

New Lactation Room Requirements For New York City Employers



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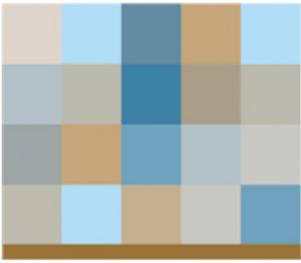
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On March 18, 2019, pursuant to amendments to the New York City Human Rights Law (“NYCHRL”), New York City employers with four or more employees will be required to: (1) provide a lactation room, as defined by the new law, and a refrigerator suitable for breast milk storage in reasonable proximity to the employee’s work area; and (2) implement and distribute a lactation room accommodation policy.

Before the amendments, New York State had already required employers, regardless of size, to, among other things, “make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy.” New York Labor Law, Section 206-C. This requirement remains in effect throughout New York State. In New York City, the amendments’ requirement that employers provide a lactation room in reasonable proximity is not a major change, but the requirement to provide a refrigerator suitable for breast milk storage in reasonable proximity to an employee’s work area is a new obligation. The new law defines *lactation room* as: “a sanitary place, other than a restroom, that can be used to express breast milk shielded from view and free from intrusion and that includes at minimum an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water.” If a room designated by an employer to serve as a lactation room is also used for another purpose, the sole function of the room shall be as a lactation room while an employee is using the room to express breast milk. When the employer designates a room for this purpose, the new law requires the employer to provide notice to other employees that the room is given preference for use as a lactation room.

In the event that providing a lactation room would impose an undue hardship on an employer, the new law requires the employer to engage in a “cooperative dialogue” with the employee about how to meet the employee’s needs in another way. At the conclusion of the cooperative dialogue, the employer must provide the employee with a written final determination identifying any accommodation granted or denied.

The new law also requires employers to implement a written policy regarding the lactation room and to distribute such policy to all employees upon hire. The policy should include a statement that employees have a right to request a lactation room, identify a process by which employees may request a lactation room, and address the details of how such requests will be handled in a manner that complies with the new law. The New York City Commission on Human Rights, the agency that enforces the NYCHRL, in collaboration with the Department of Health and Mental Hygiene, will develop a model lactation room



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This Alert was written by A. Jonathan Trafimow and Joan B. Lopez.

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accommodation policy and a model lactation room request form and will make such model policy and request form available on its website.

We strongly encourage employers to restructure their policy on accommodating employees who are nursing mothers to comply with the new law. Failure to comply with the law could lead to time-consuming and financially-burdensome litigation. For instance, in January 2019, five New York City police officers filed a class-action EEOC charge against the City of New York, the Mayor, and certain police officials alleging, among other things, that the NYPD discriminated against them by “engag[ing] in a pattern, practice, and policy of failing and refusing to provide nursing mothers with reasonable break times and a proper location to express milk,” in violation of federal, state, and city laws.

Any issues raised in this Alert may be addressed to Mr. Trafimow or Ms. Lopez who can be reached at: (516) 873-2000 or by email at jtrafimow@moritthock.com or jlopez@moritthock.com



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