

March 25, 2019

Legal Alert: Amended New York City Lactation Laws Expand Employers' Obligations

Effective as of March 18, 2019, New York City will adopt two bills that will amend the New York City Human Rights Law that requires employers to provide a lactation space for employees who express milk at the workplace. The previous New York State Labor Law required employers to provide reasonable unpaid break time (or permit employees to use paid break time) to express milk in the workplace and to “make reasonable efforts” to provide a room or other location, other than a restroom, to express milk in private. The new bills expand on these laws by requiring employers to provide a lactation room for employees and implement a written policy informing employees about the existence of the lactation room and the process by which they can make lactation-related accommodation requests. Here’s what you need to know:

Executive Summary

New York City is adopting laws that will further obligate employers to make accommodations for employees expressing breast milk, including:

- designating a lactation room to be used while an employee is expressing breast milk in the office;
- providing certain accommodations in that lactation room, such as a chair and refrigerator; and
- drafting a written policy specifying how to notify the office about use of the lactation room and what to do if two people need to use the room concurrently.

Lactation Room Requirements

The first bill, [Int. No. 879-A](#), requires employers to provide a lactation room and a refrigerator suitable for breast milk storage for employees who express breast milk at the workplace. This refrigerator must be “in reasonable proximity” to the employee’s work area. The lactation room must be a sanitary place, other than a restroom, which can be used to express breast milk shielded from view and free from intrusion. The bill requires that the lactation room include, at least, an electrical outlet, a chair, and a surface upon which to place a breast pump and other personal items as well as nearby access to running water.

Note that this bill does not require employers to create a room solely dedicated to express breast milk, but rather, if the room designated for lactation is also used for other purposes, then the room must be used solely as a lactation room during the timeframe when an employee is using the room to express milk. Further, the employer must provide notice to other employees that the room will be given preference for use as a lactation room during that timeframe.

If providing a lactation room that meets the above referenced standards causes an undue hardship on the employer, the bill requires the employer to engage in a “cooperative dialogue” with its employees to

determine if there any alternative accommodations that may be available. Currently, there is no standard for how to measure what consists of an “undue hardship”; but, should the relevant agencies use the New York City Human Rights Law as a guideline, this will be a high standard to meet – likely resulting in only a few employers legitimately claiming an undue hardship. Following the cooperative dialogue discourse, the employer must provide its employees a written determination specifying if any alternative accommodations have been granted or denied.

Written Lactation Room Policy Requirement

The second bill, [Int. No. 905-A](#), requires employers to implement a written lactation room policy, notifying employees that they have a right to a lactation room and informing employees of the process by which they can make lactation-related accommodation requests. Note that although the bill specifically requires that the written policy be distributed to all new employees on hire, it does not state how current employees should be informed.

The policy must:

- state how an employee can submit a request for a lactation room;
- specify that the employer must respond to any request for a lactation room within a reasonable amount of time, which is not to exceed five business days;
- provide procedures for when two or more individuals need to use the lactation room concurrently, including the individuals’ contact information (should any follow-up be necessary);
- require the employer to provide reasonable break time for an employee to express breast milk pursuant to Section 206-c of the New York State Labor Law; and
- specify that if the request for a lactation room poses an undue hardship on the employer, the employer must engage in a cooperative dialogue, as iterated further above.

The bill also requires the New York City Commission on Human Rights, with the aid of the Department of Health and Mental Hygiene, to develop a model lactation room accommodation policy and request form to be used by employers. The current [model policy](#) on Department of Health’s website does not reflect the new requirements iterated above but will likely be posted [here](#), upon completion.

What nonprofits should do now:

1. Evaluate your new mothers’ policy to make sure it complies with both current policies and the new lactation room requirements and lactation room policy requirements.
2. If the nonprofit organization has four or more employees, it must designate a lactation room at its premises. The lactation room must be:
 - a sanitary place other than a restroom;
 - free from intrusion;
 - nearby access to running water; and
 - in close proximity to the work area of the employee using it for the expression of breast milk.

3. The room should also contain the following, at minimum:
 - an electrical outlet;
 - a chair; and
 - a surface on which to place a breast pump and other personal items.

4. Even if the office already has a lactation room, make sure it follows the requirements listed in items 2 and 3 above and start writing a policy informing the employees about the lactation room and procedures which employees can make lactation-related accommodation requests. The policy must:
 - specify the means by which an employee can submit a request for a lactation room;
 - require the employer to respond to a request for a lactation room within a reasonable amount of time not to exceed five business days;
 - provide a procedure to follow when two or more individuals need to use the lactation room at the same time, including contact information;
 - state that the employer shall provide reasonable break time for an employee to express breast milk, consistent with section 206-c of the Labor Law; and
 - state that if the request for a lactation room poses an undue hardship on the employer, the employer shall engage in a cooperative dialogue.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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