



# Nursing Mothers in the Workplace

## *State Law*

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## State Law

### A. State Statutes

**1. Forty-nine states, the District of Columbia and the Virgin Islands** have laws that specifically allow women to breastfeed in any public or private location. Idaho has no applicable statute.

2009 Wis. Laws, Act 148 provides that a mother may breastfeed her child in any public or private location where the mother and child are otherwise authorized to be.

Cal. Civil Code § 43.3 (1997) allows a mother to breastfeed her child in any location, public or private, except the private home or residence of another, where the mother and the child are otherwise authorized to be present. (AB 157)

D.C. Code Ann. § 2-1402.81 et seq. amend the Human Rights Act of 1977 to include breastfeeding as part of the definition of discrimination on the basis of sex, to ensure a woman's right to breastfeed her child in any location, public or private, where she has the right to be with her child.

Ill. Rev. Stat. ch. 740 § 137 (2004) creates the Right to Breastfeed Act. The law provides that a mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be; a mother who breastfeeds in a place of worship shall follow the appropriate norms within that place of worship. (SB 3211)

Ala. Code § 22-1-13 allows a mother to breastfeed her child in any public or private location. (2006 Ala. Acts, Act 526; HB 351)

Minn. Stat. § 145.905 provides that a mother may breastfeed in any location, public or private, where the mother and child are authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breastfeeding.

N.Y. Civil Rights Law § 79-e (1994) permits a mother to breastfeed her child in any public or private location. (SB 3999)

Md. Health-General Code Ann. § 20-801 (2003) permits a woman to breastfeed her infant in any public or private place and prohibits anyone from restricting or limiting this right. (SB 223)

**2. Twenty-nine states, the District of Columbia, and the Virgin Islands exempt breastfeeding from public indecency laws.<sup>1</sup>**

Ill. Rev. Stat. ch. 720 § 5/11-9 (1995) clarifies that breastfeeding of infants is not an act of public indecency. (SB 190)

Ky. Rev. Stat. § 211-755 (2006) permits a mother to breastfeed her baby or express breast milk in any public or private location. Requires that breastfeeding may not be considered an act of public indecency ((2006 SB 106)

Mo. Rev. Stat. § 191.918 (1999, 2014) allows a mother's breastfeeding her child or expressing breast milk in any public or private location is not considered an act of public indecency, indecent exposure, lewd touching or obscenity. (2014 HB 1320)

S.D. Codified Laws Ann. § 22-24A-2 (2002) exempts mothers who are breastfeeding from indecency laws.

Tenn. Code Ann. § 68-58-101 et seq. (2006, 2011) specifies that the act of breastfeeding shall not be considered public indecency or nudity, obscene, or sexual conduct. (2006 Tenn. Law, Chap. 617; HB 3582)

Wyo. Stat. § 6-4-201 (2007) exempts breastfeeding mothers from public indecency laws and gives breastfeeding women the right to nurse anyplace that they otherwise have a right to be. (HB 105)

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<sup>1</sup> Alaska, Arizona, Arkansas, Florida, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, Wisconsin and Wyoming.

**3. Twenty-seven states, the District of Columbia, and Puerto Rico** have laws related to breastfeeding or lactation in the workplace.<sup>2</sup>

Colo. Rev. Stat. § 8-13.5-101 et seq. (2008) require an employer to provide reasonable break time for an employee to express breast milk for her nursing child for up to two years after the child's birth. The employer must make reasonable efforts to provide a place, other than a toilet stall, for the employee to express breast milk in privacy. (2008 Colo., Sess. Laws, Chap. 106, HB 1276)

Ga. Code § 34-1-6 (1999) allows employers to provide daily unpaid break time for a mother to express breast milk for her infant child. Employers are also required to make a reasonable effort to provide a private location, other than a toilet stall, in close proximity to the workplace for this activity. The employer is not required to provide break time if to do so would unduly disrupt the workplace operations.

