

In California, all employers are required to provide reasonable break time to employees who need to express breast milk. Unlike Federal law, which has restrictions on the age of the child and which employees are covered, California's laws regarding lactation breaks cover all employers and all employees in the state with no upper age limit of the child. The California Labor Code provides that break time for expressing milk should be concurrent with existing paid breaks when possible. Break time that exceeds the length of the employee's existing paid breaks must be offered, but the break time does not have to be paid. California law requires the employer to make reasonable efforts to provide a space that is close to the employee's regular work space for the employee to express milk in private.³²

California employees who are non-exempt workers are also protected by the Break Time for Nursing Mothers provisions of the Federal Labor Standards Act (FLSA) in addition to the provisions of the California Labor Code. In general, employees who are eligible for overtime pay are non-exempt and eligible for the protections of the FLSA. In cases where an employee is protected under both the federal and state law, the stronger of the two shall prevail. In some cases, that may be state law and in some, federal.

Below is a chart comparing federal and state laws with a summary of legal protections for workers who are eligible for the protections of both the California Labor Code and the FLSA with respect to expressing breast milk. Federal law only applies to non-exempt employees. State law applies to both exempt and non-exempt employees.

If an employee feels that their employer is not providing adequate break time and/or a place to express milk, the employee may file a report/claim with the Department of Labor Standards Enforcement (DLSE) Bureau of Field Enforcement (BOFE) either at the BOFE office that is located nearest to the place of employment. More information about how to file a claim is here:
www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm.

Any employee who experiences retaliation for asserting their rights to lactation accommodations or for reporting a violation to the DLSE about their employer's failure to provide lactation accommodations can file a claim with the DLSE³³ and also seek legal advice.

Reasonable Accommodations

Lactation is considered a condition related to pregnancy and childbirth under the California Pregnancy Disability Leave Law and is, therefore, a basis for reasonable accommodations when accommodations are deemed medically advisable by a person's healthcare provider.^{34,36} Employees who experience substantial impairment in a major life activity because of a breastfeeding complication may also have protections under the federal Americans with Disabilities Act. Employees in California are already entitled to break time to express milk under the California Labor Code, as explained above.

In most circumstances, advocates in California should not need to rely on the reasonable accommodations of PDL to obtain basic breaks or space for a breastfeeding employee to express breast milk. If, however, an employer offers an employee a space to pump that complies with the bare minimum requirements of the Labor Code, but does not meet the worker's basic pumping needs, the employee can, with the advice of their healthcare provider, request a different space or changes to the offered space as a reasonable accommodation. Examples might include:

- Access to nearby clean running water for washing hands and pump parts.
- Access to a clean refrigerator or space to store a personal cooler for storage of breastmilk.
- Access to an electrical outlet to plug in an electric breast pump.
- A comfortable chair to sit in while expressing milk.
- A table for the lactation space.

Some workers will need accommodations beyond basic break time and space in order to continue to work and breastfeed due to breastfeeding complications or challenges presented by their particular jobs. Which accommodations will be reasonable for a particular worker is very situation specific and depends on the employee's medical need, the specifics of the employee's job, and the needs of the employer.

Breastfeeding at Work

Break Time and Private Space for Lactating Employees

Subject	Laws on Subject	Citation
Breaks To Express Milk	<p>California and Federal. Both state and federal law require employers to provide reasonable break time for nursing employees who need to express milk.</p>	Cal. Labor Code § 1030; 29 U.S.C. 207(r)(1)(A)
Period During Which Employee Is Entitled To Breaks To Express Milk	<p>California. California has no time limit on how long an employee may take breaks to express milk for an infant child.</p> <p>Federal. Federal law states that a non-exempt employee is entitled to breaks only until the child is one year old.</p>	Cal. Labor Code § 1030
Provision of Space For Expression of Breastmilk	<p>Federal. Federal law provides that employers <u>shall</u> provide space for non-exempt breastfeeding employees to express milk that is shielded from view and free from intrusion by co-workers and the public.</p> <p>California. California provides that employers need to make “reasonable efforts” to provide private space to express milk.</p>	29 U.S.C. 207(r)(1)(A)
Location of Milk Expression in Relation to Restrooms	<p>Federal. Federal law states that employers <u>shall</u> provide space for non-exempt breastfeeding employees to express milk that <u>cannot</u> be a bathroom.</p> <p>California. California law states that employers must make reasonable efforts to find a space that is not a <u>toilet stall</u>.</p>	29 U.S.C. 207(r)(1)(B)
Location of Pumping Space in Relation To Work	<p>California. California law provides that an employer must make reasonable efforts to find a space for any employee to express milk that is <u>close to the employee’s workspace</u>.</p>	Cal. Labor Code § 1031
Exemptions Based On Hardship/Disruption	<p>Federal. Federal law provides that only employers with fewer than 50 employees may claim exemption from compliance based on undue hardship.</p> <p>California. Under California law, any employer can obtain exemption based on serious disruption to their operations regardless of size.</p>	29 U.S.C. 207(r)(3)

