

# Lactation and Residency:

*Legal considerations for policy  
drafting*

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# Specific Break Time and Space Laws

# Specific Lactation Laws

## Spell out break time and space requirements

### California

Cal. Lab. Code §§ 1030, et. Seq.

### Minnesota

Minn. Stat. § 181.939(1)

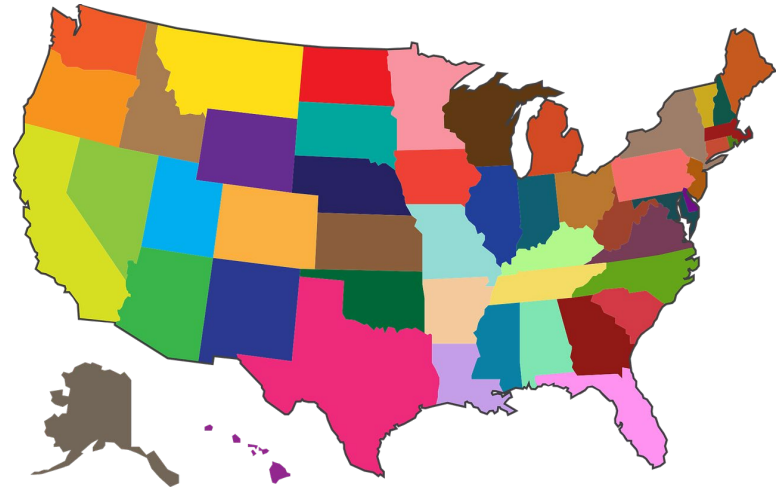
Note, includes paid break time!

### Puerto Rico

29 L.P.R.A. § 478a.

### Rhode Island

R.I. Gen. Laws § 23-13.2-1.



Break Time for Nursing Mothers, FLSA

# ●● Break Time for Nursing Mothers (FLSA)

Requires employers nationwide to provide eligible employees within the first year of infant's life:



## Reasonable break time, **as needed**

- Commonly every 2-3 hours, for 15-20 minutes **plus** travel/set up
- Break is unpaid, unless break taken at same time as a paid break
- If employee chooses to pump while working, they should be paid.



## Private (free from intrusion and view) non-bathroom space

- Does not need to be permanent, dedicated space, so long as available when needed
- Needs to be functional! Typically includes flat surface, seat, and electricity
- Don't forget temperature, air flow, basic sanitation

A teal-tinted photograph of a doctor in a white coat examining a baby held by a smiling woman. The doctor is on the left, looking down at the baby. The woman is on the right, smiling and holding the baby. The baby is looking towards the camera.

# Reasonable Accommodation Laws

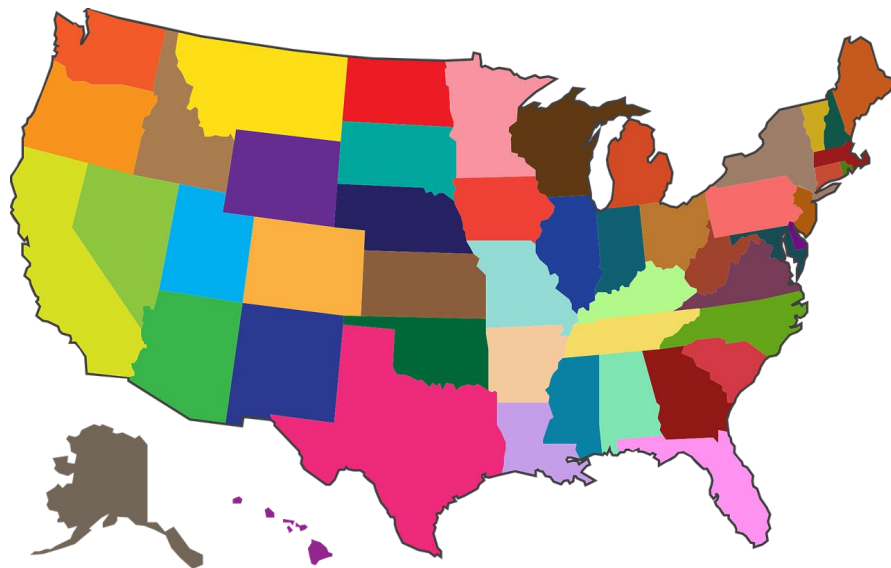


# Reasonable Accommodation Laws: Locations

States with existing  
accommodation laws:

- **California**  
Cal. Gov't Code § 12945 et. seq.
- **Minnesota**  
Minn. Stat. § 181.9414
- **Rhode Island**  
R.I. Gen. Laws § 28-5-7.4 et. seq.
- **Virginia**  
VA. CODE ANN. § 2.2-3904

In the future?



Pregnant Workers Fairness Act



# Reasonable Accommodation Laws

- **Require “Reasonable Accommodations”**  
Changes in how, when, or where an employee works in order to protect their health
- **Often mention “pregnancy-related conditions” not lactation**
- **Also prohibit retaliation**

# Reasonable Accommodation Examples

- Break time and lactation space
- