

# Lactation in the Workplace Ordinance

## Frequently Asked Questions

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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 establishes new standards to ensure employers accommodate lactation.

These Frequently Asked Questions are intended to restate the law in plain language. These Frequently Asked Questions do not address rules in the Building Code governing building standards for and required construction of lactation rooms.

In 2019, the state of California enacted SB 142 which modified the state lactation accommodations law to become similar to the San Francisco Lactation in the Workplace Ordinance. See the State of California's Lactation Accommodation web page for more information about state law:

[https://www.dir.ca.gov/dlse/Lactation\\_Accommodation.htm](https://www.dir.ca.gov/dlse/Lactation_Accommodation.htm)

### Operative Date

#### 1.Q: When did the Ordinance take effect?

A: The Lactation in the Workplace Ordinance took 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. Note, however, that state law provides similar protections to public sector workers.

### 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 and seasonal employees. Employees are covered on the first day of employment.

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

A: No. The San Francisco Ordinance only covers employees who work within the geographical boundaries of San Francisco, which does not include the San Francisco International Airport. Note that state law provides similar protections to workers at the Airport.

**5.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).

## **Required Lactation Breaks**

**6.Q: What is a lactation break?**

A: A lactation break is the break time an employee needs to express breastmilk, which includes, but is not limited to, pumping, breastfeeding, and hand expressing. An employer is required to provide an employee with this time.

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

A: Yes. Employers must provide a reasonable amount of break time to accommodate an employee to express breast milk for the employee’s child. The break time may run concurrently with any break time already provided to the employee. The length of the break, and the number of breaks that an employee needs, may vary over time and from employee to employee. See [Lactation in the Workplace Rule 1](#) for more information.

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

A: No. Lactation break time should be provided during an employee’s existing paid breaks if possible. Where it is not, employers are not required to pay employees during lactation break time, but employers may choose to pay an employee for this time.

## **Required Lactation Location**

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

A: A lactation location is a clean and private space that an employer must provide to an employee for the purpose of expressing breast milk.

**10.Q: Are employers required to provide a space for lactation?**

A: Yes. Employers must provide a space 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.

The lactation space 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;
- (4) Have access to electricity; and
- (5) Not be a bathroom

Additionally, the employer must 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.

**11.Q: What does it mean for a lactation space, refrigerator, and sink to be “in close proximity” to an employee’s work area?**

A: It depends on the specifics of the situation, but it must be close enough that its location does not deter a reasonable employee from using it. See [Lactation Accommodation Rule 2.1](#), available on the Lactation Accommodation web page at: [sfgov.org/olse/lactation-workplace](http://sfgov.org/olse/lactation-workplace).

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

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

**13.Q: Can the lactation space be the employee’s normal work area?**

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

**14. Q: Can the lactation space be used for other purposes?**

A: Yes. An employer may designate a room as a lactation space that is also used for other purposes, as long as the primary function of the room is a designated lactation space for the duration of an employee’s need and as long as lactation accommodation takes priority.

During the period when the room is being used as a lactation space, 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.

**15. Q: Can multiple employers in the same building share the same lactation space?**

A: Yes, if the employer cannot satisfy the requirements of the Ordinance by providing a lactation space within the employer’s workspace, then the employer may fulfill this obligation by providing a shared space among multiple employers in the building. The shared space must be sufficient to accommodate the number of employees who desire to use it at any given time.

## Exemptions to Lactation Accommodation Requirements

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

A: Yes. An employer may establish an exemption from a requirement in the Ordinance to provide lactation breaks and/or a lactation space. Note, however, that such exemptions may not be available under state law.<sup>1</sup> For an exemption under the Ordinance, the employer must show that a specific requirement would impose an undue hardship (this means a 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.

The employer must still comply with all other requirements of the Ordinance, as well as all state and federal legal requirements.

## Policy and Process for Requesting Lactation Accommodation

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

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

### **18.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 relies on an exemption to deny lactation breaks or a lactation location, or provides a lactation location that does not comply with the Ordinance's requirements, 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.
- (5) Outline the process by which an employee may request lactation accommodation, which must:
  - (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

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<sup>1</sup> See [https://www.dir.ca.gov/dlse/Lactation\\_Accommodation.htm](https://www.dir.ca.gov/dlse/Lactation_Accommodation.htm) for more information.

(c) 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.

**19.Q: Where can I find a sample accommodation policy?**

A: OLSE has posted both a sample lactation accommodation policy and a sample lactation accommodation request form on its [Lactation in the Workplace](https://www.sfgov.org/olse/lactation-workplace) webpage, here: [sfgov.org/olse/lactation-workplace](https://www.sfgov.org/olse/lactation-workplace).

The Department of Public Health has posted numerous employer resources, including lactation accommodation best practices, on its [Workplace Lactation Accommodation Program](https://www.sfdph.org/dph/comupg/oprograms/NutritionSvcs/WIC/LactationAcc.asp) webpage, here: [www.sfdph.org/dph/comupg/oprograms/NutritionSvcs/WIC/LactationAcc.asp](https://www.sfdph.org/dph/comupg/oprograms/NutritionSvcs/WIC/LactationAcc.asp)

**20.Q: When must an employer distribute its lactation accommodation policy to its employees?**

A: At an employee's time of 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**

**21.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, including name, date of the request, and its resolution. Employers must also retain any written response provided to an employee.

**22. Q: How long must employers retain the required records?**

A: Employers must retain the required documentation for 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, OLSE will presume that the employer has violated the Ordinance, absent clear and convincing evidence otherwise.

## **Retaliation Prohibited**

**23. 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 they have been subjected to retaliation, the employee can file a claim with OLSE.

**24. 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.

## **Enforcement and Penalties**

**25.Q: How much are the administrative penalties for violations of the Lactation Ordinance?**

A: Administrative penalties are up to \$500 for each violation of the Ordinance, payable to the affected worker(s) and due within 30 days from the date of the OLSE's Determination of Violation. The OLSE can also impose administrative penalties up to \$50 for each day and for each Employee or person as to whom the violation occurred or continued.

For more information on the Lactation in the Workplace Ordinance, please visit:  
[sfgov.org/olse/lactation-workplace](https://sfgov.org/olse/lactation-workplace).