

EMPLOYEES

Laws Impacting Breastfeeding at Work

California:

Civil Code, Section 43.3: Breastfeeding in Public

Labor Code 1030: Reasonable accommodations for lactation in workplace

Labor Code 1171.5: Labor laws enforced regardless of immigration status

DFEH vs. Acostas Tacos: “Breastfeeding is an act intrinsic to being female”

AB 2386: Under FEHA, Breastfeeding employed mothers are a protected class.

FEHA, Preg Regs: Lactation is officially defined as “other related medical condition”

Federal:

Title VII

Title IX

Fair Labor Standards Act “Break Time for Nursing Mothers”



CA Anti-Discrimination Law

FEHA, California's Civil Rights Law:

Prohibits Harassment and Discrimination on Basis of

- Age (40 and over)
- Ancestry
- Color
- Religious Creed (including religious dress and grooming practices)
- Denial of Family and Medical Care Leave
- Disability (mental and physical) including HIV and AIDS
- Marital Status
- Medical Condition (cancer and genetic characteristics)
- Genetic Information
- National Origin (including language use restrictions)
- Race
- **Sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding)**
- Gender, Gender Identity, and Gender Expression
- Sexual Orientation



Pregnancy/Lactation Accommodations: Reasonable Accommodations

Fair Employment and Housing Act (FEHA) - Government Code § 12945:

Unlawful to engage in specified discriminatory practices in employment accommodations on the basis of sex (**including breastfeeding or medical conditions related to breastfeeding**).

Employers are required to provide **reasonable accommodations** for employees with a condition related to pregnancy or childbirth, including lactation.

A “reasonable accommodation” is an adjustment to an employee’s work environment that enable the employee to perform the essential functions of the job. Common ones include:

- Transferring to a less hazardous or strenuous position
- Change in hours
- Uniform modifications

State Law Requirement for Lactation Break Time

Labor Code Sections 1030-1033

- Employers are required to provide “reasonable” break time to employees who need to express milk
- Break times should be as close to regularly scheduled paid breaks as possible
 - Any additional break time needed must be provided but is unpaid

- Exception: Employer is not required to provide break time if it would “seriously disrupt” the operations of the employer. (Note: challenging to meet this test)

State Law Requirement for Lactation Break Time

Labor Code Sections 1030-1033

Duration of Lactation Breaks

- The length must be a reasonable amount of time to express milk, PLUS
- Additional variables to consider:
 - Time to reach the lactation space
 - Time to prepare
 - Time to store milk
 - Time to clean up/pack up

Remember: Quality and availability of lactation space directly impacts time!

CA Requirement for Lactation Space

Must make reasonable efforts to provide a private space that is not a bathroom (if regular work space isn't suitable)

The space should be:

- Shielded from view and free from intrusion by other employees
- Close proximity to employee's work area
- Not a bathroom stall

Comparison: California v. Federal Law

	California Law	Federal Law
Preemption	When state and federal law differ, the law with greater protection prevails.	
Who	Applies to ALL employers and employees. Employer of any size is exempted from providing break time under this section if doing so would seriously disrupt the employer's operations.	Applies to non-exempt employees. Employers with less than 50 employees may be exempt if compliance would create 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.
How long	Reasonable amount of break time (no upper age limit).	Reasonable amount of break time up to 1 year after infant's birth.
Breaks	May use paid rest and/or meal break times. Additional unpaid breaks may be taken if not used concurrently with paid breaks.	
Space	An employer must make <u>reasonable</u> efforts to provide a room or other location in close proximity to the work area for the employee to express milk in private. Space cannot be a toilet stall.	Employer <u>shall</u> provide a place shielded from view and free from intrusion from co-workers and the public for the employee to express breastmilk. Space cannot be a bathroom.
Penalty	Civil penalty of \$100 per violation.	Civil sanction, \$1,100 per willful violation.

Employer Consequences for Legal Violations

- Failing to provide a lactation break carries a penalty fine for *each violation* (**Labor Code § 1033**)
- Discrimination consequences:
 - Compensatory damages, money for lost wages, unpaid wages, medical costs
 - Punitive damages
 - Legal expenses
 - Bad publicity!

Employees may resolve the dispute by:

- Using internal Title IX, HR or union grievance policy
- File a complaint with an administrative agency
- File a civil lawsuit

STUDENTS

Anti-Discrimination Law and Pregnant/Parenting Students

Sex

Pregnancy

Pregnancy, False Pregnancy,
Termination, Childbirth, Lactation,
Recovery and related conditions

Key anti-discrimination laws:

- Title IX
- CA Sex Equity in Education Act
- CA Unruh Civil Rights Act

Reasonable Accommodations for Pregnant/Parenting Students

Title IX & CA Law:

- ADA/504 Accommodations cover pregnancy-related impairments
- Any special services/accommodations provided to students with “temporary conditions” must be provided to students with pregnancy-related conditions

Bottom line:

Treating pregnant or lactating students differently or denying reasonable accommodations is sex discrimination.

Common Accommodations for Pregnant/Parenting Students

- Delayed deadlines
- Bathroom breaks
- Breaks for rest or water
- Time to pump breast milk during class or exams
- Parking space
- A larger chair so pregnant student can sit comfortably
- Modification of equipment, test, or training materials, or policies

Accommodations: Additional Considerations

- Typical accommodations processes may be poorly suited to address pregnancy-related accommodation needs
 - Deadlines
 - Onerous certification requirements
 - Disability Stigma and lack of awareness
 - Gray areas
- Colleges can require a pregnant student to submit medical certification only if it also requires the same of all similarly-situated students under a doctor's care.
- Schools must be very careful about confidentiality of pregnancy information: protected under Constitution, HIPAA, & CA laws.

Leave and Absences

Leave permitted “as long as medically necessary”

Is determined by a physician and may include:

- ▶ medically-necessary doctor’s appointments
- ▶ leave during pregnancy
- ▶ time off for childbirth and recovery
- ▶ post-birth absences related to pregnancy/childbirth (such as for breastfeeding)

Leave and Absences

“...reinstated to the status which she held...” following the absence

Includes:

- ▶ Guaranteed re-admittance to program
- ▶ No penalty or grade deductions
- ▶ Must be allowed to make up assignments
- ▶ Stop-the-clock on time to degree policies
- ▶ Law provides no exceptions

Student Lactation Time/Space Requirements

Time to express milk:

- Reasonable amount of break time as frequently as needed for all nursing mothers (frequency and duration of milk expression may vary)
- For students: break time without incurring academic penalty and with the ability to make up any missed work

Time/Space Bottom Line:

- If lactation space adequacy or time issues prevent student from equal access to an education, it is a Title IX problem!