

SAMPLE WORKSITE LACTATION ACCOMMODATIONS POLICY



This resource provides employers an example of a comprehensive and up-to-date worksite lactation accommodations policy.

It was developed using examples from the Center for WorkLife Law and the Public Health Law Center, and with additional contributions from others in the 2023 Innovation, Equity, and Exploration workgroup. It includes provisions based on federal law requirements, recommended practices drawn from other jurisdictions, and evidence-based practices. In this area, federal law

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establishes minimum standards; Tribes, states and local governments may also have lactation accommodations laws that go beyond federal protections. Employers should consult with an attorney to ensure their lactation accommodations policies and practices comply with all applicable legal requirements.

How to use this resource

This sample policy provides languages addressing necessary and recommended components for a comprehensive policy, including explaining why these policies are important, what actions are required, how they should be implemented and enforced, and what are the specific responsibilities of employers and employees. Drafting tips and alternatives or options for policy language are indicated with **red type**. Drafting tips also provide additional information and guidance on recommended language. Text to be inserted [**fill-in-the-blank text**] is indicated with brackets and is also in gray type. Employers should tailor and customize their policy language to make sure it aligns with their organizational culture and practices, and so that it complies with the laws of the jurisdiction(s) within which they operate.

Introduction

Drafting Tip

It is a good practice to provide data and information related to the need and rationale for a policy, to help everyone understand why the policy is useful and/or necessary. Below is sample language that could be included as an introduction or preface to the policy.

Breastfeeding/chestfeeding lowers the risk of several diseases for babies, including asthma, obesity, Type 1 diabetes, severe lower respiratory disease, ear infections, childhood overweight and obesity, sudden infant death syndrome (SIDS), gastrointestinal infections, and necrotizing enterocolitis (a serious gastrointestinal problem that typically affects premature babies).¹ Human milk also protects infants from diarrhea, colds, and flu.²

For lactating parents, breastfeeding/chestfeeding lowers their risk of high blood pressure, Type 2 diabetes, ovarian cancer, and breast cancer. Studies indicate that breastfeeding/chestfeeding also reduces stress and is positively linked to lower rates of postpartum depression in women.³

Breastfeeding/chestfeeding also brings benefits to employers. Research shows that employers who support lactating employees experience positive returns on investment and ultimately save money. Because both babies and employees experience better health outcomes, lactating

employees have lower rates of absenteeism from their jobs compared to employees who formula-feed their infants. Healthier employees also mean fewer medical insurance claims for employers.⁴

Businesses with good lactation support policies and programs also experience better rates of employee retention and lower turnover rates compared to those without any programs. Employees are more likely to return to their workplace following childbirth if their employer supports breastfeeding/chestfeeding. Businesses who support lactating employees also report improved job satisfaction and increased productivity.⁵

Federal [[and Tribal, state, and/or local law, as applicable](#)] law require employers of all sizes to provide reasonable milk expression breaks every day to breastfeeding/chestfeeding employees as needed, and an appropriate, private space that is not a bathroom or toilet stall, for these breaks.

Core Policy Provisions

Drafting Tip

The following is sample language for the core provisions for a worksite lactation accommodations policy. This language is based both on federal law requirements and includes recommended good practices.

Policy

It is [[name of employer](#)]'s priority and responsibility to provide reasonable breaktimes and make reasonable efforts to provide an appropriate space (which cannot be a bathroom) for breastfeeding/chestfeeding employees to express milk during their work day. This includes the following lactation accommodations policy administered by [[name of relevant department or title of relevant role — for example, the employee's supervisor](#)]. Starting [[date](#)], this policy will be provided to all current employees and to all new employees at the start of their employment.

Drafting Tip

If the employer has a human resources handbook or similar kind of resource, include language like this: This policy will also be incorporated into the employee handbook.

In accordance with [Tribal, state, local] and federal law, [name of employer] provides reasonable accommodations for employees' pregnancy, childbirth, or related medical conditions, including accommodations for lactation. Before an employee returns from parental leave, [name of employer] will seek to discuss with the employee what reasonable accommodations the employee may need to express breast milk at work.

