

November 26, 2018

New York City to Require Lactation Rooms and Policies

On November 17, 2018, The New York City Human Rights Law (“NYCHRL”) was amended to require most New York City employers to develop written “lactation room accommodation” policies and to accommodate employees who need to express breast milk by providing lactation rooms and refrigerators for breast milk storage, absent an undue hardship. While New York State law already requires employers to provide reasonable break time and a private and sanitary space for the expression of breast milk, the City laws will impose additional requirements for lactation rooms and require employers to formalize a process for requesting and using such rooms. The new requirements will apply to employers with four or more employees, and will take effect on March 17, 2019.

Lactation Room Accommodation Policies

Covered employers must develop a written policy notifying employees of their right to request a lactation room and the process for doing so. Such policies must, at a minimum:

- Identify the means by which employees may request a lactation room and require the employer to respond to any request within a “reasonable” time (no more than five business days);
- Establish a procedure to follow when multiple employees need to use the lactation room at a single time, including contact information for any necessary follow up;
- Affirm that the employer will provide reasonable break time for the expression of breast milk in accordance with New York Labor Law § 206-c; and
- State that the employer will engage in a cooperative dialogue with employees if a request for a lactation room poses an undue hardship on the employer.

*747 Third Avenue
New York, N. Y. 10017
Tel: 212-758-7600
www.cfk-law.com*

The lactation room accommodation policy must be provided to all employees upon hire. Current state law also requires employers to provide employees returning to work following the birth of a child with written notice of the employee's right to express breast milk. Employers are therefore encouraged to add lactation policies into their employee handbooks for compliance with state and local law.

The New York City Commission on Human Rights ("NYCCHR") will develop and publish a model lactation room accommodation policy and lactation room request form, but the law does not expressly require employers to provide a request form. In advance of the law's effective date, the NYCCHR may issue rules or guidance clarifying employers' obligations in this regard.

Lactation Room Accommodations

Absent an undue hardship, New York City employers with four or more employees will be required to provide a lactation room to accommodate employees who need to express breast milk. The lactation room must be a sanitary place that is "shielded from view and free from intrusion" and also must, at a minimum, contain an electrical outlet, chair, and surface on which to place a breast pump and personal items, with "nearby access" to running water. Covered employers must also provide a refrigerator suitable for breast milk storage. Both the lactation room and refrigerator must be in "reasonable proximity" to the employee's work area. These requirements are consistent with certain best practices identified in existing New York State guidance on employers' obligations under New York Labor Law § 206-c (which encourages, but does not require, employers to provide an electrical outlet, clean water supply, and access to a refrigerator).

Under the New York City law, employers may designate multipurpose rooms to also serve as a lactation room, but cannot allow use of that room for other purposes while an employee is expressing breast milk and must also notify employees that the room is given preference for use as a lactation room. Like current state law, the New York City law does not permit employers to designate restrooms as lactation rooms. The availability of a lactation room also does not limit employees' rights to breastfeed in public.

Cooperative Dialogue Requirements

The NYCHRL already requires employers to engage in a "cooperative dialogue" with employees who request accommodations due to pregnancy, childbirth or a related medical condition, disability, religious purposes, or the individual's status as a victim of domestic violence, sex offenses or stalking. The New York City lactation room laws specifically require employers to engage in this process if they believe that providing a lactation room that meets the above criteria would pose an undue hardship. Among other obligations, the NYCHRL requires employers to provide employees who request an accommodation with a final written determination identifying any accommodations that were granted or denied at the conclusion of the cooperative dialogue, even when

granting an employee's requested accommodation. For more information on the NYCHRL's "cooperative dialogue" requirements, which took effect on October 15, 2018, please see the Firm's May 4, 2018 Client Advisory [here](#) (pages 4-5).

The new law does not expressly excuse employers who provide a lactation room that meets the NYCHRL's requirements from the obligation to engage in a cooperative dialogue regarding employee requests for lactation-related accommodations. As such, it is unclear whether employers will be required to provide written determinations to employees who simply ask to use an existing lactation room to express breast milk. In addition, employers should be mindful that employees who request lactation-related accommodations that exceed the law's minimum requirements may still trigger cooperative dialogue requirements under the NYCHRL.

As noted above, the NYCCHR may issue rules and guidance clarifying employers' cooperative dialogue and other lactation accommodation obligations under the new law, and the Firm will be monitoring the agency's publications for any updates.

Next Steps

Employers should review and update their policies and procedures to ensure compliance with the new law. Employers should also assess existing lactation rooms (or other rooms provided for the expression of breast milk) to ensure that they meet the minimum requirements under the NYCHRL amendments, and identify an appropriate lactation room or rooms where one is not currently provided. Employers who believe that complying with the lactation room requirements of the new law may be an undue hardship for their business are encouraged to consult with counsel.

In addition, the new law provides an opportunity for employers to ensure that managers and human resources personnel are familiar with established reasonable accommodation policies and protocols, and the types of employee requests that may trigger the employer's cooperative dialogue obligations under the NYCHRL.

If you have any questions, please contact Nick Bauer or any other attorney at the Firm at (212) 758-7600.

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