

## Employment Law Alert – N.Y.C.’s Updated Lactation Room Requirements

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Most New York City employers are now required to (1) provide a lactation room and (2) develop a written lactation room accommodation policy. The presence of a lactation room in accordance with these New York City administrative code amendments does not affect an individual’s already established right to breastfeed in public pursuant to article 7 of the NYC Human Rights Law. The amendments take effect on March 17, 2019.

### Lactation Rooms

Under New York City Local Law No. 185, employers with four or more employees (“Employers”) must provide a lactation room in their workspaces for breastfeeding employees. Under the law as revised, a lactation room is defined as a “sanitary place, other than a restroom, that can be used to express breast milk shielded from view and free from intrusion and that includes at minimum an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water.” The lactation room and a refrigerator suitable for breast milk storage must be in reasonable proximity to the lactating employee’s work area.

While the lactation room may be used for other purposes, the room’s sole function shall be as a lactation room while the employee is using the room to express breast milk. Additionally, the

Employer must provide notice to all other employees that the room is given preference for use as a lactation room while the employee is using the room.

### **Written Policy Regarding Lactation Room**

New York City Local Law No. 186 further requires that Employers develop and implement a written lactation room accommodation policy that sets forth the procedures and processes for employees' use of the lactation room. The policy must be distributed to all employees upon hiring. The policy must include a statement that employees have a right to request use of a lactation room, and must identify a process by which the employees may request a lactation room.

The process for requesting a lactation room under the policy must:

- (1) Specify the means by which an employee may submit a request for a lactation room;
- (2) Require that the Employer respond to a request for a lactation room within a reasonable amount of time, not to exceed 5 business days;
- (3) Provide a procedure to follow when two or more individuals need to use the lactation room at the same time, including contact information for any follow up required;
- (4) state that the Employer shall provide reasonable break time for an employee to express breast milk as required by NYC labor laws; and
- (5) state that if the request for a lactation room poses an undue hardship on the Employer, the Employer shall engage in a cooperative dialogue with the employee (further discussed below).

### **Model Policy and Request Form**

Under the new law, the NYC Human Rights Commission will develop a model lactation room accommodation policy that conforms to the requirements of the new law, and a model lactation room request form. The Commission will make the model policy and request form available on its website, which an Employer can use for reference in developing its own policy.

### **Cooperative Dialogue**

If establishment and maintenance of a lactation room or written policy imposes an undue hardship on an Employer, the Employer must engage in a "cooperative dialogue" with the employee who requested use of a lactation room. The Employer and employee should seek to determine if any alternative accommodations may be available. Upon conclusion of this cooperative dialogue, the Employer must provide the employee with a written final determination identifying any accommodations that were granted or denied.

### **Consequences for Failure to Comply**

Failure to comply with the requirements of the new law is a violation of the NYC Human Rights Law and could constitute an unlawful discriminatory practice. Under the NYC Human Rights Law, non-complying Employers could be subject to a complaint directed to the NYC Human Rights Commission, which could result in investigation and penalties.

## **Employer Takeaways**

Employers with four or more employees should assess their existing workspace arrangements and review existing policies to ensure compliance with the revised NYC lactation law, in and with any other requirements under New York State and federal law. To ensure compliance with this new law, Employers should designate a space to be used for a lactation room that meets the law's requirements, and should ensure that a written policy regarding the lactation room is integrated into its employee handbooks or other written policies distributed to employees.

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