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Some examples of possible reasonable accommodations include:

A breastfeeding employee who develops a complication like mastitis may need an accommodation such as time off from work to seek medical treatment and recover.³⁵

Rarely, breastfeeding may be incompatible with an employee's basic job duties. For example, a breastfeeding police officer might be temporarily unable to wear a tight bulletproof vest required to safely perform patrol duties. In this example, the officer might need a reasonable accommodation in the form of a temporary transfer to a light or desk duty position, if the employer offers light duty to other non-breastfeeding workers.

An employee whose work involves exposure to smoke, heavy metals, radiation or other toxins that could affect breast milk may need reasonable accommodations to reduce exposure. Reasonable accommodations might include use of protective gear (such as gloves, protective clothing or respirators) or, if available, temporary reassignment to a different position. More information about accommodations for breastfeeding workers exposed to potentially hazardous materials is available at:

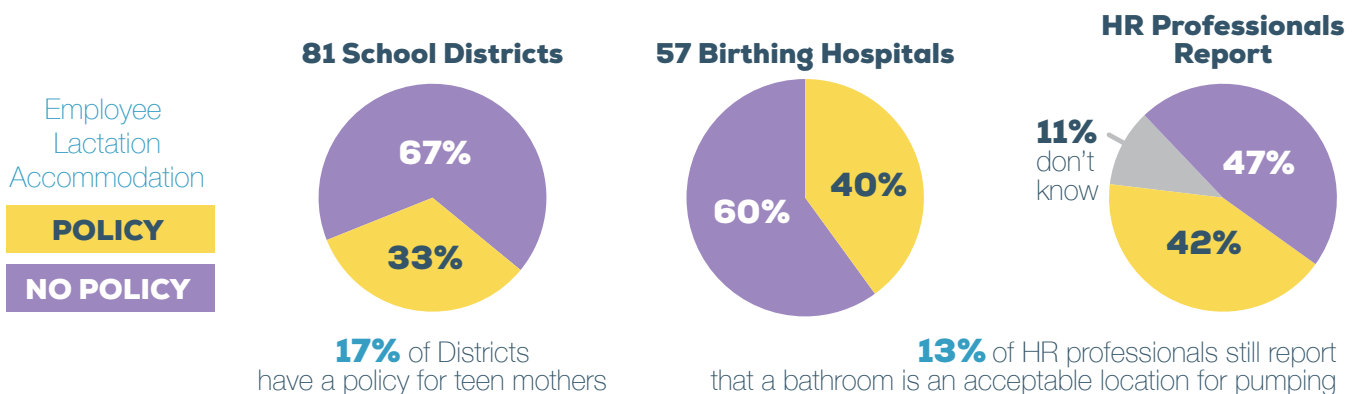
www.cdc.gov/niosh/topics/repro/breastfeeding.html

An employee who is having difficulty expressing milk using a pump is entitled under the Labor Code to express milk each time there is a need to do so, even if they need to pump more frequently than the average breastfeeding worker. Depending on the nature of the employee's workplace, they may also be able to discuss accommodations that would allow the employee access to their infant so that they can breastfeed rather than pump during some or all of their lactation breaks. (Note: Employers may be particularly willing to consider access-to-infant accommodations if granting them will result in shorter or fewer lactation breaks due to the fact that infants are much more efficient than pumps at removing breast milk.)

Examples of this type of accommodation might include:

- Having a caregiver bring the baby to the parent to breastfeed on breaks (rather than pumping).
- Permission to leave work to breastfeed at home or the baby's day care (if nearby).
- Permission to bring baby to work pursuant to a babies-at-work policy.
- Permission to telework (with another caregiver present to watch the baby when the employee is not breastfeeding).

Women work at the highest numbers in health care and education



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It is important to remember that workers are not entitled to receive their first choice accommodations, and employers generally do not have to change the employee's job duties, hours, or productivity requirements unless they would do so for a non-breastfeeding worker.

Employers also do not have to offer accommodations that would create undue hardship for their businesses. Reasonable accommodations may need to be negotiated.

An employee cannot, however, be punished, fired, or penalized in any way for asking for a lactation accommodation, even if the accommodation is ultimately denied.

Discrimination and Retaliation

Under both Federal and California law, discrimination against employees on the basis of pregnancy, childbirth and related medical conditions is considered a form of sex discrimination and is illegal. The California Fair Employment and Housing Act expressly recognizes discrimination based on lactation as a form of illegal sex discrimination.^{18,37}

State and Federal law also forbid employers from retaliating against employees who oppose sex discrimination, seek reasonable accommodations, or exercise their rights to take job-protected leave.^{38,39}

Employees who believe that they have been demoted or fired because they breastfed or expressed milk at work should seek legal counsel and should contact one of the legal resources listed on the front of this toolkit.

