
- [Name of Employer] will ensure that the multi-purpose room can be locked from the inside so that the employee pumping can do so without intrusion.
- [Name of Employer] will ensure that the multi-purpose room is clean, free from intrusion, and meets as many of the following requirements as possible: contains at least one electrical outlet, a surface to place a pump and other personal items, and a chair;⁶ and is near running water and a refrigerator to store breast milk. [If employer does not have a refrigerator and cannot provide one because of an undue hardship,⁷ [Name of Employer] will discuss alternative options for where the

³ Employees may also contact the New York City Commission on Human Rights by visiting <http://www.NYC.gov/HumanRights>.

⁴ N.Y.C. Admin. Code § 8-107(22)(b)(ii).

⁵ In the case that the multi-purpose space is used to provide accommodations related to disability or religion, such as for example, use as a prayer room, [Name of Employer] will make every effort to accommodate the needs of all employees.

⁶ N.Y.C. Admin. Code § 8-102. If the lactation room is too far from the employee, [Name of Employer] will discuss alternative options.

⁷ It is the employer's responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

- (a) The nature and cost of the accommodation;
- (b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

employee may store their breast milk, which may include, for example, providing a cooler and ice packs.]

- When more than one employee needs to use the multi-purpose room to express breast milk, *[Name of Employer]* will discuss alternative options with all employees who use the shared space to determine what arrangement addresses their needs. Options may include: finding an alternative space; sharing the space among multiple users with screens, curtains, or other privacy measures; or creating a schedule for use.
- If the multi-purpose room is unavailable for use as a lactation room when an employee needs it, *[Name of Employer]* will provide *[name alternative space]* for temporary use as a lactation room.
- Even if the multi-purpose room is available, an employee who wishes to pump at their usual workspace will be permitted to do this so long as it does not create an undue hardship for *[Name of Employer]*.⁸

Reasonable Time to Express Breast Milk

- *[Name of Employer]* will provide a reasonable amount of time for an employee to express breast milk and will not unreasonably limit the amount of time or the frequency that an employee expresses breast milk.⁹ *[Name of Employer]* will

(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

⁸ Discomfort expressed by a coworker, client, or customer generally does not rise to the level of “undue hardship” for the employer. It is the employer’s responsibility to prove that an accommodation poses an undue hardship. Inconvenience is not an undue hardship. In determining whether an accommodation poses an undue hardship, factors that may be considered include but are not limited to:

- (a) The nature and cost of the accommodation;
- (b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
- (d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

⁹ N.Y.C. Commission on Human Rights, Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, p. 8, https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpretiveGuide_2016.pdf. Reasonable time must be at least the amount of time required pursuant to section 206-c of the New York Labor Law. Law and guidelines can be found here:

Speak with the employee to determine a schedule of breaks that reasonably accommodates the pumping needs of the employee.

- *[If [Name of Employer] already provides compensated breaks:* An employee who uses their break time to express breast milk will be compensated to the same extent and in the same way that other employees are compensated for break time.^{10]}
- *[Name of Employer]* does not require the employee to work while pumping. However, if the employee works while pumping, the employee will be paid at their regular rate for that time.

Lactation Accommodation Request Process

- Before an employee returns from parental leave, *[Name of Employer]* will resend this policy to the employee in writing (electronically or by mail) and request information from the employee regarding the need for a reasonable accommodation to express breast milk at work.
- Employees may also independently request a lactation accommodation by contacting *[name of relevant department/name of individual]*. A request may be made orally or in writing to *[name of relevant department/name of individual]* and should indicate that the employee will need accommodations for expressing breast milk at work. *[If the employer has a request form, the employee may complete it and submit it to the employer in a manner designated by the employer.]*
- *[Name of relevant department/name of individual]* will respond to a request for a lactation accommodation **as quickly as possible**. Under no circumstances will this amount of time exceed five (5) business days.¹¹ During the time it takes to respond to a request and/or engage in a cooperative dialogue to determine the accommodation, *[Name of Employer]* will provide a temporary accommodation to the employee so that the employee can pump in a manner that meets the

<https://www.labor.ny.gov/workerprotection/laborstandards/pdfs/guidelinesexpressionofbreastmilkfinal.pdf>. It provides that, "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 breast milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace."

¹⁰ The Fair Labor Standards Act and New York State Labor Law also require employers to provide certain accommodations for employees to express breast milk. See U.S. Dep't of Labor, Wage and Hour Div., "Fact Sheet #73: Break Time for Nursing Mothers under the FLSA," <https://www.dol.gov/whd/regs/compliance/whdfs73.pdf>; N.Y. Lab. Law § 206-c.

¹¹ N.Y.C. Admin. Code § 8-107(22)(c)(i)(2). See N.Y.C. Commission on Human Rights, Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpretiveGuide_2016.pdf.

employee's immediate needs, unless that poses an undue hardship for the employer.¹²

- [Name of Employer] recognizes that employees' lactation accommodation needs may change over time. Employees may request changes to their existing lactation accommodation at any point.

Undue Hardship¹³

- If [Name of Employer] believes that the lactation accommodation requested poses an undue hardship on [Name of Employer], [Name of Employer] will discuss reasonable alternatives with the employee to accommodate the employee's needs, initiating a cooperative dialogue¹⁴ as quickly as possible, but absolutely no

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- (a) The nature and cost of the accommodation;
- (b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
- (d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

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- (a) The nature and cost of the accommodation;
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- (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
- (d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity. N.Y.C. Admin. Code § 8-102.

¹⁴ The term "cooperative dialogue" means the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person's accommodation needs; potential accommodations that may address the person's accommodation needs, including alternatives to a requested accommodation;

later than five (5) business days from the date of the request.¹⁵ The conversation between [*Name of Employer*] and the employee will be in good faith, may occur orally or in writing, and will conclude with a final written determination of the accommodation granted or denied. This process gives the employee an opportunity to have an open discussion with [*Name of Employer*] about their needs, and [*Name of Employer*] has an opportunity to hear its employee and work with them to come up with an appropriate accommodation for the employee.

- For example, if [*Name of Employer*] believes the length of time an employee needs to pump is an undue hardship for [*Name of Employer*] to accommodate, [*Name of Employer*] will engage in a cooperative dialogue with the employee to determine if there is an accommodation, such as an adjusted pumping schedule, or more frequent pumping breaks for shorter periods of time, that addresses [*Name of Employer*]'s concerns and the employee's needs.
- During the time it takes to respond to a request and/or engage in a cooperative dialogue to determine the accommodation, [*Name of Employer*] will provide a temporary accommodation to the employee so that the employee can pump in a manner that meets the employee's immediate needs unless doing so poses an undue hardship.

and the difficulties that such potential accommodations may pose for the covered entity. N.Y.C. Admin. Code § 8-102.

¹⁵ N.Y.C. Admin. Code § 8-107(22)(c)(i)(2). See N.Y.C. Commission on Human Rights, Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy, https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Pregnancy_InterpretiveGuide_2016.pdf.