

## Lactation in the Workplace Ordinance

Frequently Asked Questions

Posted December 27, 2017

The San Francisco Board of Supervisors passed the [Lactation in the Workplace Ordinance](#) (Ordinance No. 131-17) on June 20, 2017; the legislation was signed by Mayor Lee on June 30, 2017. The law is the first of its kind in the country and establishes new standards to ensure employers accommodate lactation.

These Frequently Asked Questions are intended to restate the law in plain language. The Office of Labor Standards Enforcement (OLSE) is currently engaged in a rulemaking process that will provide additional guidance, with the publishing of formal rules expected by July 1, 2018. To submit suggested topics for rulemaking, and to receive updates on the rulemaking process, please email [lactation@sfgov.org](mailto:lactation@sfgov.org).

These Frequently Asked Questions do not address rules in the Building Code governing building standards for and required construction of lactation rooms.

***Note: For the calendar year 2018, OLSE will only issue warnings and notices to correct when it has concluded that a violation has occurred. Starting January 1, 2019, OLSE may issue determinations and impose administrative penalties.***

### **Operative Date**

**1. Q: When does the Ordinance take effect?**

A: The Lactation in the Workplace Ordinance takes effect on January 1, 2018.

### **Covered Employers**

**2. Q: What employers are covered by the Ordinance?**

A: Any person as defined in [Section 18 of the California Labor Code](#) who employs an employee working in San Francisco. Employer does not include the City or any governmental entity.

## **Covered Employees**

### **3. Q: What employees are covered by the Ordinance?**

A: Any person who is employed within the geographic boundaries of San Francisco by an employer, including part-time employees.

### **4. Q: Are public sector workers covered by the Ordinance?**

A: No. The Ordinance does not cover any governmental entity.

### **5. Q: Are employees at the San Francisco International Airport covered by the Ordinance?**

A: No. The Ordinance only covers employees who work within the geographical boundaries of San Francisco, which does not include the San Francisco International Airport.

### **6. Q: Are employees of private businesses operating on federal property in San Francisco covered by the Ordinance?**

A: No. The Ordinance does not cover employees of private businesses located in “federal enclaves” such as the Presidio, Fort Mason, and the Golden Gate National Recreation Area (GGNRA).

## **Lactation Breaks (Required)**

### **7. Q: What is a lactation break?**

A: A lactation break is the break time an employer is required to provide an employee for purposes of expressing breast milk.

### **8. Q: Are employers required to provide breaks for lactation?**

A: Yes. Employers must 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.

**9. Q: Are employers required to pay for lactation breaks?**

A: Lactation 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.

**Lactation Location (Required)**

**10. Q: What is a lactation location?**

A: A lactation location is the space, room, or location an employer must provide an employee for the purposes of expressing breast milk.

**11. Q: Are employers required to provide a location for lactation?**

A: Yes. Employers must provide a lactation location in close proximity to the employee's work area that is shielded from public view and free from intrusion from co-workers and the public.

**12. Q: What additional requirements are there for a lactation location?**

A: The lactation location must also:

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

Additionally, the employer must also 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.

**13. Q: Will a bathroom satisfy an employer's requirement to provide a location for lactation?**

A: No. The lactation location may not be a bathroom.

**14. Q: Can the lactation location be the employee's normal work area?**

A: The space where the employee normally works can be the lactation location if it otherwise meets the requirements of the Ordinance.

**15. Q: Can the lactation location be used for other purposes?**

A: An employer may designate a room as a lactation location that is also used for other purposes, provided, however, that the primary function of the room must be a designated lactation location during the duration of an employee's need to express breast milk and as long as lactation accommodation takes priority over other uses of the room.

During the period when the room is being used as a lactation location and also for other purposes, the employer is required to provide notice to other employees that the primary use of the room is a lactation location, which takes precedence over other uses.

**16. Q: Can multiple employers in the same building share the same lactation location?**

A: When more than one employer is located in the same building, if the employer cannot satisfy the requirements of the Ordinance by providing a lactation location within the employer's workspace, the employer may fulfill this obligation by providing a lactation location that is shared among multiple employers in the building, provided that the lactation location is sufficient to accommodate the number of employees who desire to use it at any given time.

**Exemptions to Lactation Accommodation Requirements**

**17. Q: Are there exemptions to the requirements to provide lactation breaks and a lactation location?**

A: Yes. An employer may establish an exemption from the requirements to provide lactation breaks and/or a lactation location 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.

