



Guide to the Rights of Breastfeeding Employees in California

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

California Laws:

California Labor Code § 1030-1033:

1030. Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid.

1031. The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.

1032. An employer is not required to provide break time under this chapter if to do so would seriously disrupt the operations of the employer.

1033. (a) An employer who violates any provision of this chapter shall be subject to a civil penalty in the amount of one hundred dollars (\$100) for each violation.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a violation of this chapter has occurred, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for violations of this chapter shall be the same as those set forth in Section 1197.1.

(c) Notwithstanding any other provision of this code, violations of this chapter shall not be misdemeanors under this code.

Resources:

- [State of California Department of Industrial Relations Division of Labor Standards Enforcement \(California Labor Commissioner's Office\):](#)
 - [Lactation Accommodation:](#) includes information on general requirements and frequently asked questions.

California Fair Employment and Housing Act (Government Code sections 12900 through 12996): The Fair Employment and Housing Act prohibits harassment and discrimination in employment because of race, color, religion, sex, gender, gender

identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, medical condition, genetic information, age, military and veteran status, pregnancy, denial of medical and family care leave, or pregnancy disability leave. [Government Code 12926](#) expands the definition of sex discrimination to include pregnancy, childbirth and breastfeeding, plus any medically related conditions regarding pregnancy, childbirth and breastfeeding.

Resources:

- [California Department of Fair Employment and Housing](#):
 - [Statutory language](#): full text of the California Fair Employment and Housing Act
 - ["Notice A" Your Rights and Obligations as a Pregnant Employee](#): summary of employee rights and obligations under the Fair Employment and Housing Act (FEHA).
 - [California Law Prohibits Workplace Discrimination and Harassment](#): employers are required to post this document.

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: California Labor Code § 1030-1033	State: California Fair Employment and Housing Act	Federal: Break Time for Nursing Mothers Law	Federal: Title VII of the Civil Rights Act
Eligible Employees	All employees.	All employees of businesses with 5 or more employees except individuals employed by his or her parents, spouse, or child, any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility, or independent contractors. Note: The provision prohibiting harassment in employment applies to employers with 1 or more employees and covers employees, applicants, unpaid interns or volunteers, and independent contractors.	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 interstate commerce requirements.	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 to employees in the federal sector.
Are Employers Required to Have a Policy on Breastfeeding Employees?				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

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				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	Reasonable.		As frequently as needed by the nursing mother. The frequency of breaks needed to express breast milk will likely vary.	
Length of Time for Milk Expression Breaks	Reasonable.		Reasonable. The duration of each break will likely vary.	
Duration of Milk Expression Breaks			1 year after the child's birth.	
Space Requirements	Private space other than a toilet stall in close proximity to the employee's work area. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.		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	

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			determine that is the best way to meet their obligations under the law.	
Pay Requirement	Unpaid, unless concurrent with paid breaks. The Industrial Welfare Commission Wage Orders require that employers must authorize and permit nonexempt employees to take a paid rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the number of total hours worked daily and generally must be at the minimum rate of a net ten consecutive minutes for each four hour work period or major fraction thereof. The rest period is defined as a "net" ten minutes, which means that the rest period begins when the employee reaches an area away from the work area.		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 California Law Prohibits Workplace Discrimination and Harassment notice. Employers are also required to provide reasonable advance notice advising employees affected by pregnancy, childbirth, or related medical conditions of their rights and obligations under the Fair Employment and Housing Act.		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>

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Requirements for Employees		Employers may require an employee to obtain medical verification of the need for reasonable accommodation from the employee's own health care provider, related to her pregnancy, childbirth, or related medical condition.		
Exemption	An employer is not required to provide an employee break time for purposes of expressing milk if to do so would seriously disrupt the operations of the employer.		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 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		Employers are required to provide		

