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New York City's New Lactation Laws Require Accommodation and Written Policy

On October 17, 2018, the New York City Council passed two measures concerning workplace lactation accommodations. The measures—passed as part of the two “Mother’s Day” bills—amended the New York City Human Rights Law and 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 are also required to notify employees about their lactation rights in a written policy. These laws will go into effect on March 17, 2019.

Lactation Room Requirements

Employers are required to designate a “lactation room,” defined as “a sanitary place, other than a restroom, that can be used to express breast milk shielded from view and free from intrusion.” The designated lactation room must be in reasonable proximity to the employee’s work area and include an electrical outlet, a chair, a surface where a breast pump and other personal items may be placed, and close access to running water. In addition, employers must provide a refrigerator suitable for break milk storage that is also within reasonable proximity to the employee’s work area.

A lactation room must be provided upon an employee’s request; however, the room may be used for other purposes when the employee is not using it to express milk. 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.

If the employer finds that that providing a compliant lactation room would impose an undue hardship on its organization, the employer must engage in a cooperative dialogue with the requesting employee to determine if a reasonable accommodation is available. For an explanation of an employer’s duty to

engage in a cooperative dialogue, please see our Client Alert from October 12, 2018: “New York City’s New Reasonable Accommodation Standard Requires a Cooperative Dialogue.”

Written Policy Requirement

Employers must now provide employees with a written policy that informs them of their lactation accommodation rights, including the use of a lactation room. In addition, a compliant policy must:

- specify how an employee may submit a request for the use of a lactation room;
- specify that the employer will respond to a request for a lactation room within five business days;
- provide a guideline for situations in which 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 will provide reasonable break time for an employee to express breast milk pursuant to New York Labor Law § 206-c; and
- state the employer will engage in a cooperative dialogue with the employee if providing a lactation room will impose an undue hardship on the employer.

Employers will be required to distribute the policy to all their employees upon hire. 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.

Takeaway

Employers should review their existing policies to ensure compliance with applicable federal, New York State, and New York City breastfeeding laws. While reviewing their policies, employers should incorporate a written policy of lactation accommodation rights into employee handbooks or other written materials provided to employees upon hire. Employers should inspect their facilities to determine if any modifications need to be made to comply with lactation room requirements. Human resources personnel should be trained and advised of the changes to the law.

We are of course available to assist in drafting and reviewing such policies, and in advising employers on the new lactation accommodation process.

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