[Name of employer] will not tolerate discrimination or harassment against any employee based on the request for or usage of lactation accommodations. Any discrimination, harassment, or other violations of this policy can be reported to [name of relevant role, office within the employer's organization].⁶

Drafting Tip

A recommended practice is to provide annual training on this policy and other important HR policies, for staff and supervisors. Employers who wish to provide this kind of training could use this language: All staff, including managers and supervisors, will receive training about this policy and how to implement it upon hiring, and at least annually thereafter.

Reasonable Time to Express Human Milk

[Name of employer] will provide reasonable amounts of time each day for an employee to express human milk and will not unreasonably limit the amount of time or the frequency that an employee expresses milk, as determined by the employee's needs. [Name of employer or employee's supervisor] will speak with the employee to determine a schedule of breaks that accommodates the employee's pumping needs.

[Name of employer] recognizes that an employee's lactation accommodation needs may change over time. Employees may request changes to their existing lactation accommodations at any point.

[Name of employer] shall not reduce an employee's compensation for break times used for the purpose of expressing milk. Milk expression breaks may run concurrently with break times already provided, but this is not required and should be done only if doing so meets the employee's needs.

Break times include time needed to get to and return from the lactation space, to pump, and to clean and store equipment and human milk.⁷

[Name of employer] does not require the employee to work while pumping. However, if the employee works while pumping, this will not be considered break time and is regular work time.

Lactation Space

Drafting Tip

This section provides three sets of alternative language to choose from, depending on what type of lactation space the employer can provide, including a flexible, temporary space (such as a storage room, tent or portable space, an empty office, etc.); a multi-purpose room (such as a conference room, meditation room, or similar space); or a dedicated lactation space.

If the employer doesn't have a dedicated space:

[Alternative] Flexible, Temporary Lactation Spaces

[Name of employer] will discuss options to ensure employees will be able to express human milk (or pump) at work. Such options may include creating a temporary lactation space, allowing pumping in a shared space or at the employee's work area, or allowing longer breaks for employees to pump offsite.

[Name of employer] will provide a space that is shielded from view, free from intrusion, provides access to at least one electrical outlet, and is in close proximity to the employee's work area. The space cannot be a bathroom. [Employer's supervisor] will discuss with the employee how to accommodate the employee's needs to pump at work, including how to ensure the employee's privacy and maintain a sanitary pumping environment.

Drafting Tip

Worksite lactation spaces must include the following features to ensure good compliance: [Name of employer] provides the following additional items in the lactation space: a surface to place a pump and other items, and a chair. The lactation space is also located near a sink with running water and a refrigerator where milk can be stored.

Drafting Tip

If the employer does not have a refrigerator and cannot provide one, consider including this language: [name of employer] does not provide a refrigerator on site, and will discuss alternative options for where the employee may store their human milk, which may include, for example, allowing the employee to bring in a cooler.

If the employer is using a multi-purpose space (such as a conference room, wellness room, or storage room):

[Alternative] Multi-Purpose Space Available for Use for Lactation

[Name of employer] has designated [insert room here] as a lactation room when employees are using the room to express human milk. [Name of employer] will notify other employees that the room will be prioritized as a lactation room and may only be used for expressing human milk during the time[s] when lactating employees need the space. [Name of employer] will post proper signage to notify others when the room is in use and will ensure that it can be shielded from view of others while being used as a lactation room.

The employees who need the room for pumping will be given priority use of the room and their pumping needs will determine the availability of the room for other purposes.⁸

[Name of employer] will ensure that [the multi-purpose room] can be locked from the inside or otherwise made secure so that the employee pumping can do so without intrusion.

[Name of employer] will provide a space that is shielded from view, free from intrusion, provides access to at least one electrical outlet, and is in close proximity to the employee's work area. The space cannot be a bathroom. [Employer's supervisor] will discuss with the employee how to accommodate the employee's needs to pump at work, including how to ensure the employee's privacy and maintain a sanitary pumping environment.