In all circumstances, employers must comply with other provisions of the Ordinance and with applicable State and Federal laws regarding rest breaks and break time for nursing mothers.

### **Policy and Process for Requesting Lactation Accommodation**

**18. Q: Must all employers have a policy regarding lactation accommodation?**

A: Yes. Each employer must develop and implement a policy regarding lactation accommodation.

**19. Q: What must be included in an employer's lactation accommodation policy?**

A: An employer's lactation accommodation policy must:

- (1) Include a statement that employees have a right to request lactation accommodation;
- (2) Identify a process by which employees may request lactation accommodation;
- (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 the Ordinance's requirements, on the basis of an exemption, the employer must provide the employee a written response that identifies the basis upon which the employer has denied the request;
- (4) State that retaliation against an employee for exercising the rights conferred by the Ordinance is prohibited.

**20. Q: What must be included in the employer's lactation accommodation policy regarding the process by which an employee may request lactation accommodation?**

A: The process by which an employee may request lactation accommodation must:

- (1) Specify the means by which an employee may submit a request for lactation accommodation;
- (2) Require the employer to respond to a request for lactation accommodation within five business days; and

(3) Require the employer and the employee to engage in an interactive process to determine the appropriate lactation break period(s) and the lactation location for the employee.

**21. Q: Does the City have sample lactation accommodation forms for use by employers?**

A: Yes. OLSE has posted both a sample lactation accommodation policy and a sample lactation accommodation request form on its [Lactation in the Workplace](#) webpage.

In addition, the Department of Public Health has posted numerous employer resources, including lactation accommodation best practices, on its [Workplace Lactation Accommodation Program](#) webpage.

**22. Q: When must employers distribute its lactation accommodation policy to their employees?**

A: The employer's lactation accommodation policy must be distributed to all employees upon hire. The employer must 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 must be included.

## **Employer Records**

**23. Q: What records must an employer retain to comply with the Ordinance?**

A: Employers are required to maintain a record of the initial written request for lactation accommodation or any update to the initial request. The record must include the name of the employee, the date of the request, and a description of how the employer resolved the request.

Employers must also retain any written response provided to an employee that identifies the basis upon which the employer has denied a request for a lactation accommodation.

**24. Q: For how long must employers retain the required records?**

A: Employers must retain the required documentation three years from the date of the request for lactation accommodation, and are required to allow OLSE access to such records.

If an employer has failed to maintain or retain required documentation, or does not allow OLSE reasonable access to such records, it shall be presumed that the employer has violated the Ordinance, absent clear and convincing evidence otherwise.

**Retaliation Prohibited**

**25. Q: Are employers prohibited from retaliating against employees for exercising their rights under the Ordinance?**

A: Yes. It is unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any other manner discriminate or take adverse action against any person in retaliation for exercising rights protected under the Ordinance. If an employee believes that s/he has been subjected to retaliation, the employee can file a claim with OLSE.

**26. Q: Are employees afforded enhanced protections in the time period after exercising their rights?**

A: Yes. Employers that take adverse action against a person within 90 days of the person's filing a complaint with OLSE; making a request for lactation accommodation; informing other persons about an employer's alleged violations; cooperating with OLSE or other persons in the investigation or prosecution of an alleged violation; opposing any policy, practice, or act that is unlawful under the Ordinance; or informing any person of his or her rights under the Ordinance shall raise a rebuttable presumption that such adverse action was taken in retaliation.

## **Administration and Enforcement**

**27. Q: Will OLSE issue further guidance on implementation of the Ordinance?**

A: Yes. OLSE is currently engaged in a rulemaking process, with the publishing of formal rules expected by July 1, 2018. To submit suggested topics for rulemaking, and to receive updates on the rulemaking process, please email [lactation@sfgov.org](mailto:lactation@sfgov.org).

**28. Q: Will OLSE impose administrative penalties for the first year after the Ordinance's effective date?**

A: No. For the calendar year 2018, OLSE will only issue warnings and notices to correct when it has concluded that a violation has occurred. Starting January 1, 2019, OLSE will have the power to issue determinations and impose administrative penalties.

**For more information on the Lactation in the Workplace Ordinance, please visit:**

**<http://sfgov.org/olse/lactation-workplace>**