



Employment Systems, Inc. Suggestions for Implementing Lactation Accommodation Requirements under California Labor Code Sections 1030—1033

An experienced employee has been off on pregnancy disability leave for the past two months and has inquired about using CFRA leave for bonding with her newly born child. She is concerned because she wants to nurse the child for several months and does not know how that can fit in with work. You are anxious for her to return to work because she knows your operations and business cycle. There are some critical schedules to meet during the next few months. What can you do to help her to return to work and still meet her intent as a new mother to breastfeed her baby?

Women have made up an ever-growing portion of the workforce at all levels during the past four decades. Not surprisingly, critical issues affecting women have slowly made their way into employment regulations and laws in California during those same decades. The California law that provides Pregnancy Disability Leave is still a cutting edge benefit that is not available in many other states. When combined with benefits available through the California Family Rights Act (or FMLA), a female employee can take off up to seven months for pregnancy, childbirth and bonding. Not all women, however, want to take off that much time. But a new mother may have many logistical problems to resolve before they can effectively come back to work. One of those problems has been how to incorporate a return to work when the new mother wants to breastfeed their infant.

The California Labor Code has been modified, as of January 1, 2002, to address this issue. With AB 1025, the Lactation Accommodation Law, employers, both public and private, are required to provide a reasonable amount of break time to female employees to accommodate those who want to express milk for the care of their infant child. The reasonable break time involved should run concurrently with other mandatory break time for meal and rest periods when possible.

Additionally, the employer must make a reasonable effort to provide the employee with the use of a room or facility (other than a toilet stall) to do so in private. Employers who fail to accommodate female employees who want to express milk face a civil fine of \$100 for each violation.

There are two restrictions in these requirements. One is that an employer does not have to provide the break time under this new regulation if, according to the Labor Code, “to do so would seriously disrupt the operations of the employer.” The second is that if the employer provides a longer than normal rest break to the employee as an accommodation for expressing milk, the extra time involved does not have to be paid.



AB 1025 is more than another family friendly regulation because it encompasses public health policy, women’s rights in the workplace, and privacy issues as well. But how does an employer implement this new regulation?

The regulation requires that a company provide a female employee who need to express milk a “reasonable” amount of break time. This will invariably mean allowing them to take breaks that are longer than 10 or even 15 minutes. If possible, this break should run concurrently with the normal rest break period. It is possible, however, that more than two breaks may be required in order for the mother to properly express milk in order to continue to breastfeed her child. One first step in implementing this new regulation is to make supervisors aware of it and to make them aware of their responsibility for working with the employee to arrange a suitable break schedule.

Another initial step to take is to communicate the requirements of this new regulation and how the company will respond to it to employees. In the communications, the company can direct employees to talk to their supervisor in order to work out a break schedule that accommodates their needs. That discussion can also determine if some of the break time will be unpaid so that the employee clearly knows what to expect in terms of any impact on their pay. It will also be important to have this discussion with a pregnant employee so that she knows what to expect when she returns to work after her pregnancy leave, if she chooses to breastfeed her child.

A couple of methods for communicating this information would be to use a payroll stuffer and to put up a poster. The California Department of Health Services has a letter-sized flyer that can be used as a poster or as a payroll stuffer for this communications effort. The web address for this resource is given below. An additional method would be to ask supervisors to inform employees of the new regulation and for them to provide information about it in group meetings or group updates. This method would allow supervisors to describe the company’s policy in a positive manner as part the company’s concern with the employee’s quality of work life and well-being. The information can also be included in new employee orientation materials.

Even before a new mother returns to work, the company may want to establish a policy of allowing the employee to return to work after a pregnancy leave on a graduated or flexible basis. If possible, the return to work could be part time for the first week or so, then three-quarters time, and then full time. That would allow the employee to continue their home-life transition with their infant as they return to work.

Some recommend that the new mother initially return to work late in a workweek, especially if they will be breastfeeding their infant. This will give them a day or two at work to see how thing go and then have a weekend to evaluate that experience and make

personal adjustments if necessary. It is also recommended that the employee have a home schedule that allows them to nurse their child not too long before they come to work each day and to nurse soon after they pick up their child from the childcare service. That, of course, is a personal decision to be made by the employee outside of the workplace. But it could affect their schedule for expressing milk while at work.

When the employee returns to work, the company may want to allow the employee to adopt a temporary, flexible work schedule so that the employee can start work earlier than the normal starting time (or end later) in order to account for the extra break time that may be unpaid. In other words, if the break time needed to express milk will take 30 minutes, and only 10 minutes is provided for the rest break, allow the employee to start work 20 minutes earlier to account for the unpaid break time and still have a normal paycheck. (Of course, the company should review the implications of a flexible schedule on daily overtime requirements.) Using a flexible work schedule is not required by the regulations, but may be an employee-friendly practice that shows dividends in the productivity of female employees impacted by this policy, and in lower turn over, less absenteeism, faster return from pregnancy leave, and reduction in overtime and temp employee costs.

It is estimated that an employee who is continuing to breastfeed their child will need between 20 to 30 minutes to express milk at work. This would include the set-up, clean up, labeling of a container, and storing the container. Because the employee may need a break more frequently than once for every four hours of work, which is the State's rest break requirement, the supervisor will need to discuss the employee's schedule with the employee and work out the details. You should remember that this is a temporary process for the employee and that eventually her break schedule will return to normal.

