

## New York City Issues Model Lactation Accommodation Policies and Request Form and FAQs

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As we previously [reported](#), effective March 17, 2019, employers with four or more employees in New York City must provide employees with break time and a private space to express milk, unless doing so would cause undue hardship. Employers must also notify employees about these rights in a detailed written policy.<sup>1</sup>

The New York City Commission on Human Rights (“Commission”) just released its “Lactation Accommodations” [webpage](#) with three sample policies to assist employers in satisfying the policy mandate, along with a Model Lactation Accommodation Request Form and several lactation-related resources, including a detailed set of [Frequently Asked Questions](#) (“FAQs”).

While the policy requirements of the new lactation accommodation laws are themselves quite extensive, the model policies are extremely long and contain more information than employers are statutorily required to include. Nevertheless, the models may assist employers in developing (or revising) a lactation accommodation policy to ensure that it is both legally compliant and appropriate for their employees’ and business needs.

### The Model Policies

The Commission offers the following three model policies:

- **A policy for workplaces with [dedicated lactation room\(s\)](#)**
  - This model policy contains helpful descriptions of the various accommodations that employers must provide, such as a private room, types of equipment, break periods, and procedures for use of the room by multiple employees.

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<sup>1</sup> Keep in mind that *New York State’s* [lactation accommodation law](#) applies to all employers, regardless of size.

- Included in the model policy are items that are not specifically required by law, such as:
  - detailed descriptions of statutes and Commission guidance on such matters as “undue hardship” and “cooperative dialogue”;
  - contact information for the Commission;
  - a statement that “[e]ven if the lactation room is available, an employee who wishes to pump at their usual workspace will be permitted to do this so long as it does not create an undue hardship ...” (as discussed below, the Commission takes the position that employees may refuse to use a lactation room);
  - a notification requirement that employers resend the policy to an employee before the employee returns from parental leave and “request information from the employee regarding the need for a reasonable accommodation to express breast milk at work” (the statute, in contrast, imposes an obligation on *employees* to request the lactation accommodation; nonetheless, since the Commission may stand by its interpretation of the law, and because it may be useful for planning purposes, employers may wish to send such a notice); and
  - an instruction that the employer will provide a temporary accommodation during the cooperative dialogue process; again, this is not explicitly required by the statute, but it is a procedure that employers may wish to adopt, if feasible.<sup>2</sup>
- Additionally, although employers need not include the model policy’s definitions of “undue hardship” and “cooperative dialogue,” they should be aware of their obligation at the conclusion of the cooperative dialogue process to provide employees with a final *written determination* as to whether the accommodation is granted as requested, granted as modified, or denied.<sup>3</sup>
- **A policy for workplaces with a multipurpose space, other than a restroom, that may be used as a lactation room**
  - This model policy appears to be consistent with the law’s requirements concerning multipurpose lactation rooms, and contains the items noted above in connection with the dedicated lactation room(s).

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<sup>2</sup> The law requires an employer to respond to a request for lactation accommodation within five days.

<sup>3</sup> For more information on the cooperative dialogue law, please see our *Act Now* Advisories titled “[New Disability Discrimination Guidance Sheds Light on New York City’s “Cooperative Dialogue Requirements”](#)” and “[New York City Employers Will Be Required to Engage in Reasonable Accommodations Dialogue.](#)”

- **A policy for workplaces with no available space for a lactation room**
  - This model policy imposes no new requirements on employers, aside from those noted above in connection with the dedicated lactation room(s). The policy does, however, underscore that, even if an employer is unable to provide a dedicated lactation room without incurring undue hardship, the obligation to engage in a cooperative dialogue with the employee to find some means of accommodation remains.

### **Model Lactation Accommodation Request Form**

The Commission has also developed a [Model Lactation Accommodation Request Form](#) for employees to use to request an accommodation. Employers are not required to adopt this specific form, but it can be used as a template to design one that better serves the needs of an employer's business and employees.

### **Lactation Accommodations FAQs**

Finally, the Commission introduced a set of [FAQs](#) that features some common questions and answers about the new laws. The FAQs address a few concepts not directly touched upon in the policies, such as providing lactation accommodations for non-birthing parents who induce lactation, and lactation accommodations for all gender identities and expressions (i.e., lactation accommodations are not limited to employees who identify as women or mothers).

The FAQs contradict New York State's lactation accommodation laws with respect to delaying or altering pumping schedules. The Commission's FAQs state that an employee dictates the pumping schedule, unless it poses an undue hardship; however, New York State [guidelines](#) instruct that an employer may ask an employee to delay a break for up to 30 minutes.

Consistent with the model policies above, the FAQs also state that an employer may not require an employee to use a dedicated lactation room and should advise employees that they have the right to pump at their own workstation.

For employers with a mobile workforce, the FAQs offer some solutions to provide lactation accommodations, including:

- portable lactation spaces;
- using employer vehicles (e.g., the cab of a large agriculture or construction vehicle), along with shades or other privacy measures the employer can offer;
- pop-up tents;
- other mobile enclosed spaces that would allow mobile employees to pump in privacy;

- temporarily assigning changing rooms or manager offices or conference rooms to serve as pumping spaces;
- setting up a stall in an employee locker room;
- for employees with mobile routes, ensuring employees are able to find a space to pump;
- using portable screens to provide privacy in a shared area; and/or
- subsidizing employees to purchase and use hands-free, battery-operated or chargeable breast pumps while in the field.

### **What New York City Employers Should Do Now**

- Whether or not you have developed a lactation accommodation policy, review the applicable law and model policy to ensure compliance with all substantive requirements.
- Assess whether, based on business and employees' needs, any of the additional information contained in the applicable model policy is appropriate for inclusion.
- Consider whether you wish to provide the additional employee notifications suggested in the model policies.
- Confirm that procedures are in place to handle required notifications and requests concerning lactation accommodation.
- Ensure that all relevant personnel are adequately trained on receiving lactation accommodation requests. Such training should include a “refresher course” on “undue hardship” and an employer’s obligations under the “cooperative dialogue” law, including documentation requirements.

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