

PUMPING AT WORK: SUPPORTING LACTATING EMPLOYEES DURING CORONAVIRUS (COVID-19)

COVID-19 HAS CHANGED A LOT ABOUT WORKPLACES - BUT EMPLOYEES' RIGHTS TO LACTATION ACCOMMODATIONS HAVE NOT CHANGED.

THE 2010 FEDERAL "BREAK TIME FOR NURSING MOTHERS" LAW REQUIRES EMPLOYERS TO PROVIDE:

TIME



- A reasonable amount of break time
- Break time as often as needed
- Paid time if the worker chooses to pump during a paid break or while working

PRIVATE SPACE



- Not a bathroom
- Shielded from view
- Free from intrusion
- Available when the employee needs it

ADDITIONAL RIGHTS INCLUDE:

EQUAL TREATMENT =

- No harassment or retaliation for breastfeeding or break/space requests
- If other employees receive certain freedoms or accommodations, lactating workers should be given the same

The "Break Time for Nursing Mothers" law covers employees who are "non-exempt" from the FLSA's overtime for the first year of their child's life. It applies to employers of all sizes, but employers with less than 50 employees may be exempt if providing break time or space would cause an undue hardship. All other employers, including those in COVID-19 essential industries, must continue to provide break time and space as required by law.

Title VII of the Civil Rights Act and the Pregnancy Discrimination Act prohibits employers with 15 or more employees from discriminating because of breastfeeding and lactation. The Michigan Civil Rights Act has similar provisions and applies to employers of all sizes.

NEED HELP?

For more information on workplace lactation support, visit mibreastfeeding.org/workplace.

For more information on legal rights and duties, contact the Center for WorkLife Law: 415-703-8276 or hotline@worklifelaw.org.



Frequently Asked Questions:

1. How often and why do lactating employees need to pump or express milk?

Human milk is universally recommended by major health organizations as it provides the best source of nutrition for infants and young children, helps to build their immune systems, and helps them to develop and grow. During the work day, lactating parents need to express milk as often as their child usually eats. This protects their milk supply and prevents painful and potentially serious health complications. Most parents will need to express milk two to three times during an eight hour shift. The federal Break Time for Nursing Mothers law requires employers to provide lactation breaks as often as needed. How often a lactating employee will need to express milk will depend on their own body as well as the age and needs of their child.

The time needed to express milk also varies, but averages about 15 to 20 minutes—not including set up, cleaning, and traveling to the pumping area. The total time needed depends on how close the lactation space is to the employee’s workspace, storage space, sinks, and electricity, and the type of pump they are using.

2. How does COVID-19 change my legal obligations to provide breastfeeding accommodations?

Federal and state anti-discrimination laws and the Break Time for Nursing Mothers law remain in effect, and additional steps may be necessary to follow the law during the pandemic. To meet the legal requirement to provide a functional space for expressing milk, employers must provide safe spaces for milk expression and storage. During the coronavirus crisis, depending on the workplace, this may mean employers need to offer a space where risk of exposure is less than in the regularly-provided pumping location. It may also mean giving employees more time to travel to the new pumping location or milk storage area with additional time and supplies to disinfect the space.

The Break Time for Nursing Mothers law provides a limited exemption for employers that have less than 50 employees. The exemption may apply if providing break time or space would cause an “undue hardship.” Until they are granted an exemption from the Department of Labor, employers should assume they must follow the law. The coronavirus crisis may be a relevant factor. For more information, see Question #3.

3. What qualifies a company for an exemption to the Break Time for Nursing Mothers law?

The law allows a limited exemption to be granted in the rare case that providing break time and/or space would cause an undue hardship on the employer AND the employer has fewer than 50 employees. “Undue hardship” is significant difficulty or expense in light of the size, financial resources, nature or structure of the employer’s business. The Department of Labor has stated that “this is a stringent standard” likely available “only in limited circumstances.”¹ The coronavirus crisis may be a factor in this undue burden test if it has an impact on your business’s ability to provide breaks or space.

¹See U.S. Dep’t of Labor, Wage & Hour Div., Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80075 (Dec. 21, 2010).

If you are having difficulty meeting an employee's milk expression needs, please do not assume you are exempt from this law. Reach out for help. Michigan Breastfeeding Network has helped many employers find creative and affordable solutions.

