

New York City Law Expanding Employers' Lactation Accommodation Obligations Goes Into Effect on March 18, 2019

The Bottom Line

- *Before March 18, 2019, New York City employers with four or more employees should review their written policies and HR practices in advance to ensure that they have the appropriate space to satisfy the law's lactation room requirements and that they provide a compliant lactation room accommodations policy to all new hires.*

Effective March 18, 2019, New York City employers with four or more employees must provide lactation rooms to nursing employees that meet certain minimum requirements and also must develop a written lactation room accommodations policy.

The new requirements, which stem from two bills (Int. No. 879-A and Int. No. 905-A), were passed by the New York City Council in late 2018 and follow the trend of other jurisdictions, including [Massachusetts](#) and [San Francisco](#), which require employers to provide lactation rooms that meet specific requirements.

Lactation Room Accommodations

New York employers were already required under the Fair Labor Standards Act and the New York Labor Law to provide nursing mothers with reasonable break time and a private room (other than a restroom) in close proximity to their work area to express breast milk for up to three years after child birth. The amended New York City Human Rights Law expands these obligations by requiring New York City employers with four or more employees to provide nursing employees with a refrigerator suitable for breast milk storage in reasonable proximity to their working area and that the lactation room provided must be sanitary and include, 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. If a designated lactation room is also used for other purposes, the employer is obligated to notify employees that the room is to be given preference as a lactation room and that its sole function is to serve as a lactation room when an employee needs to use it to pump.

In the event that an employer believes that the lactation accommodation requirements will impose an undue hardship, employers are required to engage in a cooperative dialogue with the nursing employee. During the cooperative dialogue process, the employer must engage in a good faith written or oral dialogue with the employee concerning the difficulties that the potential accommodations may pose, as well as potential alternatives to the accommodations, and must provide a final written determination at the end of process identifying any accommodation(s) that were granted or denied. For additional information about New York City employer's obligations to engage in the cooperative dialogue process, see our alert titled, "[New York City Law Requiring 'Cooperative Dialogue' for Reasonable Accommodation Requests Goes into Effect on October 15, 2018.](#)"

Lactation Room Accommodations Policy

New York City employers with four or more employees will also be required to implement a written lactation room accommodation policy that must be provided to all new employees at time of hire. The written policy must include the following information:

1. State that the employer will provide reasonable break time for an employee to express breast milk pursuant to Section 206-c of the New York Labor Law;
2. A statement that employees have a right to request a lactation room;
3. Identify the process by which employees may request a lactation room, including specifying the means by which they may submit a request for a lactation room, and noting that the employer will respond to any such request within a reasonable amount of time that is no more than five business days;
4. Provide a procedure to follow when two or more employees need to use the lactation room at the same time, including contact information for any follow up required; and
5. State that if the request for a lactation room poses an undue hardship on the employer, the employer will engage in the above-mentioned cooperative dialogue.

The New York City Department of Health and Mental Hygiene will be developing a model lactation room accommodation policy and request form that employers can utilize to satisfy the law's written policy requirements.

Related People

Jessica Golden Cortes

Partner

212 468 4808

jcortes@dglaw.com

Sharon Cohen

Partner

212 468 4971

shcohen@dglaw.com