



Nursing Mothers in the Workplace

Recommendations and Best Practices

Prepared by:
JoAnn M. Hart
Boardman & Clark LLP



November 2016

Nursing Mothers in the Workplace - Recommendations and Best Practices, ©2016 Lorman Education Services. All Rights Reserved.

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 700 available
- ☑ Slide Decks - More than 1700 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

Recommendations and Best Practices

A. What to think about as an Employer

1. Lactation Policy.

- a. Developing, disseminating, and enforcing a strong policy based on the requirements of the PDA (reasonable time and space requirement) and the ADA.
- b. Making policies that align with any state laws that provide greater support (i.e. in coverage, length of break time, space requirement, age of the child).

2. Clear Communication.

- a. Developing shared expectations and an understanding of what will constitute reasonable break time and how to incorporate the breaks into the workday (the DOL recommends that employers and nursing mothers enter into a dialogue regarding what the nursing mother will need).
- b. Having a dialogue about the frequency and timing of breaks to express milk, as well as the location and availability of space for expressing milk, which will affect the time required for breaks.
- c. Keeping the lines of communications open because the need for breaks may evolve over time.

3. Lactation Space and Place to Store Expressed Milk

- a. Providing a place that is shielded from view, free from intrusion, and functional for expressing milk. 29 U.S.C. § 207(r)(1)(B).
- b. A space temporarily created or converted for expressing milk, or made available when needed by the nursing mother is sufficient--provided the space is shielded from view and free from any intrusion from coworkers and the public. 75 Fed. Reg. at 24II.

4. Lactation Education (cited in the EEOC guidance as references)

- a. Break Time for Nursing Mothers, DEP'T OF LABOR, <https://www.dol.gov/whd/nursingmothers/>.
- b. Going back to work: Breastfeeding, WOMENSHEALTH.GOV, <http://www.womenshealth.gov/breastfeeding/going-back-to-work/>.
- c. Overcoming breastfeeding problems, MEDLINEPLUS, <https://www.nlm.nih.gov/medlineplus/ency/article/002452.htm>.

B. Best practices to protect nursing mother rights in the workplace from the EEOC Enforcement Guidance.¹

1. In General

- Develop, disseminate, and enforce a strong policy based on the requirements of the PDA and the ADA.
- Train managers and employees regularly about their rights and responsibilities related to pregnancy, childbirth, and related medical conditions. (federal, state, local laws and regulations including Title VII, as amended by the PDA, the ADA, as amended, the FMLA, as well as relevant employer policies).
- Protect applicants and employees from retaliation.

2. Hiring, Promotion, and Other Employment Decisions

- Focus on the applicant's or employee's qualifications for the job in question. Do not ask questions about the applicant's or employee's pregnancy status, children, plans to start a family.
- Develop specific, job related qualification standards for each position that reflect the duties, functions, and competencies of the position.

3. Leave and Other Fringe Benefits

- Leave related to pregnancy, childbirth, or related conditions can be limited to women affected by those conditions. Parental leave must be provided to similarly situated men and women on the same terms.
- If there is a restrictive leave policy (such as restricted leave during a probationary period), evaluate whether it disproportionately impacts pregnant workers and, if so, whether it is necessary for business operations. Ensure that the policy notes that an employee may qualify for leave as a reasonable accommodation.
- Review workplace policies that limit employee flexibility, such as fixed hours of work and mandatory overtime, to ensure that they are necessary for business operations.
- Consult with employees who plan to take pregnancy and/or parental leave in order to determine how their job responsibilities will be handled in their absence.

¹ Available at: https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#IIIA.

4. Terms and Conditions of Employment

- State explicitly in any written reasonable accommodation policy that reasonable accommodations may be available to individuals with temporary impairments, including impairments related to pregnancy.
- Train managers to recognize requests for reasonable accommodation and to respond promptly to all requests.
- Make sure that anyone designated to handle requests for reasonable accommodations knows that the definition of the term “disability” is broad and that employees requesting accommodations, including employees with pregnancy-related impairments, should not be required to submit more than reasonable documentation to establish that they have covered disabilities.

