

**ARTICLE 33I:
LACTATION IN THE WORKPLACE**

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SEC. 3300I.1. TITLE.

This Article 33I shall be known as the "Lactation in the Workplace Ordinance."

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)

SEC. 3300I.2. FINDINGS AND PURPOSE.

- (a) Breastfeeding provides health benefits to babies, as breast milk contains antibodies that protect babies from childhood illnesses including ear infections, respiratory infections, dermatitis, gastrointestinal disorders, asthma, obesity, diabetes, and a reduced risk of Sudden Infant Death Syndrome. The American Academy of Pediatrics recommends that babies be fed exclusively breast milk for the first six months of life and that breastfeeding continue at least until the end of the baby's first year. For some parents, breast milk is readily available and affordable.
- (b) Breastfeeding also provides many health benefits for mothers, including earlier return to pre-pregnancy weight and reduced risk of maternal postpartum depression, and reduced risk later in life of several cancers, type II diabetes, and osteoporosis.
- (c) If a mother does not regularly express milk, the mother's breasts can become full and uncomfortable, which may lead to a decrease in milk supply or infection. Most nursing mothers who return to work are able to sustain their milk supply and avoid discomfort by simply expressing milk at intervals and for lengths of time that suit their bodies.
- (d) According to the Centers for Disease Control and Prevention, approximately 79% of new mothers in the United States breastfeed their babies at some point. Despite the benefits to mother and child of breastfeeding, only about 42% of babies are exclusively fed breast milk at three months of age. At six months of age, only about 19% of babies are exclusively fed with breast milk, and only about 49% of babies, in total, are fed some amount of breast milk.
- (e) According to the San Francisco Department of Public Health (DPH), the majority of women in San Francisco do not exclusively breastfeed their child during the first six months. Of women who have a live birth, 97% initiate breastfeeding in the hospital, and 80% of mothers exclusively breastfeed in the hospital. Between birth and one month postpartum, 23% of women begin supplementing with infant formula, and 23% who had intended to exclusively breastfeed do so. Between one and three months postpartum, 10% of mothers stop breastfeeding altogether.
- (f) There are noticeable disparities in breastfeeding rates in San Francisco among socioeconomic and ethnic groups. Mothers who

use Women, Infants, and Children (WIC) services, a federally funded program that provides supplemental foods, health care referrals, and nutrition education to low-income women, experience much lower breastfeeding rates. Between birth and one month postpartum, 27% of mothers participating in WIC are exclusively breastfeeding. And only 16% of mothers participating in WIC are exclusively breastfeeding at six months of age. Caucasian infants whose mothers utilize WIC services are 3.5 times more likely than Asian infants, and 2 times more likely than African American infants, to be exclusively breastfed at one month of age. Hospitals that serve the largest number of low-income women have the lowest rates of breastfeeding initiation.

(g) In the United States, more than one-third of mothers with children under the age of two work full-time outside the home. Employment of mothers outside the home, especially full-time employment, has a negative influence on the period of time mothers breastfeed. Only 25% of employed women who are breastfeeding a child under age one continue to breastfeed the child for at least one month after returning to work. In 2000, only 11% of mothers with a one-year-old child and who worked full-time were still breastfeeding the child, in comparison to 19% of mothers who worked part-time while having a one-year-old child, and 22% of such mothers who were not in the labor force.

(h) There are several barriers to breastfeeding associated with employment. Women may not be aware of their rights to lactation accommodation in the workplace. Many women have fear of discussing breastfeeding with employers, which for San Francisco WIC participants, is one factor associated with early supplementation of formula for breastmilk. In San Francisco, 50% of women who have given birth report back to work within 12 months postpartum, with only 13% reporting leave from their job and only 13% working less than 40 hours per week

(i) Under the Healthy People 2020 initiative, the U.S. Department of Health and Human Services' Office of Disease Prevention and Health Promotion developed a set of national objectives, which include a goal to increase the proportion of mothers who breastfeed their babies in the early postpartum period to 81.9% by 2020.

(j) An employer with a breastfeeding- friendly environment may have an advantage when recruiting and retaining employees. Breastfeeding may decrease employee absenteeism due to illness of a child, to the extent breastfeeding reduces childhood illnesses. The fewer the childhood illnesses, the fewer sick days mothers and fathers have to take in order to care for sick children.

