

# New Lactation Room Laws: What Employers Need to Know

**An examination of existing federal, New York State and New York City policies regarding lactation rooms in the workplace, with a discussion on some practical guidance for New York City employers in light of the new laws.**

By **Avi Lew**, New York Law Journal | April 29, 2019



New York City passed two new laws, New York City Local Laws 185 and 186 (the “NYC lactation room laws”) that went into effect on March 18, 2019 and that expand the rights of nursing mothers in the workplace. Specifically, the laws set forth new mandatory standards that require employers to provide a lactation room and to implement written lactation room accommodation policies. These new laws amend the New York City Human Rights Law (N.Y.C. Admin. Code §§8-101 to 8-131).

Before analyzing the New York City lactation room laws, this article first will examine existing federal and New York State policies regarding lactation rooms in the workplace. It then will analyze the New York City lactation room laws and explain how they expand upon the existing federal and state rules that apply to New York City employers. This article concludes with some practical guidance for New York City employers in light of the NYC lactation room laws.

## **Federal Lactation Room Law**

President Barack Obama signed the Affordable Care Act (ACA) on March 30, 2010. Section 4207 of the ACA amends §7 of the Fair Labor Standards Act (FLSA) of 1938 (29 U.S. Code 207) to require that employers provide basic time and space accommodations for breastfeeding mothers at work (the federal lactation room

law). Specifically, the federal lactation room law states that any “covered employer” under the FLSA must provide its “non-exempt” employees with reasonable break time, for a period of one year after the child’s birth, for an employee to express breast milk for her nursing child each time such employee has need to express milk. (With few exceptions, to be considered “exempt,” the employee must (a) be paid no more than \$23,600 per year, (b) be paid on a salary basis, and (c) perform exempt job duties (as outlined in the FLSA regulations promulgated by the U.S. Department of Labor.) FLSA defines an employer to include “any person acting directly or indirectly in the interest of an employer in relation to an employee,” including a public agency.

Notably, unlike most other federal employment laws, employers covered under FLSA do not need to employ a threshold number of employees to be covered. Instead, specific criteria are applied that are different for public and private employers. In general, private employers must comply with the FLSA if they are engaged in interstate commerce and have an annual gross income of at least \$500,000 to be a “covered employer.” This is referred to as the “enterprise coverage” test. Most employers will meet those criteria.

In the case of employees paid on an hourly basis, employers are not required to compensate such employee for time spent on “reasonable break time” while the employee expresses milk. However, the law neither defines “break” nor what is considered “reasonable.” Employers also must provide a private place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, for the employee to express breast milk. “Private” means that other people cannot see an employee while she is pumping breastmilk. The space does not have to be a permanent, dedicated lactation room.

Moreover, under federal lactation room law, an employer with fewer than fifty employees is not subject to the federal lactation room law requirements if the employer can demonstrate that these requirements impose an “undue hardship.” Undue hardship is determined by looking at the difficulty or expense of an employer’s compliance in comparison to its size, financial resources, nature, and structure of its business. Federal lactation room law requirements do not preempt a state (or municipality) from expanding on the federal laws or from enacting similar laws, or enforcing union contracts that require greater protections for employees.

## **NYS Lactation Room Law**

Currently, 29 states, including New York, have laws that address the rights of nursing women at work. In addition to state laws, some employers may be required to comply with local rules (such as New York City) and/or union regulations for their workplace.

The New York State Labor Law requires New York State employers to provide nursing mothers in the workplace with reasonable unpaid breaks to express breast milk for up to three years following the birth of a child and to provide reasonable access to a dedicated lactation room or other private area in close proximity to the employee's work area. N.Y. Labor Law §206-c (2007). The statute does not define the terms "reasonable" and "privacy." This standard is similar to that imposed by federal law.

## **NYC Lactation Room Law**

The NYC lactation room laws expand on the federal law and New York State Labor Law and create additional requirements that the room designated as a lactation room (1) be a sanitary place, other than a restroom, that provides total "privacy" to an employee using the room to express milk, (2) be equipped with an electrical outlet, a chair, a surface on which employees may place a breast pump and other personal items, and (3) provide the employee with close access to running water, and also require employers to provide a refrigerator suitable for breast milk storage in reasonable proximity to an employee's work area.

Significantly, the lactation room laws also require New York City employers to distribute a written policy to new employees that (1) informs them of their right to request a lactation room, (2) sets forth the process for submitting an accommodation request, (3) specifies that an employee's request for a lactation room will be responded to within a reasonable period of time not to exceed five business days, (4) establishes a procedure when two or more employees need to use the lactation room at the same time, (5) as required by New York State Labor Law §206-c, provides reasonable break time to employees needing to express breast milk, and (6) states that if an employee's lactation room request poses an "undue hardship" for the employer, the employer will engage in "cooperative dialogue" with the employee.

The New York City Commission on Human Rights recently developed model policies and a lactation room request form, both of which are available on its [website](#). The Commission explained in its guidelines that the new policies were enacted because “New York City is striving to change work culture surrounding lactation accommodations to reduce stigma, educate employers, support employees, and normalize pumping at work.” The Commission continued that providing reasonable accommodations to employees who pump and/or express breast milk is not only the law, but also provides economic benefits to employers as well, including retention of experienced employees, reduction in time taken by employees for children’s illnesses, and lower healthcare and insurance costs.

### **Takeaways for Employers**

The New York City lactation room laws place New York City at the forefront of providing expanded rights to nursing mothers in the workplace. Unlike the federal lactation room laws that apply to certain employees based on financial considerations of both employer and employee and the New York State lactation room laws that apply to all employers, the NYC lactation room laws apply to all New York City employers with four or more employees, irrespective of financial considerations.

In light of the enhanced New York City lactation room laws, New York City employers must make certain that they provide lactation room arrangements to accommodate an employee needing to express breast milk, so that they comply with New York City’s new mandatory standards. Employers should train their managers and supervisors regarding the new expanded obligations.

New York City employers also must implement written lactation room accommodation policies and procedures consistent with the new requirements, which must be disseminated to all newly hired workers. Additionally, while not required by the lactation room laws, it would be prudent for New York City employers to distribute the relevant policies to all of their employees and not merely to their new hires.

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