Blog Post

Expanding Rights for Breastfeeding Mothers

January 22, 2020

On the heels of a new federal law requiring certain public federal buildings to provide lactation spaces, California has enacted one of the most expansive sets of protections for breastfeeding employees in the country. The California law which became effective January 1, 2020, includes provisions regarding break time, policy requirements, and specifications regarding the lactation room.

While California law previously required employees to provide a lactation room (not a bathroom) for employees to express milk in private, the new law specifies that the room must have a place to sit, a surface to place items on, and electricity.

These requirements mirror the recently enacted bipartisan federal Fairness for Breastfeeding Mothers Act, which requires certain federal buildings that are open to the public to provide a designated lactation space (not a bathroom) with a chair, a surface, and an electrical outlet. The Act was signed into law by the President on July 25, 2019 and will go into effect on July 25, 2020. The Act only applies to public federal buildings that already provide public restrooms. In addition, buildings are exempt if they don't contain a lactation room for employees, or if they don't have a space that could be re-purposed at a reasonable cost, or if the cost of new construction is not feasible.

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By contrast, the new California law applies to every California employer in the state. Employers with fewer than 50 employees may establish an exemption from any of the lactation room requirements only if they can show that it would impose an undue hardship.

In addition to the lactation room requirements, the new California law provides employees with even more protections regarding break times than its predecessor. California law previously required that employers provide employees with a reasonable amount of break time to express breast milk for an infant. The new law specifies that break time shall be provided "each time such employee has need to express milk," thus accommodating mothers who need to pump several times a day to maintain their supply.

The California law also requires that employers develop a lactation policy, which should be included in the employee handbook and distributed to new hires.

The consequences for non-compliance with the California law are steep. The denial of a break or adequate space is a violation of California's wage and hour laws. In addition, employers are also prohibited from discriminating or retaliating against employees for exercising a right pursuant to the law. Employers who violate the law may face a civil penalty in the amount of $100 for each day the employee is denied break time or adequate space to express milk.

Employers in states outside of California should be cognizant of these changes, as other states may follow suit in adopting laws providing more robust protections for breastfeeding employees. Akerman attorneys are available to answer any further inquiries regarding these changes, as well as provide guidance as to how employers may want to consider revising their existing policies.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.