(k) Federal law requires certain employers to provide nursing mothers with reasonable break time to express milk for one year after the child's birth and a private space other than a bathroom, that is shielded from view and free from intrusion, to express breast milk. (29 U.S.C. § 207(r).) Similarly, California law requires all employers to provide a reasonable amount of break time and to make a reasonable effort to provide a private space, other than a toilet stall, close to the employee's work area, to accommodate an employee desiring to express breast milk at work. (Cal. Labor Code § 1030.) Twenty-seven states, the District of Columbia, and Puerto Rico have laws that are supportive of breastfeeding in the workplace. Women employees who have adequate break time and private space to pump milk are more likely to exclusively breastfeed. At six months, employed women who receive breastfeeding accommodations are 2.3 times as likely to exclusively breastfeed and 1.5 times as likely to exclusively breastfeed with each passing month in comparison to women who do not have adequate accommodations.

(l) A work environment that is supportive of a mother's efforts to breastfeed her child will likely increase the period of the child's life during which breastfeeding will occur. By creating requirements on employers to facilitate lactation for mothers returning to work, the City will enhance employed mothers' ability to continue breastfeeding through their child's first year and beyond.

(m) In recognition of the well-documented health advantages for mother and child of breastfeeding, the purpose of this Article 33I is to provide a supportive work environment to enable employees in the City who are nursing mothers to breastfeed or express milk during working hours. Providing a supportive work environment to these employees will greatly benefit the health and welfare of employees and their families, while reducing burdens on the health care system associated with medical problems in children and mothers caused in part by an absence of or reduction in breastfeeding.

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)

SEC. 3300L3. DEFINITIONS.

For purposes of this Article 33I, the following definitions shall apply:

"Agency" shall mean the Office of Labor Standards Enforcement or any successor department or office.

"Employee" shall mean any person who is employed within the geographic boundaries of the City by an Employer, including part-time Employees.

"Employer" shall mean any person as defined in Section 18 of the California Labor Code who employs an Employee working in the City. Notwithstanding the previous sentence, Employer shall not include the City or any governmental entity.

"Lactation Accommodation" shall mean Lactation Breaks and Lactation Location.

"Lactation Break" shall mean the break time an Employer is required to provide an Employee for purposes of expressing breast milk.

"Lactation Location" shall mean the space, room, or location an Employer must provide an Employee for purposes of expressing breast milk.

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)

SEC. 3300I.4. LACTATION ACCOMMODATION.

(a) **Lactation Break.** An Employer shall provide a reasonable amount of break time to accommodate an Employee desiring to express breast milk for the Employee's child. 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 may be unpaid.

(b) **Lactation Location.**

(1) An Employer shall provide a Lactation Location, other than a bathroom, in close proximity to the Employee's work area that is shielded from view and free from intrusion from coworkers and the public. The room or other location may include the place where the Employee normally works if it otherwise meets the requirements of this Section 3300I.4. The Lactation Location shall also:

- (A) Be safe, clean, and free of toxic or hazardous materials;
- (B) Contain a surface (e.g., a table or shelf) to place a breast pump and other personal items;
- (C) Contain a place to sit; and
- (D) Have access to electricity.

(2) The Employer shall provide, in close proximity to the Employee's work area, access to a refrigerator where the Employee can store breast milk and access to a sink with running water.

(3) **Multi-Purpose Lactation Location.** The Employer may satisfy the requirements of this Section 3300I.4 by designating a room as a Lactation Location that is also used for other purposes, provided, however, that if the Employer uses this method to provide the accommodation, the primary function of the room shall be a designated Lactation Location during the duration of an Employee's need to express milk and during any particular day that the room is needed to provide accommodation it may also be used for other purposes so long as lactation accommodation takes priority. During the period when the room is being used as a Lactation Location and also for other purposes, the Employer shall provide notice to other Employees that the primary use of the room is a Lactation Location, which takes precedence over other uses.

(4) **Multi-Tenant Buildings.** Where more than one Employer is located in the same building, and the Employer cannot satisfy the requirements of this Section 3300I.4 by providing a Lactation Location within the Employer's workspace, the Employer may fulfill the obligations under this Section 3300I.4 by providing a Lactation Location meeting the requirements of subsection (b) that is shared among multiple Employers, provided that the Lactation Location is sufficient to accommodate the number of Employees who desire to use it at any given time.

(c) **Exemption.** An Employer may establish an exemption from any requirement of this Section 3300I.4 if the Employer can show that such requirement would impose an undue hardship by causing the Employer significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the Employer's business. Examples of an undue hardship could, in some circumstances, include: requiring the Employer to build a room, undertake a construction project, remove seating from a restaurant, or remove retail floor space.