Drafting Tip

Worksite lactation spaces must include the following features to ensure good compliance: [Name of employer] provides the following additional items in the lactation space: a surface to place a pump and other items, and a chair. The lactation space is also located near a sink with running water and a refrigerator where milk can be stored.



Drafting Tip

If the employer does not have a refrigerator and cannot provide one, consider including this language: [Name of employer] does not provide a refrigerator on site, and will discuss alternative options for where the employee may store their human milk, which may include, for example, allowing the employee to bring in a cooler.

When more than one employee needs to use [the multi-purpose room] to express milk, [name of employer] will discuss alternative options with all employees who use the shared space to determine what arrangement addresses their needs. Options may include: finding alternative spaces; making the space shareable for multiple users with screens, curtains, or other privacy measures; or creating a schedule for use.

If [the multi-purpose room] is unavailable for use as a lactation room when an employee needs it, [name of employer] will provide [identify alternative space] for temporary use as a lactation room.

Even if [the multi-purpose room] is available, an employee who wishes to pump at their usual workspace will be permitted to do so if it is a reasonable accommodation.⁹

If the employer has a dedicated lactation room:

[Alternative] Lactation Room

[Name of employer]'s dedicated lactation room[s] (which [is/are] not a bathroom) [is/are] located at [insert location].

[Name of employer] will ensure that the employee work areas are in close proximity to the lactation room[s], and will ensure that the lactation room[s]: contain[s] at least one electrical outlet; [is/are] shielded from view of others; and [is/are] free from intrusion or can be locked or otherwise secured from the inside to avoid intrusion. [Employer's supervisor] will discuss with the employee how to accommodate the employee's needs to pump at work, including how to ensure the employee's privacy and maintain a sanitary pumping environment.

Drafting Tip

Worksite lactation spaces must include the following features to ensure good compliance: [Name of employer] provides the following additional items in the lactation space: a surface to place a pump and other items, and a chair. The lactation space is also located near a sink with running water and a refrigerator where milk can be stored.

Drafting Tip

If the employer does not have a refrigerator and cannot provide one, consider including this language: [Name of employer] does not provide a refrigerator on site, and will discuss alternative options for where the employee may store their human milk, which may include, for example, allowing the employee to bring in a cooler.

When more than one employee needs to use the designated lactation room, [name of employer] will discuss various options with all employees who use the lactation room to determine what arrangement addresses each employee's needs so that each employee has access to a compliant lactation space. Options may include: finding an alternative clean space free from intrusion and shielded from view with access to an outlet (that is not a bathroom); making the space shareable for multiple users with screens, curtains, or other privacy measures; or creating a schedule for use. Any accommodation must ensure each employee is afforded the time they need to pump.

Even if the lactation room is available, an employee who wishes to pump at their usual workspace will be permitted to do so if it is a reasonable accommodation.¹⁰

Lactation Accommodation Request Process

Drafting Tip

This section makes clear how the policy is operationalized and who is responsible for doing what. This section follows recommended good practices for providing notice of and communicating about the availability of lactation accommodations in an efficient and proactive way. Tribal, state, or local laws may include additional or different notice or educational requirements.

Before an employee returns from parental leave, [name of employer] will send this policy to the employee in writing (electronically or by mail) and ask the employee about their needs for reasonable accommodations to express milk at work.

Employees may also independently request lactation accommodations by contacting [name of relevant department/supervisor/other name of individual]. A request may be made orally or in writing, and should indicate that the employee will need accommodations for expressing human milk at work. (If the employer has a request form, the employee may complete it and submit it to the employer in a manner designated by the employer.)

[Name of relevant department/supervisor/name of individual] will respond to a request for a lactation accommodation **as quickly as possible**. Under no circumstances will this amount of time exceed five (5) business days.

Drafting Tip

An employer's responsibility to provide lactation accommodation requests begins when an employee submits the request. Thus, it's in the employer's best interest to respond to these requests as quickly as possible.

