

New York City Releases FAQs, Additional Guidance on Lactation Room Law

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The New York City Commission on Human Rights (CCHR) has released a [Frequently Asked Questions](#) (FAQs) page and other additional guidance for the City's lactation room law, which became effective March 18, 2019.

The law requires all employers with at least four employees to provide a written policy on employees' lactation accommodation rights. For more information on the law, please see our articles, [New York City Releases Model Policies for Lactation Room Law](#), [New York City Employers Must Provide Lactation Rooms, Maintain Written Policy Starting March 18, 2019](#), and [New York City to Require Private Employers to Establish Lactation Rooms and Policies](#).

In addition to the FAQs, the City's dedicated [lactation accommodation page](#) includes an overview on lactation accommodations titled [Lactation Accommodations: What NYC Employers Need to Know](#).

The following are highlights.

Policies

The FAQs confirm that the model lactation policies created by the CCHR do not have to be adopted by employers, as long as the employers' policy contains the minimum requirements stated in the law.

Notice

The law requires employers to distribute a lactation room policy to all employees upon hiring. However, the FAQs clarify that, if possible, an employer should also provide an employee information on lactation accommodation rights before an employee starts parental leave.

Additionally, employees may request lactation accommodations at any time, orally or in writing, and the employer then has five business days to respond to the request.

Coverage

The FAQs state that an employee may pump at work regardless of whether they actually gave birth to their baby (*e.g.*, where employees who adopt may want to induce lactation or in the context of surrogacy).

Workspaces/Lactation Rooms

Unless doing so poses an undue hardship for an employer, an employee who wishes to pump at their usual workspace must be allowed to do so. The FAQs clarify that discomfort expressed by a coworker, client, or customer generally does not rise to the level of "undue hardship" for the employer.

Additionally, the FAQs state that if an employee needs to travel for an extended

period of time, the employer may need to provide additional accommodations, including paying for shipment of breast milk home (subject to the undue hardship test).

Other lactation room solutions provided in the FAQs include:

- Portable lactation spaces;
- Using employer vehicles (*e.g.*, the cab of a large agriculture or construction vehicle), along with shades or other privacy measures the employer can offer;
- Pop-up tents;
- Other mobile enclosed spaces that would allow mobile employees to pump in privacy;
- Temporarily assigning changing rooms, manager offices, or conference rooms to serve as pumping spaces;
- Setting up a stall in an employee locker room;
- For employees with mobile routes, ensuring employees are able to find a space to pump, using portable screens to provide privacy in a shared area; and
- Subsidizing the purchase and use of hands-free, battery-operated, or chargeable breast pumps while in the field.

Further, though not required by law, employers may provide amenities such as “dish soap and paper towels for cleaning and drying pump parts and bottles, storage space for pump kits, hooks for hanging clothes, cleaning supplies for pumps and sink areas, and a microwave for sterilizing pump parts.”

The FAQs also provide the following example for a small food establishment:

If an employee works at a small food establishment only equipped with a service counter and a restroom, the employee should be allowed to use the restroom if needed, and be allowed to lock the restroom for however long they need to pump, however many times a day they need to pump, during their shift. The employer can promote the most sanitary condition as possible by having the restroom cleaned more frequently, by installing a barrier or stall to separate the toilet from the rest of the bathroom area, and/or by permitting the employee to bring in a clean table from outside the restroom to place the pump and pump parts for each break.

Scheduling

The FAQs state that an employer cannot “require an employee to alter their pumping schedule due to scheduling or space restraints.” That is, unless doing so poses an undue hardship, the employee’s pumping needs must determine the lactation room schedule.

Undue Hardship

In the case of undue hardship on the employer, the FAQs state the employer should work with the employee to meet as many of the lactation accommodation requirements as possible. This includes identifying a shared space that may be used for lactation; putting up privacy screens in a shared space or around a workspace to create privacy; ensuring employees can pump at their workspace; purchasing a mini or compact refrigerator or other cooling devices for employees’ use; or providing a cooler and ice packs to employees for storage purposes.

Penalties

The FAQs confirm that failure to maintain a lactation accommodation policy may result in penalties and damages assessed against employers by the CCHR.

Please contact a Jackson Lewis attorney with any questions related to policies and other preventive practices.

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