

San Francisco Passes “Lactation in the Workplace Ordinance”

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On June 30, 2017, San Francisco Mayor Ed Lee signed the “Lactation in the Workplace Ordinance” (“Ordinance”), increasing protections for nursing mothers working in San Francisco. The Ordinance becomes effective January 1, 2018, and applies to anyone employed within the “geographic boundaries” of San Francisco.

The Ordinance expands federal and California law regarding lactation in the workplace. California law requires employers to provide a reasonable amount of break time to accommodate employees and make reasonable efforts to provide the employee with a room, other than a toilet stall, in close proximity to the employee’s work area, to express milk in private. The Fair Labor Standards Act requires employers to provide a reasonable break time for an employee to express breast milk for one year after the child’s birth and in a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public.

Lactation Rooms:

The Ordinance goes further and requires that the room be safe, clean and free of toxic or hazardous materials, contains a surface to place a breast pump and other personal items, have a place to sit and access to electricity. The room also should have access to a refrigerator and a sink. The room may be used for multiple purposes, but employees must be put on notice that lactation takes precedence over other uses for the room.

Lactation Accommodation Policy:

The Ordinance requires that every employer maintain a written lactation accommodation policy. The policy must include the following:

- A statement of the right to request a lactation accommodation.
- A process for requesting an accommodation. This process shall:
 - specify the means by which an employee may submit a request;
 - require the employer to respond to any such request for accommodation within 5 business days; and
 - require the employer and employee to engage in an interactive process to determine the appropriate accommodations.
- State that if in response to a request for accommodation the employer does not provide the accommodation, the employer must provide a written response which identifies the basis for denial of the request.
- Notice that retaliation in response to a request is prohibited.

The policy must be distributed upon hire, included in any handbook and must be provided to any employee who inquires about or requests pregnancy or parental leave.

Recordkeeping Obligations:

Employers will be required to maintain a record of employee requests for lactation accommodations for three years. The record must include the employee’s name, the date of the request, and a description of how the



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employer addressed the request.

Undue Hardship Exemption:

Employers may be exempt from the Ordinance if its requirements would impose an undue hardship on the employer. Examples of an undue hardship may include performing construction to comply, removing seating from a restaurant, or removing retail floor space.

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