During the time it takes to respond to a request and/or engage in an interactive process to determine the accommodations, [name of employer] will provide temporary reasonable accommodations to the employee so that the employee can pump in a manner that meets the employee's immediate needs.¹¹

[Name of employer] recognizes that employees' lactation accommodations needs may change over time. Employees may request changes to their existing lactation accommodations at any point.

Establishing that Accommodations Will Cause Undue Hardship for the Employer's Operations¹²

Note: "Undue Hardship" Exemptions Are Rare and May Not Apply

Federal law states that employers with fewer than 50 employees across all their sites may be excused from providing lactation accommodations if they can show that doing so would cause "undue hardship,"¹³ However, Tribal, state, or local laws can be more protective than federal law and may not include this kind of exception.¹⁴ For employers in jurisdictions without this kind of exception, this language is not relevant and should be avoided. For employers in jurisdictions that allow this kind of exception, they should be aware that situations that would rise to the level of undue hardship or undue disruption (another phrase that may be used) seem rare and difficult to prove. The authors could find no documented cases of an employer successfully proving undue hardship or disruption for providing a lactation accommodation. Employers with questions about the applicability of this exception to their situations should consult an attorney who can provide legal advice.

If [name of employer] believes that a lactation accommodation requested will cause undue hardship for the operations of [name of employer], [name of employer] will discuss reasonable alternatives with the employee to accommodate the employee's needs, initiating an interactive process immediately.

Drafting Tip

An employer's responsibility to provide lactation accommodation requests begins when an employee submits the request. Thus, it's in the employer's best interest to respond to these requests as quickly as possible.

The conversation between [name of employer] and the employee will be in good faith, may occur orally or in writing, and will conclude with a final written determination of the accommodations granted or denied. This process gives the employee an opportunity to have an open discussion with [name of employer] about their needs, and [name of employer] has an opportunity to hear its employee and work with them to come up with appropriate accommodations for the employee.

For example, if [name of employer] believes the length of time an employee needs to pump will cause undue hardship for the operations of [name of employer], [name of employer] will engage in an interactive process with the employee to determine if there is an accommodation, such as an adjusted pumping schedule, or more frequent pumping breaks for shorter periods of time, that addresses [name of employer]'s concerns and the employee's needs.

During the time it takes to respond to a request and/or engage in an interactive process to determine the accommodation, [name of employer] will provide temporary accommodations to the employee so that the employee can pump in a manner that meets the employee's immediate needs unless doing so will cause undue hardship for [name of employer].¹⁵

Additional Information

- For questions about this policy, employees should talk to [name/title of appropriate person or department].
- Additional information about [Tribe's/state's/city/county's] lactation accommodation laws can be found at [insert URL].
- Additional information about federal lactation accommodation laws can be found at [dol.gov/agencies/whd/pump-at-work](https://www.dol.gov/agencies/whd/pump-at-work).
- Contact information for the local Wage & Hour Division can be found at [dol.gov/agencies/whd/contact/local-offices](https://www.dol.gov/agencies/whd/contact/local-offices).

- Information about the federal 2022 Pregnant Women’s Fairness Act can be found at [eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act](https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act).
- The Equal Employment Opportunity Commission [provides an infographic](#) with tips for workers about how to ask for a reasonable accommodation.

The Public Health Law Center provides information and legal technical assistance on issues relating to public health and health equity. The Center does not provide legal representation or advice. As explained above, this sample policy should not be considered legal advice. Readers who have questions about their rights or responsibilities relating to worksite lactation accommodations should consult with an attorney who is familiar with the laws of their jurisdiction and who can give them legal advice.