Hawaii Rev. Stat. § 378-2 provides that it is unlawful discriminatory practice for any employer or labor organization to refuse to hire or employ, bar or discharge from employment, withhold pay from, demote or penalize a lactating employee because an employee breastfeeds or expresses milk at the workplace. (2000 Hawaii Sess. Laws, Act 227; HB 2774)

Ill. Rev. Stat. ch. 820 § 260 (2001) creates the Nursing Mothers in the Workplace Act. Requires that employers provide reasonable unpaid break time each day to employees who need to express breast milk. The law also requires employers to make reasonable efforts to provide a room or other location, other than a toilet stall, where an employee can express her milk in privacy. (SB 542)

Me. Rev. Stat. Ann. tit. 26, § 604 (2009) requires an employer to provide adequate unpaid or paid break time to express breast milk for up to 3 years following childbirth. The employer must make reasonable efforts to provide a clean place, other than a bathroom, where an employee may express breast milk in privacy. The employer may not discriminate against an employee who chooses to express breast milk in the workplace. (2009 Me. Laws, Chap. 84, HB 280)

Minn. Stat. § 181.939 (1998, 2014) requires employers to provide daily, unpaid break time for a mother to express breast milk for her infant child. Employers are also required to make a reasonable effort to provide a private location, other than

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<sup>2</sup> Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Minnesota, Mississippi, Montana, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wyoming.

a bathroom or toilet stall, in close proximity to the workplace that is shielded from view, free from intrusion and has an electrical outlet. The law specifies that an employer may not retaliate against an employee for asserting rights or remedies under this act. (1998 SB 2751; 2014 HB 2536)

Tenn. Code Ann. § 50-1-305 (1999) requires employers to provide daily unpaid break time for a mother to express breast milk for her infant child. Employers are also required to make a reasonable effort to provide a private location, other than a toilet stall, in close proximity to the workplace for this activity. (1999 Tenn. Law, Chap. 161; SB 1856)

**4. Seventeen states and Puerto Rico** exempt breastfeeding mothers from jury duty or allow jury service to be postponed.<sup>3</sup>

2000 Cal. Stats., Chap. 266 (AB 1814) created the law and directs the Judicial Council to adopt a rule of court to allow the mother of a breastfed child to postpone jury duty for a period of up to one year and that after one year, jury duty may be further postponed upon written request by the mother. See California Rules of Court, Trial Court Rules, Rule 2.1006.

Idaho Code § 2-212 (2002) provides that a person who is not disqualified for jury service under § 2-209 may have jury service postponed by the court or the jury commissioner only upon a showing of undue hardship, extreme inconvenience, or public necessity, or upon a showing that the juror is a mother breastfeeding her child. (2002 HB 497)

**5. Five states and Puerto Rico** have implemented or encouraged the development of a breastfeeding awareness education campaign.<sup>4</sup>

2012 Ill. House Resolution 778 urges departments that assist families and children to offer and promote educational materials about breastfeeding.

Minn. Stat. Ann. § 145.894 directs the state commissioner of health to develop and implement a public education program promoting the provisions of the Maternal and Child Nutrition Act. The education programs must include a campaign to promote breastfeeding.

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<sup>3</sup> California, Connecticut, Idaho, Illinois, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, Oklahoma, Oregon, South Dakota, Utah and Virginia.

<sup>4</sup> California, Illinois, Minnesota, Missouri and Vermont.

6. At least three states have laws related to child care facilities and breastfeeding.

a. Louisiana prohibits any child care facility from discriminating against breastfed babies.

b. Mississippi requires licensed child care facilities to provide breastfeeding mothers with a sanitary place that is not a toilet stall to breastfeed their children or express milk, to provide a refrigerator to store expressed milk, to train staff in the safe and proper storage and handling of human milk, and to display breastfeeding promotion information to the clients of the facility.

c. Maryland requires child care centers to promote proper nutrition and developmentally appropriate practices by establishing training and policies promoting breastfeeding.

**Full list of the State statutes are available at: National Conference of State Legislatures and State Net (<http://www.ncsl.org/research/health/breastfeeding-state-laws.aspx>).**

**B. States laws that provide more protection than 29 U.S.C. § 207.<sup>5</sup>**

1. FLSA does not “preempt any State law that provides greater protections to employees than the protections provided for under federal law.” 29 U.S.C. § 207(r)(4).

**2. Breaks Required for Longer Periods than 1 Year.**

a. Oregon: 18 months

b. Colorado: 24 months

c. New York, Vermont, Maine: up to 36 months

3. **Breaks Required for More than Just Expression of Milk.** Employer is required to accommodate not only for expressing milk on site but also breastfeeding the child at work.

a. Connecticut

b. Oklahoma

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<sup>5</sup> See Sarah Andrews, *Lactation Breaks in the Workplace: What Employers Need to Know About the Nursing Mothers Amendment to the FLSA*, 30 HOFSTRA LAB. & EMP. L.J. 121 (2012).

- c. Puerto Rico
- d. Rhode Island

**4. Paid Leave**

- a. Puerto Rico requires an employer to allow paid breaks for lactation purposes.
- b. Some State statutes support, recommend paid breaks.

