

MODEL LACTATION ACCOMMODATION POLICY

Workplaces with No Dedicated Space for Lactation

[If there is no multi-purpose space or dedicated room available for lactation, because providing one poses an undue hardship,¹ 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.

[Name of Employer] will not tolerate discrimination or harassment against any employee based on the request for or usage of lactation accommodations. Any discrimination,

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>.

harassment, or other violations of this policy can be reported to [name of relevant department].³

No Dedicated Space for Lactation

- [Name of Employer] will discuss options to ensure employees will be able to express breast milk at work. Such options may include creating a temporary lactation space, pumping in a shared space, pumping at the employee's work station, or allowing longer breaks for employees to pump offsite.
- [Name of Employer] will ensure the accommodation is clean, free from intrusion, and meets as many of the following requirements as possible: that it contains at least one electrical outlet, a surface to place a pump and other personal items, and a chair;⁴ and is near running water and a refrigerator to store breast milk. [Name of Employer] currently has [state what components of the requirements the employer can provide], and will discuss with the employee how to accommodate the employee's needs to pump at work, including how to ensure the employee's privacy and maintain a sanitary pumping environment.

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.⁵ [Name of Employer] will 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

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

⁵ 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: <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."

extent and in the same way that other employees are compensated for break time.^{6]}

- [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.⁷ 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 that poses an undue hardship for the employer.⁸

⁶ 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.

⁷ 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.

⁸ 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:

- (e) The nature and cost of the accommodation;
- (f) 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;
- (g) 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

- [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 Hardship⁹

- 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 dialogue¹⁰ as quickly as possible, but absolutely no later than five (5) business days from the date of the request.¹¹ 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.

(h) 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 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.

¹⁰ 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; and the difficulties that such potential accommodations may pose for the covered entity. N.Y.C. Admin. Code § 8-102.

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.

- 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.