Women with adequate break time are

**2.6
TIMES**

more likely to breastfeed exclusively and

**3
TIMES**

more likely to breastfeed at all

at 6 months postpartum.

Women with private space at work breastfeed for 1.4 months longer than women with no break time or private space.¹¹⁴

Breastfeeding at Work

Contract Workers

Some contract workers are assigned to work with a company for a particular project or time frame but are still legally considered employees. This includes most “temp” workers. Temporary workers are entitled to the same legal protections as full-time, permanent workers, even if their work is limited in time or scope.

True independent contractors, on the other hand, are not protected by most of the provisions of the ADA, FEHA, FMLA, CFRA, PDL and Labor Code that are discussed in this guide. True independent contractors are self-employed and should have a high degree of control over the time and manner in which they perform their work. Therefore, a lactating worker who is truly an independent contractor should be able to take breaks to nurse or express milk as needed.

If an employer is exerting control over a worker’s working conditions, that worker may be legally an employee and entitled to the protection of state and federal employment law even if the employer refers to the worker as an “independent contractor.”

If a worker has questions about their status as an employee versus an independent contractor and needs help understanding which legal protections for lactation accommodation apply, the lactating person should seek advice from an attorney or from the Center for WorkLife Law free legal hotline at 415-703-8276.

Workers Who Perform Duties Off-Site

If an employee works at one location and is also sent off-site to perform work, both the primary employer and the off-site employer are responsible for providing lactation accommodations.⁴⁰ Additionally, if an employee is sent off-site to perform work for a client, it is the responsibility of both the employer and the client to provide lactation accommodations. For example: if a bookkeeper leaves their primary worksite to go to a client’s office to perform bookkeeping work, both the primary employer and the client are responsible for providing lactation accommodations to the bookkeeper.



Breastfeeding at Work

Union Members

Employees who are members of a union may have additional protections beyond what federal and state laws require. Union contracts could include additional benefits such as paid family leave for non full-time employees, extended leave beyond 12 weeks, elimination of the employer's right to automatically apply vacation or sick days to leave, payment of the employee's insurance contributions by the employer during leave, and stronger lactation accommodations. Union members should contact their union and ask for a copy of their contract to find out what protections are included. Union members can also participate in contract negotiations to advocate for additional paid family leave and lactation protections.

Union members have a legal right to have a union representative at any interview or meeting that could result in disciplinary action.⁴¹ If a union member feels that they were retaliated against for taking breaks to express breast milk, the union member should contact a union steward or representative. The union may provide guidance about how to file a grievance, may be able to connect the union member to a lawyer, and/or support the union member in taking collective action to resolve the issue.

Low-Wage Workers

Advocates should bear in mind that low-wage workers experience barriers to breastfeeding that higher wage workers may not, including low job security, lack of health benefits and sick leave, and inflexible work schedules.⁴² Low-wage workers may not be able to afford to take the full amount of unpaid leave to which they are entitled under PDL and CFRA and may feel forced by financial constraints to return to work before they have physically recovered from childbirth or established breastfeeding. California's Paid Family Leave program is a step in the right direction toward protecting these workers, but six weeks of partial pay may not be enough for some workers to take the leave they need to establish a milk supply and bond with a newborn.

Upon returning to work, low-wage workers are less likely to have access to a dedicated lactation room or to their own private locked office in which to express milk. For a construction worker, waitress, factory employee, or farmworker, private space to express milk may be more difficult to locate than for, say, a corporate attorney. Fortunately, the Department of Health and Human Resources, Office of Women's Health has fantastic resources for identifying appropriate pumping spaces for nursing employees in a wide variety of occupations and work environments. The Employer Solutions webpage is available online at: www.womenshealth.gov/breastfeeding/employer-solutions

CalWORKs is a public assistance program in California that serves all counties in the state. People who participate in the CalWORKs program are required to complete welfare to work activities. California state law provides that CalWORKs participants are entitled to the same protections as other workers in the state of California such as rest and meal breaks, pregnancy disability and lactation accommodations.⁴³ Additionally, California law protects CalWORKs participants' right to breastfeed in any public space including county offices.⁴³

Some low-wage workers may also be reluctant to advocate for themselves in fear of negative repercussion and loss of employment. Workers should be reassured that retaliation for breastfeeding or expressing milk is illegal. A worker who experiences retaliation or who is terminated for expressing milk or asserting their legal rights should seek legal advice right away and should consider contacting a worker's rights advocacy organization as well. See the resources list in the front of the toolkit for more information.