4. What if an employee is not covered by the Break Time for Nursing Mothers law?

The Break Time for Nursing Mothers provision is a part of the Fair Labor Standards Act. The law applies to employees covered by the FLSA's overtime provisions, also known as "non-exempt" employees. Employees not covered by that law (overtime-exempt employees) still need break time and adequate space. Breastfeeding is good for business, too! Employers who provide lactation accommodations report higher employee attendance, fewer sick days, and increased employee loyalty and productivity.

Employees not covered by the Break Time for Nursing Mothers law have rights to changes at work under federal and state anti-discrimination law. They are entitled to the same sorts of accommodations given to other employees. Breastfeeding employees must be given at least the same flexibility that other employees have to meet their health needs. If other employees are allowed to take breaks, lactating employees should be allowed to as well. For example, if some employees are allowed smoke breaks, breastfeeding employees should be allowed pumping breaks. Similarly, laws that allow employees' temporary reassignments due to health conditions also applies to breastfeeding employees, making them eligible for temporary reassignment, too.

5. Are the breaks paid?

Employee lactation breaks may be unpaid, with a few exceptions:

- a. If the employee is still working while pumping, they must be paid during that time. Note, an employee may *choose* to keep working, but may not be required to work while pumping. For example, a worker may choose to take a phone call or work on their computer while pumping but they must be paid for that time.
- b. If the employee chooses to express milk during a break that is already paid, they must still be paid for that time. For example, if your employees get a 30-minute paid lunch break, they may choose to pump during that time. If an employee needs 45 minutes to pump, eat, and get back to work, 30 minutes would be paid, and 15 minutes could be off the clock.

6. Is it safe to store human milk at work?

Yes, human milk is not a biohazard! According to the [CDC](#) and [OSHA](#), expressed milk can be stored in a shared company refrigerator. During the coronavirus crisis any changes that need to be made to allow employees to safely store expressed milk should be provided. For example, if employees are no longer able to access a shared refrigerator, they should be allowed to bring personal coolers and given a safe space to store them.

7. Do employers need to build a lactation room? What if we don't work in a building? What are examples of acceptable lactation spaces?

Federal lactation accommodations laws do *not* require employers to build separate lactation spaces. Many places can serve as lactation spaces, including spaces which are also used for other things (such as conference rooms and offices). Spaces need to meet the basic requirements of

being a space other than a bathroom, shielded from view, free from intrusion (such as behind a locking door), and available as often as needed. To be functional for expressing milk, the space should be clean and a suitable temperature, have a seat for the employee, and a surface to place the pump. Offering a space close to the employee's own work space with electricity and access to a refrigerator and sink is best practice that will allow employees to pump and return to their work sooner.

Businesses that do not work in a building are still required to provide space for their lactating employees to express milk. Farmworkers and delivery drivers have used non-traditional spaces, such as the air-conditioned cab of a tractor trailer (with windows blocked from view), pop-up tents/rooms, or shared lactation spaces along routes. For examples of affordable solutions in every industry, visit the [Office of Women's Health](#).

During the pandemic, employers may need to provide alternate space to ensure pumping locations allow social distancing and meet other recommendations from the CDC or local health departments.

8. How does COVID-19 impact room sanitation?

Because many lactation spaces are shared rooms, your employees may be worried about COVID-19 exposure. According to the Centers for Disease Control, there isn't any evidence that COVID-19 can be passed to a child through human milk. That said, any location shared by more than one employee can pose a risk of infection. Ideally, pumping spaces should be used by just one person at a time, or at least provide enough room for social distancing. Employees should be encouraged to wear masks. Air flow and deep cleaning can further limit the risk of spreading the virus. Consider cleaning lactation rooms more often (like all shared spaces) and provide disinfectant wipes for use on high-touch areas. Remember that during the pandemic, lactating parents may want to take extra time during their pumping break to wash their hands and to clean the space and pump parts.

For more information, visit the [CDC's Guidance on Cleaning and Disinfecting](#) and [CDC Guidance for Businesses and Employers](#). For a best practice guide to safe lactation spaces during the COVID-19 crisis, [see here](#).

9. Can remote work be a breastfeeding accommodation?

Employees should not be required to work from home because they are breastfeeding or have requested lactation accommodations. However, employees who request remote work may be able to meet their lactation needs more efficiently and safely from home. Enabling remote work accommodations for lactation needs may also be required by anti-discrimination laws, particularly when remote work is being provided to other non-breastfeeding employees, like those with underlying health conditions. For more information on how to successfully manage telecommuting employees, see [this Forbes article](#) and [resources from the Society of Human Resource Management](#).

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