AB 1025 not only directed employers to accommodate an employee with their break time for expressing milk, but also directed companies to make every reasonable effort to provide an appropriate place for new mothers to use to express their milk in privacy. The employer cannot designate a closed toilet stall in a restroom for that purpose. Also, the intent of the law was that the private area to be used for expressing milk should be close to the employee's normal location of work.

Examples of places in a worksite where lactation accommodation can occur include:

- A vacant office
- Borrowing someone's office
- Use of a room that can be arranged to be used temporarily by lactating employees during specified times of the day, and otherwise used for its other intended purposes.
- Women's lounge area
- First aid room

- Creating a cubicle with a curtain or other privacy screen
- The best solution is when the company can designate a dedicated area as a “lactation room”

Whatever room or area that is designated, there has to be privacy involved. This can involve papering over a window, or putting up a curtain, or making sure there is a lock on the door (if even a temporary slide latch) or using a message sign on the door that says the room is in use and is private.

If a company can set up or build a separate, designated “Lactation Room”, it would ideally have at least the following in it:

Clean source of water

Clean sink

Disinfectant soap and paper towels

Refrigerator or ice chest/cooler

Electrical outlet if electrical pump is used

Comfortable chair

Footstool

A stand to place books or papers on for those that want to read hands-free.

Small table for pumping supplies

Masking tape and pens for labeling containers

Possibly a partition if more than one employee will use the room at the same time

Reading material on nursing or breastfeeding, possibly posters for the wall, all of which show the employee that the employer supports their efforts.

A décor that is relaxing so as to make the process easier

The regulations do not require that a company develop a formal “Policy on Lactation Accommodation” for nursing mothers who return to the workplace. However, if a company wanted to be pro-active and prepare such a policy it should write out the policy, have the CEO or head of the organization prepare a supportive cover letter, and distribute it to all current employees, and to new employees when hired. The supportive cover letter should acknowledge the policy, should encourage all employees to be tolerant of their co-workers who are continuing to breastfeed their infant child and, therefore need to express milk while at work, should remind employees to be respectful of the privacy of the area designated for expressing milk, and should be congratulatory to the mother who has returned to work after the pregnancy leave. If necessary, depending on the working environment, the CEO may want to remind employees of the company’s policy against harassment of any kind.

Employment Systems, Inc. has attached a draft Lactation Accommodation policy that the company can use as a resource. Again, the regulations do not require a written policy.



Any policy that your company adopts should, of course, have proper legal review before distribution and implementation.

One other item that a company may want to prepare in support of the lactation accommodation regulations is a resource list that it can give new mothers concerning community groups or organizations that the mother can seek out to help in her breastfeeding efforts. Many areas also have lactation specialists that can help the mother with problems that she may be having, and there are companies that provide, rent or sell breast pumps. There may be organized support groups whose phone numbers would be on the resource list in case the mother wanted to talk to others who were going through her same experience. The California Department of Health Services (www.dhs.ca.gov) has a special section dedicated to women, infants and children. The website for that section (www.wieworks.ca.gov) contains a resource link on breastfeeding resources.

As mentioned above, NOT accommodating an employee who is breastfeeding and wants to express milk at work is subject to a civil penalty of \$100 per violation. Also, there is an exemption, as noted, if an employer can demonstrate that providing the additional break time would seriously disrupt the company's operations. However, that is usually a tough standard to establish.

Employment Systems, Inc. is available to further discuss this issue with its clients. We will also come to your worksite and help facilitate a discussion of the regulations with your staff and make suggestions on how to establish your private area for new mothers to use pursuant to the new regulations.



XYZ Company
Policy on Workplace Lactation Accommodation
Date

General

The State of California has implemented a public policy in support of mothers with infant children who want to continue to breastfeed their infants after they return to work. This policy took effect on January 1, 2002, and has been incorporated into the California Labor Code. XYZ supports this policy and has taken steps to implement it.

Recognizing that the American Academy of Pediatrics and various public health organizations have endorsed the practice of breastfeeding in order to promote health and well being during infant development, XYZ accommodates mothers who choose to continue breastfeeding their infant after they return to work. OPTIONAL: [XYZ believes that its employees are a strength and asset to the success of the company, and that its female employees are a significant part of that workforce. XYZ has adopted other policies to help employees balance the demands of their work life with that of their home life, and considers this accommodation policy to be part of that effort.]

Accommodation Policy



When a mother returns to work after her pregnancy leave and childbirth, she should meet with her supervisor to establish a schedule for breaks that will allow her sufficient time to express milk in a private area of the company if she has determined to continue to breastfeed her infant child. The normal rest breaks for XYZ employees are 10 minutes in the morning and 10 minutes in the afternoon. XYZ will accommodate mothers who need to express milk by allowing them to take extra time at the scheduled breaks. Because each employee will be unique in her needs, the specific schedule will be flexible and worked out on a case-by-case basis around the designated break time. However, employees who need extra time should be aware that break time beyond ten (10) minutes is unpaid, as is permitted by the State regulations on this matter.

A private area to be used by mothers for the purpose of expressing milk has been established in the [] room. The room is provided with [electricity, water, cleaning supplies, and a small refrigerator for storage]. It is the responsibility for the employee who uses the room to maintain its cleanliness after her use. Also, XYZ has a waiver of liability form that it asks each employee to sign if the employee intends to use the [refrigeration equipment and personal hygiene supplies] provided by XYZ.

All employees are to understand that this room is a private area. Employees must respect the privacy of their co-workers while using this room

XYZ has prepared a resources list for mothers who continue to breastfeed. The list is available from the Human Resources Department.