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Consider Providing Additional Accommodations for Breastfeeding Employees?		reasonable accommodation when requested, with the advice of the employee's health care provider, related to her pregnancy, childbirth, or related medical condition.		
Discrimination/Retaliation	Employers are prohibited from retaliating against employees who exercise their rights under this section or file a complaint under this section.	Discrimination in employment based on sex, including pregnancy, childbirth and breastfeeding, plus any medically related conditions regarding pregnancy, childbirth and breastfeeding is prohibited.	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 because she has complained of discrimination or participated in an employment discrimination proceeding.
Protection from Harassment		Harassment of employees, applicants, unpaid interns or volunteers, and independent contractors by any persons is prohibited, including harassment based on pregnancy, childbirth, breastfeeding and/or related medical conditions. Employers		Employers are required to provide a work environment free of harassment based on pregnancy, childbirth, or related medical conditions, including breastfeeding.

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		are required to take all reasonable steps to prevent harassment.		
Agency Responsible for Enforcement	California Department of Industrial Relations, Division of Labor Standards Enforcement (California Labor Commissioner's Office) .	California Department of Fair Employment and Housing .	U.S. Department of Labor, Wage and Hour Division .	U.S. Equal Employment Opportunity Commission .
How to File a Complaint	For an individual offense, see How to file a retaliation/discrimination complaint . For widespread violation of lactation accommodation law, see How to report a labor violation with the Bureau of Field Enforcement The complaint forms cannot be filed electronically or by fax. You must print and mail or hand-deliver a copy of the completed and signed complaint form to the nearest Wage Claim office. Use the DLSE Wage Claim Office locator to find a location near you.	If you believe you are the victim of illegal discrimination, you may file a Pre-Complaint Inquiry to initiate the complaint process using any of the options below: <ul style="list-style-type: none"> - Use the Department's online system. - Call the Communication Center at (800) 884-1684. - Request the Pre-Complaint Inquiry form, complete and return it via U.S. mail to any of DFEH's office locations. - E-mail the Pre-Complaint Inquiry form to contact.center@dfeh.ca.gov 	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 .
Is the Agency Required to Monitor and Compile Enforcement Reports?		DFEH is required to render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.		Yes.

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Sanctions for Non-Compliance	An employer who violates any provision of this chapter shall be subject to a civil penalty in the amount of \$100 for each violation. The civil penalty of \$100 would apply each time the employee needed to pump but was unable to.	After the Department of Fair Employment and Housing (DFEH) issues a merit finding, mandatory dispute resolution is conducted by the Dispute Resolution Division free of charge to the parties. If dispute resolution fails, the DFEH may pursue litigation. For more information, see Complaint Process .	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.	Yes.	Yes, but employees are first required to file a charge with the EEOC.
Worksite Designation Program	Mother-Baby Friendly Workplace Award . <i>Note: designation is not required under California law.</i>			
Additional Resources	<p>California Breastfeeding Coalition:</p> <ul style="list-style-type: none"> - Breastfeeding Rights - Workplace Lactation Accommodation - Mother-Baby Friendly Workplace Award <p>U.S. Department of Labor Women’s Bureau: Employment Protections For Workers Who Are Pregnant or Nursing</p> <p>California Department of Public Health: Breastfeeding Webpage</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 	<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 	

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			<p>Breastfeeding Employees and their Employers</p> <p>- Online Guide: "What You Need to Know About the "Break Time for Nursing Mothers" Law</p> <p>Especially see Online Guide sections:</p> <ul style="list-style-type: none"> - How should you store your breast milk? - What are the space requirements? <p>Wage and Hour Division: Family and Medical Leave Act</p> <p>Center for WorkLife Law:</p> <ul style="list-style-type: none"> - Pregnant @ Work - Guide for doctors on writing work notes for nursing mothers 	<p>Lactation Discrimination is 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 California Breastfeeding Coalition. Information on the California Fair Employment and Housing Act included in this document has been reviewed by Alexandra Seldin, Senior Staff Counsel for the California Department of Fair Employment and Housing. California Labor Code § 1030-1033 content was reviewed by the California Department of Industrial Relations, Division of Labor Standards Enforcement (California Labor Commissioner's Office) in June 2016. Title VII of the Civil Rights Act content is based on Equal Employment Opportunity Commission publications.