**5. Coverage.** States that have lactation break mandates simply include all employees (except Oregon).

**6. Enforcement**

- a. Maine, New York, Tennessee and Vermont: Whistleblower and/or retaliation protection.
- b. Connecticut, the District of Columbia, Hawaii, Maine, Mississippi, New York and Vermont (employer may not discriminate against employees for taking lactation break): Non-discrimination requirement.
- c. New York: Requirement of award of liquidated damages.
- d. California: Private cause of action.

**C. State regulations**

**1. DC. D.C. Mun. Regs. Tit. 4, § 518 Breastfeeding guidelines**

- 518.2 The Office shall provide information to employers and employees regarding their rights and obligations under this section. Employers shall conspicuously post and maintain in the workplace a notice containing this information.
- 518.3 Each employer shall create a policy with respect to its employees who are breastfeeding mothers;
- 518.4 A breastfeeding mother shall have rights to include, but not be limited to, the following...
- 518.5 Employers shall accommodate breastfeeding employees by taking steps including, but not limited to, the following...

2. **California.** 2 CCR § 11036 Prohibition against Harassment.

- It is an unlawful employment practice for any employer with one or more employees or other covered entities to harass an employee or applicant because of pregnancy or perceived pregnancy, childbirth, breastfeeding, or any related medical conditions.

3. **Mississippi.** Miss. Admin. Code 15-11-55:2.18.7 Breast-Feeding Accommodations and Staff Training

- Breast-feeding mothers, including employees, shall be provided a sanitary place that is not a toilet stall to breast-feed their child or to express milk. This area shall provide an electrical outlet, comfortable chair, and nearby access to running water.
- A refrigerator must be available to accommodate storage of expressed breast milk.
- Guidelines for Milk Storage and Use for All Infants

Storage Method and Temperature	Maximum Amount of Time For Storage
<i>Room (25 C or 77 F)</i>	4 hours
<i>Refrigerator (4 C or 39 F)</i>	48 hours
<i>Previously thawed</i>	24 hours
<i>Freezer (-20 C or 0 F)</i>	3 months

**D. Municipal ordinances**

1. **Madison, Wisconsin**

Notwithstanding any other provision of law, a mother or her surrogate may breastfeed her child and may express her breastmilk in any location, public or private, except the private home or residence of another, where the mother or her surrogate and the child are otherwise authorized to be present. Any person who intentionally interferes with a mother's or her surrogate's attempts to breastfeed her child or to express breastmilk, except the owner of a private home or residence, shall be subject to a forfeiture of not less than \$25.00 nor more than \$250.00 for each such violation. Municipal Code § 23.37

## 2. Philadelphia, Pennsylvania

- Breastfeeding in public: Under the Philadelphia Fair Practices Ordinance, a public accommodation in Philadelphia may not prohibit a breastfeeding mother from or segregate a breastfeeding mother within any public accommodation where she would otherwise be authorized to be, irrespective of whether or not the nipple of the mother's breast is covered during or incidental to breastfeeding. Municipal Code § 9-1106(1)(a)(.3)

Pumping in the workplace: Under the Philadelphia Fair Practices Ordinance, an employer in Philadelphia must reasonably accommodate an employee's need to express breast milk as long as the accommodation does not impose an "undue hardship" on the employer. Reasonable accommodations include: providing unpaid break time, allowing an employee to use paid break, mealtime, or both to express milk, and providing a private, sanitary space that is not a bathroom where an employee can express milk. Code § 9-1103(m)

## E. State Case Law

### 1. Massachusetts

- *Currier v. Nat'l Bd. of Med. Examiners*, 462 Mass. 1, 965 N.E.2d 829 (2012) (holding that the organization administering medical license examination violated public accommodation statute when it refused to provide the examinee additional break time to enable her to adequately express breast milk did not violate state's Civil Rights Act).

### 2. Ohio

- *Pitts-Baad v. Valvoline Instant Oil Change*, 2012-Ohio-4811, ¶39 (2013) (holding that manager's failure to order new uniform pants for pregnant employee was not direct evidence of gender discrimination; finding that allowing the appellant to express milk during her break time at a bathroom does not constitute gender discrimination or a failure to accommodate breastfeeding).
- *Allen v. totes/Isotoner Corp.*, 2009-Ohio-4231, ¶ 22, 123 Ohio St. 3d 216, 221, 915 N.E.2d 622, 627 (holding that there was no evidence that employer's articulated legitimate, nondiscriminatory reason for employee's termination, i.e., failure to follow directions (for taking an unauthorized break from her work station in order to use a breast pump) was pretext for pregnancy discrimination).

