

Employer's Fact Sheet: Workplace Breastfeeding Rights in New Jersey



A breastfeeding employee may be not discriminated against in the workplace on the basis of breastfeeding status. Under the New Jersey Law Against Discrimination (N.J.S.A. 10:5-12) (LAD),* it is illegal to discriminate against or to treat an employee differently on the basis of breastfeeding status. It is also unlawful for an employer to harass, to make derogatory comments about, or to interfere with an employee or to permit others to do these things because the employee breastfeeds or chooses to express breast milk at work.

Employees have the right to express breast milk at work. The LAD also states that employers must accommodate breastfeeding employees by providing them reasonable break time each day and a suitable room or other location with privacy, other than a toilet stall, in close proximity to the work area, to express breast milk for the child. An employer may not penalize an employee for asking to use or for using this accommodation.

Which employers are covered? The LAD applies to all employers in New Jersey, including private or state and local government employers, employment agencies and labor unions.

Requirements for pumping space: The pumping location may not be a toilet stall. It must be a private room or other location in close proximity to the work area where the employees cannot be seen by or intruded upon by others while pumping. For privacy, the space should have a door that locks from the inside. It does not need to be a permanent, dedicated pumping space. It can be a room or space used for other work functions, like an office, conference room or storage area. The space must be available each time breastfeeding employees need it. An employee will need a chair and small table or shelf on which to place the pump. Employers are encouraged to provide a space which also contains an electrical outlet, a sink and a refrigerator; these items can help ensure that pumping time need not exceed 30 minutes.

Duration of the right to pump breast milk: New Jersey law does not restrict an employee's right to pumping breaks to any specific number of months or years after the birth of the child. An employee may continue expressing breastmilk after the child's first birthday.

Frequency of breaks: Most mothers will need to pump as often as the baby normally feeds, or at least every 3 hours, especially when their babies are under 6 months of age. The

pumping frequency needs may change as the baby's feeding pattern changes or when the baby starts to eat solid foods.

Length of breaks: The law says that break time must be "reasonable." Most mothers need 15-20 minutes to pump breast milk, plus additional time to set up and store her supplies, store the milk and travel between her work space and the pumping location. Though 30 minutes is typical, some mothers may need more or less time.

Must break time to express milk be paid? Break time need not be paid. However, if employers already provide paid break time and if the employee chooses to use that break time to express milk, then that break time to express milk must be paid.

Employer exemptions: All employers are required to reasonably accommodate an employee's request for breastfeeding-related accommodations, including breaks and an appropriate room to express breast milk, unless the employer can demonstrate that a specific accommodation would be an undue hardship on its business operations. Employers are encouraged to provide flexible scheduling if an employee chooses to make up for unpaid break time.

Discrimination and retaliation are unlawful. An employee may not be penalized in any terms, privileges or conditions of employment for requesting or using workplace accommodations to express milk that are provided by the LAD.

Reporting violations of the LAD: An employee may file a complaint with the New Jersey Division on Civil Rights (DCR) or in the Law Division of the Superior Court of New Jersey. See <http://www.nj.gov/oag/dcr/filing.html> and DCR Frequently Asked Questions at <http://www.nj.gov/oag/dcr/faq.html> for more information. If the DCR or Superior Court finds the employer to be in violation of the law, remedies may include an order restraining the discriminatory action, back pay, damages for pain and humiliation, and attorney's fees. Punitive damages are also available in Superior Court cases.

* <http://njleg.state.nj.us/2016/Bills/PL17/263 .PDF>

For more information on the New Jersey and federal laws protecting breastfeeding, see <http://breastfeedingnj.org/breastfeeding-and-employment/>