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# LEGAL UPDATE

October 21, 2019

To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, General Counsel *CDC*

Subject: SB 142 – Employee Lactation Accommodation  
Memo No. 35-2019

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On October 10, 2019, the Governor approved Senate Bill (“SB”) 142, which effective January 1, 2020, requires an employer in California to take various actions regarding employee lactation. As a preliminary issue, an employee is entitled to a reasonable amount of break time to express breast milk for the employee’s infant with, if possible, the break time running concurrently with any break time the employer is already providing to the employee.<sup>1</sup> Below the main requirements associated with employee lactation accommodation are detailed.

## Lactation Room

An employer shall provide an employee with the use of a room or other location for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.<sup>2</sup> A lactation room or location shall not be a bathroom and shall be in close proximity to the employee’s work area, shielded from view, and free from intrusion while the employee is expressing milk.<sup>3</sup>

The lactation room shall comply with the following requirements:

1. Be safe, clean, and free of hazardous materials;
2. Contain a surface to place a breast pump and personal items;
3. Contain a place to sit; and
4. Have access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump.<sup>4</sup>

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<sup>1</sup> Labor Code § 1030.

<sup>2</sup> Labor Code § 1031(a).

<sup>3</sup> Labor Code § 1031(b).

<sup>4</sup> Labor Code § 1031(c).



The employer is also required to provide access to a sink with running water and a refrigerator suitable for storing milk in close proximity to the employee's workspace and if a refrigerator cannot be provided, an employer may provide another cooling device suitable for storing milk, such as an employer-provided cooler.<sup>5</sup>

There is a "hardship" provision for employers that employ fewer than 50 employees to be exempt from a requirement associated with the lactation room and related requirements if the employer can demonstrate that a requirement would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.<sup>6</sup>

If the employer cannot provide a break time or a location in accordance with the law, then the employee shall be provided with a written response.<sup>7</sup>

### Duty to Develop and Implement a Lactation Accommodation Policy

Employers must develop and implement a lactation accommodation policy that includes all of the following:

1. A statement about an employee's right to request lactation accommodation;
2. The process by which the employee makes a request for lactation accommodation;
3. An employer's obligation to respond to the request for lactation accommodation; and
4. A statement about an employee's right to file a complaint with the Labor Commissioner for any violation of a right under this chapter.<sup>8</sup>

The policy must be made available in either an employee handbook and/or in a set of policies made available to employees.<sup>9</sup> The policy must also be provided to new employees upon hiring or when an employee makes an inquiry or requests parental leave.<sup>10</sup>

For your convenience, a copy of SB 142 is included with this Legal Update.

Please contact our office with questions regarding this Legal Update or any other matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>5</sup> Labor Code § 1031(d).

<sup>6</sup> Labor Code § 1031(i).

<sup>7</sup> Labor Code § 1034(d).

<sup>8</sup> Labor Code § 1034(a).

<sup>9</sup> Labor Code § 1034(b).

<sup>10</sup> Labor Code § 1034(c).

## Senate Bill No. 142

### CHAPTER 720

An act to amend Sections 1030, 1031, and 1033 of, and to add Section 1034 to, the Labor Code, relating to employment.

[Approved by Governor October 10, 2019. Filed with Secretary of State October 10, 2019.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 142, Wiener. Employees: lactation accommodation.

Existing law prohibits an employer, who is required by law to give an employee a rest period during a workday, from requiring the employee to work during the rest period. Existing law requires an employer to pay the employee one additional hour of pay, at the employee's regular rate of compensation, for each rest period not provided. Existing law requires employers to provide a reasonable amount of break time to employees desiring to express milk for the employee's infant child. Existing law also requires an employer to make reasonable efforts to provide the employee with the use of a room, or other location, other than a bathroom, in close proximity to the employee's work area, for the employee to express milk in private. Existing law exempts an employer from the break time requirement if the employer's operations would be seriously disrupted by providing that time to employees desiring to express milk. Existing law subjects employers who violate these provisions to a civil penalty of \$100 per violation and authorizes the Labor Commissioner to issue citations for those violations.

This bill would instead require an employer to provide a lactation room or location that includes prescribed features and would require an employer, among other things, to provide access to a sink and refrigerator in close proximity to the employee's workspace, as specified. The bill would deem denial of reasonable break time or adequate space to express milk a failure to provide a rest period in accordance with state law. The bill would prohibit an employer from discharging, or in any other manner discriminating or retaliating against, an employee for exercising or attempting to exercise rights under these provisions and would establish remedies that include filing a complaint with the Labor Commissioner. The bill would authorize employers with fewer than 50 employees to seek an exemption from the requirements of these provisions if the employer demonstrates that the requirement posed an undue hardship by causing the employer significant difficulty or expense, as specified. The bill would require an employer who obtains an exemption to make a reasonable effort to provide a place for an employee to express milk in private, as specified.

