

Lactation Room Rules: NYC Places New Obligations On Employers To Accommodate Lactating Employees

On March 17, 2019, amendments to the New York City Human Rights Law will go into effect that will require New York City employers with 15 or more employees to provide their employees with reasonable unpaid or paid break time and a private space to express milk. Under the new laws, employers will also be required to notify employees about their lactation rights in a written policy.

The Requirements

The new laws have two main requirements: one pertaining to lactation rooms, and one pertaining to written policies.

Lactation Rooms

Previously, New York City law required that employers make “reasonable efforts” to provide employees a private location for purposes of expressing milk. Under the new law, employers are required to designate a “lactation room” for employees needing to express breast milk. The lactation room should be “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 a 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 must also be in reasonable proximity to the employee’s work area, and employers must provide a refrigerator suitable for break milk storage that is also within reasonable proximity to the employee’s work area.

If employers find that complying with any of these requirements would impose an undue hardship, they must engage in a cooperative dialogue with the requesting employee to determine whether a reasonable accommodation is available. For an explanation of an employer’s duty to engage in a cooperative dialogue, please see our Alert from March 19, 2018.

The designated room may be used for other purposes when the employee is not using it to express breast milk. However, employers must notify their employees that even though the lactation room may be used for other purposes, its use for expressing milk takes priority over any other purpose.

Written Policy

Employers must now provide employees with a written policy that informs employees of their lactation accommodation rights. The policy needs to include a statement that employees have a right to request a lactation room, and needs to identify a process by which employees may request a lactation room. This process must:

- Specify the means by which an employee may submit a request for a lactation room;
- Require that the employer 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 for any follow up required;
- State that the employer shall provide reasonable break time for an employee to express breast milk; 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.

Employers will be required to distribute the policy to all their employees when they are hired. The New York City Commission on Human Rights and the Department of Health and Mental Hygiene will develop a model lactation room accommodation policy and request form for use by employers and make the model policy and request form available on the website of the New York City Commission on Human Rights.

Practical Takeaways

- Employers should ensure their existing policies comply with applicable federal, New York State, and New York City lactation laws.
- Employers should make sure that a written policy of lactation accommodation rights is incorporated into employee handbooks.
- Employers should assess their workplace to determine what space meets the criteria established for a lactation room under the new laws and determine if any changes need to be made to their physical space to comply with lactation room requirements.
- Human resources personnel should be trained and advised of the changes to the law.
- Note that under the law governing cooperative dialogues, employers must provide the employee with a final written determination identifying any accommodation granted or denied after engaging in the cooperative dialogue.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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