

New York's New & Upcoming Paid Nursing and Pregnancy Protections

New York recently enacted and implemented laws requiring accommodations for pregnant and nursing employees. These laws are in addition to the recently enacted federal laws, i.e., the Pregnant Workers Fairness Act ("PWFA"), the Providing Urgent Maternal Protections for Nursing Mothers Act (the "PUMP" Act), and the NY State and City lactation accommodation laws, including their lactation room requirements.

As of June 19, 2024, all New York employers must provide employees with 30-minute paid lactation breaks when employees need to express breast milk for up to three years following childbirth. These 30-minute paid lactation breaks are in addition to any regularly paid break or meal time. Additionally, pursuant to Section 206-c of the New York Labor Law and the NYSDOL's instructive FAQ:

- Employees can take shorter breaks if they choose.
- Employees may also use their regular paid break time or meal time to pump breast milk. This means that employers cannot take time away from meal periods or regularly paid breaks to cover time to pump breast milk.
- Employees can also choose to take breaks for breast milk expression right before or after their regularly scheduled meal time or paid break periods.
- Employers cannot require employees to stay beyond their regularly scheduled work hours because they took breaks during the workday for breast milk expression.
- Employers must accommodate employee(s) whenever they reasonably need a break to express breast milk. The number of break times needed throughout the day may be unique to each individual employee.¹
- Employees are required to provide advance written notice, preferably before their return from leave, when they intend to use such breaks.

As a reminder, New York employers must provide a place for eligible employees to express breast milk. The room or location provided to express breast milk cannot be a restroom or toilet stall. As established in the NYSDOL's model policy, the private room or other location must contain a chair and small table or other flat surface and must include good natural or artificial light and an electrical outlet. A temporarily vacant room may be used to satisfy this requirement, and a cubicle can be used, provided it is fully enclosed with walls that are at least seven feet tall. NYC employers must also comply with NYC's lactation accommodation and policy obligations.

Employers will need to update their NY nursing rights policy to include the foregoing changes. In making such changes, employers may use the NYSDOL's updated model policy available on their website as a template or point of reference. Employers are also required to provide written notification to employees about their rights regarding breast milk expression by providing them with the NYSDOL Policy on the Rights of Employees to Express Breast Milk in the Workplace when they start a new job (i.e., at the time of hire), annually thereafter, and upon their return to work following the birth of a child.

¹ While the law and guidance are silent on how frequently it would be reasonable for an employee to use this new paid lactation break benefit, previous NYSDOL guidance relating to the prior version of this law (that required employers to provide unpaid break time) provides that employees "can take breaks at least once every three hours to pump breast milk."

Relatedly, on January 1, 2025, all New York employers, regardless of size (including employers with four or fewer employees that only need to provide unpaid sick leave), will be required to provide paid prenatal leave to eligible employees during their pregnancies under NY's Paid Sick Leave Law. Under NY's amended sick leave law, employers will be required to:

- Provide eligible pregnant employees up to 20 hours of prenatal leave during any 52-week period for certain healthcare services relating to their pregnancies (including attending medical appointments).
- Employees can use such leave in one-hour increments for qualifying reasons such as "for the health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy."
- These 20 hours are in addition to the mandatory hours of sick leave under NY's Paid Sick Leave Law that vary based on employer size. There is no waiting period for the use or accrual of paid prenatal leave.
- Prenatal leave must be paid at 100% of the employee's regular rate of pay, but employers are not required to pay employees for any unused leave upon separation from employment.

Additional guidance is expected from the state prior to the effective date, especially since certain items remain unanswered, such as how much notice is required to take leave, documentation requirements, whether any carry-over of unused time is required, etc.

Employers should review and ensure compliance with these new lactation and prenatal leave laws by updating relevant policies relating to pregnancy

accommodations, providing any necessary training to managers and human resources staff, and ensuring payroll systems are properly configured to track and administer such leave.

Should you have any questions or need assistance with updating related policies, please contact:



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Amory represents employers and executives in all aspects of the employment relationship with a focus on counseling, litigation avoidance and, when necessary, litigation. Her counseling experience on behalf of a broad range of employers includes advice on issues ranging from discrimination and retaliation to wage-and-hour issues to compensation. She also regularly drafts, updates, and negotiates agreements and policies on behalf of clients concerning executive employment agreements, separation agreements, and other business arrangements.



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Rose is an employment lawyer whose practice primarily focuses on two main areas (advice and counseling, and employment law and related litigation) that use a wide-range of skills from employment law to assist clients in navigating complex employment matters in the workplace.

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