The bill would require an employer to develop and implement a policy regarding lactation accommodation and make it available to employees, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1030 of the Labor Code is amended to read:

1030. Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child each time the employee has need to express milk. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid.

SEC. 2. Section 1031 of the Labor Code is amended to read:

1031. (a) An employer shall provide an employee with the use of a room or other location for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.

(b) A lactation room or location shall not be a bathroom and shall be in close proximity to the employee's work area, shielded from view, and free from intrusion while the employee is expressing milk.

(c) A lactation room or location shall comply with all of the following requirements:

(1) Be safe, clean, and free of hazardous materials, as defined in Section 6382.

(2) Contain a surface to place a breast pump and personal items.

(3) Contain a place to sit.

(4) Have access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump.

(d) The employer shall provide access to a sink with running water and a refrigerator suitable for storing milk in close proximity to the employee's workspace. If a refrigerator cannot be provided, an employer may provide another cooling device suitable for storing milk, such as an employer-provided cooler.

(e) Where a multipurpose room is used for lactation, among other uses, the use of the room for lactation shall take precedence over the other uses, but only for the time it is in use for lactation purposes.

(f) (1) An employer in a multitenant building or multiemployer worksite may comply with this section by providing a space shared among multiple employers within the building or worksite if the employer cannot provide a lactation location within the employer's own workspace.

(2) Employers or general contractors coordinating a multiemployer worksite shall either provide lactation accommodations or provide a safe

and secure location for a subcontractor employer to provide lactation accommodations on the worksite, within two business days, upon written request of any subcontractor employer with an employee that requests an accommodation.

(g) An agricultural employer, as defined in Section 1140.4, shall be deemed to be in compliance with this section if the agricultural employer provides an employee wanting to express milk with a private, enclosed, and shaded space, including, but not limited to, an air-conditioned cab of a truck or tractor.

(h) An employer may comply with this section by designating a lactation location that is temporary, due to operational, financial, or space limitations. These temporary spaces shall not be a bathroom and shall be in close proximity to the employee's work area, shielded from view, free from intrusion while the employee is expressing milk, and otherwise compliant with this section.

(i) An employer that employs fewer than 50 employees may be exempt from a requirement of this section if it can demonstrate that a requirement would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business. If that employer can demonstrate that the requirement to provide an employee with the use of a room or other location, other than a bathroom, would impose such undue hardship, the employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private.

SEC. 3. Section 1033 of the Labor Code is amended to read:

1033. (a) The denial of reasonable break time or adequate space to express milk in accordance with this chapter shall be deemed a failure to comply for purposes of Section 226.7. An aggrieved employee may file a complaint under this subdivision with the Labor Commissioner pursuant to Section 98.

(b) An employer shall not discharge, or in any other manner discriminate or retaliate against, an employee for exercising or attempting to exercise any right protected under this chapter. This subdivision is not intended to limit or expand an employee's rights pursuant to Section 98.6. An aggrieved employee may file a complaint under this subdivision with the Labor Commissioner pursuant to Section 98.7.

(c) An employee may report a violation of this chapter to the Labor Commissioner's field enforcement unit. If, upon inspection or investigation, the Labor Commissioner determines that a violation of this chapter has occurred, the Labor Commissioner may issue a citation and may impose a civil penalty in the amount of one hundred dollars (\$100) for each day that an employee is denied reasonable break time or adequate space to express milk in violation of this chapter. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor

Commissioner for violations of this chapter shall be the same as those set forth in Section 1197.1.

(d) Notwithstanding any other provision of this code, violations of this chapter shall not be misdemeanors under this code.

SEC. 4. Section 1034 is added to the Labor Code, to read:

1034. (a) An employer shall develop and implement a policy regarding lactation accommodation that includes the following:

(1) A statement about an employee's right to request lactation accommodation.

(2) The process by which the employee makes the request described in paragraph (1).

(3) An employer's obligation to respond to the request described in paragraph (1) as outlined in subdivision (d).

(4) A statement about an employee's right to file a complaint with the Labor Commissioner for any violation of a right under this chapter.

(b) The employer shall include the policy described in subdivision (a) in an employee handbook or set of policies that the employer makes available to employees.

(c) The employer shall distribute the policy described in subdivision (a) to new employees upon hiring and when an employee makes an inquiry about or requests parental leave.

(d) If an employer cannot provide break time or a location that complies with the policy described in subdivision (a), the employer shall provide a written response to the employee.