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)

SEC. 3300I.5. REQUIRED POLICY AND PROCESS FOR REQUESTING LACTATION ACCOMMODATION.

(a) **Lactation Accommodation Policy.** Each Employer shall develop and implement a policy regarding Lactation Accommodation. The policy shall:

- (1) Include a statement that Employees have a right to request Lactation Accommodation.
- (2) Identify a process by which an Employee may request Lactation Accommodation. The process shall:

(A) specify the means by which an Employee may submit a request for Lactation Accommodation;

(B) require the Employer to respond to a request for Lactation Accommodation within five business days; and

(C) require the Employer and Employee to engage in an interactive process to determine the appropriate Lactation Break period(s) and the Lactation Location for the Employee.

(3) State that if in response to a request for Lactation Accommodation, the Employer does not provide Lactation Breaks or a Lactation Location, or provides a Lactation Location that does not comply with Section 3300I.4(b), on the basis of the exception available under Section 3300I.4(c), the Employer must provide the Employee a written response that identifies the basis upon which the Employer has denied the request. Copies of the responses required by this subsection (a)(3) shall be retained in accordance with Section 3300I.6.

(4) State that retaliation against an Employee for exercising the rights conferred by this Article 33I is prohibited.

(b) The Employer's Lactation Accommodation policy shall be distributed to all Employees upon hiring. The Employer shall also offer a copy of the policy to any Employee who inquires about or requests pregnancy or parental leave. If the Employer has an employee handbook or set of policies that the Employer makes available to Employees, the Lactation Accommodation policy shall be included therein.

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)

SEC. 3300I.6. EMPLOYER RECORDS.

An Employer shall maintain a record of the initial written request or any update to the initial request for Lactation Accommodation made pursuant to the policy required by Section 3300I.5(a)(2). The record shall include the name of the Employee, the date of the request, and a description of how the Employer resolved the request. Employers shall retain documentation required under this Article 33I for a period of three years from the date of the request for Lactation Accommodation, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Article 33I. When an issue arises as to an alleged violation of this Article 33I, if the Employer has failed to maintain or retain documentation required under this Article 33I, or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer has violated this Article 33I, absent clear and convincing evidence otherwise.

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)

SEC. 3300I.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

(a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right protected under this Article 33I.

(b) It shall be unlawful for an Employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this Article 33I. Such rights include but are not limited to the right to request Lactation Accommodation pursuant to this Article; the right to file a complaint or inform any person about any Employer's alleged violation of this Article; the right to cooperate with the Agency in its investigations of alleged violations of this Article; and the right to inform any person of his or her possible rights under this Article.

(c) Protections of this Section 3300I.7 shall apply to any person who mistakenly but in good faith alleges violations of this Article 33I.

(d) Taking adverse action against a person within 90 days of the person's filing a complaint with the Agency alleging a violation of any provision of this Article 33I; of making a request for Lactation Accommodation; of informing any person about an Employer's alleged violation of this Article; of cooperating with the Agency or other persons in the investigation or prosecution of any alleged violation of this Article; of opposing any policy, practice, or act that is unlawful under this Article; or of informing any person of his or her rights under this Article, shall raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one or more of the aforementioned rights. Unless the Employer rebuts the presumption with clear and convincing evidence that the adverse action was solely for a reason other than retaliation, the employer shall be deemed to have violated this Section 3300I.7.

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)

SEC. 3300I.8. IMPLEMENTATION AND ENFORCEMENT.

(a) **Administrative Enforcement.**

(1) The Agency is authorized to take appropriate steps to enforce this Article 33I and coordinate enforcement of this Article. The Agency may investigate possible violations of this Article. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing. Given the time-sensitive nature of a complainant's need for accommodation, the Agency shall endeavor to investigate and resolve complaints in an expeditious manner.

(2) The Agency shall not enforce and shall not impose penalties for any violation of Sections 1030-1032 of the Labor Code or violations of federal law.

(3) Where the Agency determines that a violation of this Article has occurred, it may issue a determination and order any appropriate relief, provided, however, that during 2018, the Agency must issue warnings and notices to correct. Starting January 1, 2019, the Agency may issue determinations and impose an administrative penalty up to \$500 for each violation of this Article. Prior to issuing a determination and imposing an administrative penalty, the Agency must issue a notice to correct and provide a reasonable amount of time for the Employer to resolve the violation. With the notice to correct, the Agency shall also provide or refer the Employer to information regarding how to resolve the violation. If the Employer resolves the violation within the prescribed period, the Agency shall not issue a determination of violation or impose an administrative penalty.

