

The 12 Days of California Labor & Employment Series – Day 5: More Expansion to Lactation Accommodations

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It's the end of the year and while everyone is busy, employers in California should be aware of new laws and regulations that go into effect on January 1, 2020. In the spirit of the season, we are using the "12 days of the holidays" to blog daily about one of these new California laws and its impact on California employers. On the fifth day of the holidays, my labor and employment attorney gave to me: five golden rings and SB 142.

Last year, California enacted AB 1976, which expanded the requirements of what an employer needed to provide for lactation accommodations. Lactation accommodations have again been expanded with SB 142. AB 1976 required that an employer provide a place for nursing mothers to express breastmilk other than a toilet stall or bathroom. With the addition of SB 142, the location for nursing mothers to express breastmilk must also be close to the employee's work area, shielded from view, and free from intrusion. There is a caveat that the location may be the place where the employee normally works, such as a private office, if it meets the requirements.

The lactation location must also meet the following requirements:

- be safe, clean, and free of toxic or hazardous materials;
- contain a surface to place a breast pump and other personal items upon;
- contain a place to sit; and
- have access to electricity, which could include extension cords or charging stations needed to operate an electric or battery-powered breast pump.

In addition, an employer must provide the employee with access to a sink with running water, as well as a refrigerator suitable for storing milk. The law further provides that if a refrigerator is unavailable, the employer may provide another suitable cooling device, such as an employer provided cooler.

SB 142 contains a few other interesting points. If a multipurpose room is chosen as the lactation location, the use of the room for lactation must take precedence over the other uses, but only for the time it is in use for lactation

purposes. An employer in a multi-tenant building can provide a shared space if they cannot provide a lactation location within the employer's own workspace. An agricultural employer must provide a private, enclosed, and shaded space, which may include an air conditioned cab of a truck or tractor for an employee wanting to express breastmilk.



Similar to AB 1976, an employer with less than 50 employees may be exempt from these requirements if they can demonstrate that a requirement would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business. If such an exemption is allowed, the employer must still make reasonable efforts to provide an employee with the use of a room or location—other than a toilet stall—in close proximity to the employee's work area.

Employers must also remember that they are required to allow an employee wanting to express breastmilk with a reasonable breaktime to do so. Failure to comply with a reasonable lactation break is equivalent to a violation of California's rest period laws resulting in an identical violation, or one hour of pay per day for each day on which a violation occurs.

California employers who do not have an undue hardship exemption should *already* be providing a location other than a bathroom for employees to express breastmilk. Employers should assess the area and ensure it is clean, free of toxic or hazardous materials, contains an area both to sit and set the breast pump and personal items on, and that it has electricity or the means to use a breast pump. If the area chosen under AB 1976 is not close to the employee's work area, shielded from view, or does not have a sink with running water or refrigerator nearby, a new location will need to be selected and provided effective January 1, 2020. If you are looking for new space or remodeling your current one, keep these requirements in mind when making your plans.

Finally, employers should include a lactation policy in their handbook. If you do not have one, it is highly recommended one be created.

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