

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
ATTENDANCE AND LEAVE MANUAL
POLICY BULLETIN 2024-06

Section 21.12

July 2024

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TO: Manual Recipients
FROM: Jessica Rowe, Deputy Commissioner for Merit System Operations
SUBJECT: Rights of Employees to Express Breast Milk in the Workplace

This Policy Bulletin supersedes all previous guidance on Expressing Breast Milk in the Workplace.

Section 206-c of the New York State Labor Law gives all employees in New York the right to express breast milk in the workplace. The New York State Department of Labor has developed the official policy on breast milk expression in the workplace as required by the law, ensuring that all employees know their rights and all agencies understand their responsibilities. This policy is the minimum required standard, but agencies are encouraged to include additional accommodations tailored to their workplace.

USING BREAK TIME FOR BREAST MILK EXPRESSION

Employees must be provided with paid break time for 30 minutes to allow an employee to express breast milk for such employee's nursing child **each time** such employee has reasonable need to express breast milk for up to three years following childbirth. No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace. This policy applies to employees working off-site (e.g., telecommuting, field work, etc.), they are entitled to the same break time off to express breast milk.

The number of breaks an employee will need to express breast milk is unique to each employee and break times must be provided based on the individual.

If additional time is needed beyond the 30 minutes of paid break time, an employee can utilize the following:

- Leave credits (credits other than sick leave)
- Existing paid break time (15 minute breaks)
- Mealtime
- Work before and after shift
- Unpaid breaks

Employees can work before or after their normal shift to make up any time used as unpaid break time to express breast milk, as long as this time falls within the agency or facility's normal work hours. However, an employee is not required to make up their unpaid break time.

Employees must be permitted to charge appropriate leave credits (credits other than sick leave) during the unpaid portion of the breaks. Agencies need to ensure that employees understand the impact on eligibility to earn leave credits if they elect to utilize unpaid break time and not charge leave credits. The Attendance Rules require an employee to be in full pay status for seven separate full days out of ten in a biweekly pay period in order to earn biweekly leave

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credits (or a proportionate number of days for employees scheduled to work fewer than ten days in a biweekly pay period). A day on which an employee takes an unpaid break for this purpose, and doesn't charge leave credits during that break, does not count as a day in full pay status for purposes of earning leave credits. Employees who make up their unpaid break time or charge leave credits for seven out of ten days in a biweekly pay period are in full pay status for Attendance Rule purposes and will earn leave credits. Paid breaks count toward earning leave credits.

Employees can work while expressing breast milk, if they voluntarily choose to do so. Time working while expressing breast milk must be compensated.

Paid break time in excess of 20 minutes does not count towards the 1250 hours of service requirement for FMLA. It will count towards time worked for the 12 months of cumulative service. For example:

- If any employee takes only 15 minutes of the 30-minute paid break to express breast milk that time will count towards the 1250 hours of service requirement for FMLA.
- If any employee takes the full 30-minute paid break, those 30 minutes will not be counted toward the 1250 hours of service requirement.
- If an employee takes the full 30-minute paid break and adds an additional 15 minutes of paid break (regular break) for a total continuous break of 45 minutes, 45 minutes will not be counted towards the 1250 hours of service requirement.

LACTATION ROOM REQUIREMENTS

In addition to providing the necessary time during the workday, employees must be provided with a private room or alternative location for the purpose of breast milk expression. **The space provided for breast milk expression cannot be a restroom, locker room, or toilet stall.**

The room or other location must:

- Be close to an employee's work area
- Provide good natural or artificial light
- Be private – both shielded from view and free from intrusion
- Have a functional lock that locks from the inside
- Have accessible, clean running water nearby
- Have an electrical outlet (if the workplace is supplied with electricity)
- Include a chair
- Provide a desk, small table, desk, counter or other flat surface

A single room or other location can be dedicated for breast milk expression to be shared by all employees. Should there be more than one employee at a time needing access to a lactation room, a centralized location can be dedicated for use by all employees.

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Any space provided for breast milk expression must be close to the work area of the employee(s) using the space. The space must be within walking distance, and it should not significantly extend an employee's required break time.

If there is not a separate room or space available for lactation, a vacant office or other available room can be used on a temporary basis. This room must not be accessible to the public or other employees while an employee is using it for breast milk expression.

As a last resort, an available cubicle may be used for breast milk expression. A cubicle can only be used if it is fully enclosed with a partition and is not otherwise accessible to the public or other employees while being used for breast milk expression. The cubicle walls must be at least seven feet tall to insure the employee's privacy.

To ensure privacy, if the lactation room has a window, it must be covered with a curtain, blind or other covering. In addition, the lactation space should have a door equipped with a functional lock. If this is not possible (such as in the case of a fully enclosed cubicle), as a last resort, a sign must be used advising the space is in use and not accessible to other employees or the public.

If the workplace has a refrigerator, employees are allowed to use it to store breast milk. However, agencies are not responsible for ensuring the safekeeping of expressed milk stored in any refrigerator in the workplace. Employees are required to store all expressed milk in closed containers and bring milk home each evening.

The space designated for expressing breast milk must be maintained and clean at all times.

If a hardship is demonstrated in providing a space with the above requirements, a room or other location must be provided - other than a restroom or toilet stall - that is in close proximity to the work area where an employee can express breast milk in privacy, that meets as many of the requirements as possible.

MAKING A REQUEST TO EXPRESS BREAST MILK AT WORK

If an employee wants to express breast milk at work, they need to give reasonable advance notice in writing, generally before returning to the workplace if the employee is on leave. This advance notice is needed to allow for time to find an appropriate location and adjust schedules. Written notification should include: anticipated return to work date, as well as details regarding how many breaks are anticipated during the workday and preferred times to express breast milk.

Employees wishing to request a room or other location to express breast milk in the workplace should do so by submitting a written request to their direct supervisor, Office of Human Resource Management or designee for processing requests. Employees must receive a response to their request within five business days.

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All employees must be notified in writing through email or printed memo when a room or other location has been designated for breast milk expression.

All employees must be given the attached “Policy on the Rights of Employees to Express Breast Milk in the Workplace”, when they are hired and again every year after. Employees must also receive a copy as soon as they return to work following the birth of a child. More detailed information is provided in the attachment.

[Attachment](#)