(4) Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Employer or person to pay to the City a sum of not more than \$50 for each day or portion thereof and for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the costs of implementing and enforcing this Article.

(5) An Employee or other person acting on behalf of an Employee may report to the Agency any suspected violation of this Article. The Agency shall encourage reporting pursuant to this subsection (a)(5) by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation; provided however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Article or for other appropriate purposes. The filing of a report of a suspected violation by an Employee does not create any right of appeal to the Agency by the Employee; based on its sole discretion, the Agency may decide whether to investigate or pursue a violation of this Article.

(6) **Rulemaking.** The Director of the Agency may issue rules, regulations, or guidance consistent with this Article to further the purpose of the Article. The Director of the Agency may also establish rules and policies governing the administrative process for determining and appealing violations of this Article. The rules shall include but not necessarily be limited to procedures for:

(A) providing the Employer with notice that it may have violated this Article;

(B) providing the Employer with a right to respond to the notice;

(C) providing the Employer with notice of the Agency's determination of a violation; and

(D) providing the Employer with an opportunity to appeal the Agency's determination to a hearing officer, not employed by the Agency, who is appointed by the City Controller or his or her designee.

(7) If there is no appeal of the Agency's determination of a violation, that determination shall constitute the City's final decision. An Employer's failure to appeal the Agency's determination of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Employer against the City regarding the Agency's determination of a violation.

(8) If there is an appeal of the Agency's determination of a violation, the hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the Agency's determination of a violation shall be considered prima facie evidence of a violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that the Agency's determination of a violation is incorrect. The hearing officer's decision of the appeal shall constitute the City's final decision. The sole means of review of the City's final decision, rendered by the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of mandate under Section 1094.5 of the California Code of Civil Procedure. The Agency shall notify the Employer of this right of review after issuance of the City's final decision by the hearing officer.

(b) **Interest.** In any administrative action brought under this Article, the Agency or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(c) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Article are cumulative.

SEC. 3300I.9. CREATION OF EMPLOYER BEST PRACTICES, MODEL POLICY, AND MODEL REQUEST FORM.

(a) The Director of Public Health, or his or her designee, shall create and distribute through the Department of Public Health website and through other means, as appropriate, guidance for Employers regarding best practices for Lactation Accommodation. The guidance shall provide examples of permissible Lactation Locations and shall include the following recommendations:

(1) **Permanent Lactation Location.** The ideal situation is for an Employer to designate a permanent room within the workplace solely for purposes of lactation or nursing at all times. It should be a private room with: (A) a door that can be locked from the inside, (B) at least one electrical outlet, (C) a washable, comfortable chair, (D) a surface on which to place a pump or personal belongings such as a table or shelf, (E) adequate lighting, (F) the ability to add a partition to the room to accommodate multiple Employees simultaneously, (G) a refrigerator for storage of breast milk, (H) a sink with running water, (I) a hospital-grade electric breast pump or pumps, (J) a full length mirror, (K) a microwave, (L) lockers or a place to store belongings, and (M) the hygiene standards of the room shall be on par with a location suitable for the preparation or storage of food. There should be a permanent sign outside the room or on the door indicating that it is a Lactation Location.

(2) **Temporary Lactation Spaces.** If, due to space, operational, or financial limitations, the Employer cannot provide a room as a dedicated Lactation Location or a room that is a multipurpose Lactation Location, the Employer should designate a space within a room as a temporary Lactation Location. A temporary Lactation Location could, for example, be created using screening or curtains. The means by which the temporary Lactation Location is created (e.g., the curtain), and the items contained therein (i.e., the chair, table, etc.) should not be modified during the duration of the Employee's need to express milk. While an Employee expresses milk, the Lactation Location should be free from intrusion by other persons by means of a latch or other closure mechanism. The temporary lactation space should have signage visible to other Employees designating the area as a Lactation Location for the duration of the Employee's need to express milk. The Employer should provide notice to Employees of the existence and purpose of the temporary Lactation Location and that it should not be disturbed.

(3) Employers should consider flexible break times, given that an Employee's need to express milk may change over time.

(b) The Agency, in consultation with the Director of Public Health, or his or her designee, shall create a model Lactation Accommodation policy that conforms to the requirements of Section 3300I.5, and a model Lactation Accommodation request form. The Agency shall make these materials available on its website.

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)

SEC. 3300I.10. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Article 33I shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

(Added by Ord. [131-17](#), File No. 170240, App. 6/30/2017, Eff. 7/30/2017, Oper. 1/1/2018)