Endnotes

- 1 Cesar G. Victoria et al., Breastfeeding in the 21st Century: Epidemiology, Mechanisms, and Lifelong Effect, 387 THE LANCET 475, 475-490 (2016), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(15\)01024-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)01024-7/fulltext); Johns Hopkins Medicine, Breast Milk Is Best, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/breastfeeding-your-baby/breast-milk-is-the-best-milk#:~:text=Breastfeeding%20helps%20protects%20babies%20from,babies%20who%20are%20not%20breastfed> (last visited May 8, 2023); Ctrs. for Disease Control and Prevention, Breastfeeding: Why It Matters, <https://www.cdc.gov/breastfeeding/about-breastfeeding/why-it-matters.html> (last updated August 23, 2021); Am. Acad. of Pediatrics, Benefits of Breastfeeding, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Breastfeeding/Pages/Benefits-of-Breastfeeding.aspx> (updated Mar. 9, 2021).
- 2 Ctrs. for Disease Control and Prevention, Breastfeeding: Why It Matters, <https://www.cdc.gov/breastfeeding/about-breastfeeding/why-it-matters.html> (last updated August 23, 2021).
- 3 See Am. Acad. Of Pediatrics, Benefits of Breastfeeding, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Breastfeeding/Pages/Benefits-of-Breastfeeding.aspx> (updated Mar. 9, 2021); Ctrs. for Disease Control and Prevention, Breastfeeding: Why It Matters <https://www.cdc.gov/breastfeeding/about-breastfeeding/why-it-matters.html> (last updated August 23, 2021); Kathleen M. Krol and Tobias Grossman, Psychological Effects of Breastfeeding Children and Mothers, 61 BUNDESGESUNDHEITSLATT-GESUNDHEITSFORSCHUNG-GESUNDHEITSSCHUTZ 983 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6096620/pdf/103_2018_Article_2769.pdf; and Carley J. Pope and Dwight Mazmanian, Breastfeeding and Postpartum Depression: An Overview and Methodological Recommendations for Future Research, 2016 DEPRESSION RESEARCH AND TREATMENT (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4842365/pdf/DRT2016-4765310.pdf>.
- 4 Office on Women’s Health, U.S. Dep’t of Health and Human Servs., Business Case for Breastfeeding, <https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work/business-case> (last updated Feb. 18, 2021). See also Minn. Dep’t of Health, Breastfeeding Information for Workplaces, <https://www.health.state.mn.us/people/breastfeeding/workplaces.html> (last updated Nov. 28, 2022).
- 5 Office on Women’s Health, U.S. Dep’t of Health and Human Servs., Business Case for Breastfeeding, <https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work/business-case> (last updated Feb. 18, 2021). See also Minn. Dep’t of Health, Breastfeeding Information for Workplaces, <https://www.health.state.mn.us/people/breastfeeding/workplaces.html> (last updated Nov. 28, 2022).

- 6 Employees may also file a complaint with the U.S. Department of Labor’s Wage and Hour Division through this link: <https://www.dol.gov/agencies/whd/contact/complaints>, and/or with the [Tribe/state department of labor] at [telephone number and email address].
- 7 See U.S. Dep’t of Labor, Wage & Hour Div., Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work (revised Jan. 2023), <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers> (section on “Break Time to Pump Breast Milk”).
- 8 If the multi-purpose space also is used to provide accommodations related to disability or religion — for example, it is also used as a prayer room — [name of employer] will make every effort to accommodate the needs of all employees.
- 9 It is the employer’s responsibility to prove that providing an accommodation would be an undue hardship or undue disruption. Discomfort expressed by a coworker, client, or customer generally does not rise to the level of unduly disrupting operations for the employer. Inconvenience generally is not undue hardship. The U.S. Department of Labor provides helpful guidance in understanding what would be considered an undue hardship for an employer’s operations: “undue hardship” is determined by looking at the difficulty or expense to the specific employer, the employer’s financial resources, and the nature and structure of the employer’s business, among other factors. See, U.S. Dep’t of Labor, Job Accommodations, <https://www.dol.gov/general/topic/disability/jobaccommodations> (last visited May 7, 2023).
- 10 See note 9.
- 11 See note 9.
- 12 See note 9.
- 13 29 U.S.C. § 218d(c) (2023). See also U.S. Dep’t of Labor, Wage and Hour Division, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers> (revised January 2023) (section on “Covered Employees”).
- 14 The Center for WorkLife Law provides a survey of state workplace accommodations laws, last updated June 2023, available here: <https://www.dol.gov/agencies/whd/contact/local-offices>.
- 15 See note 9.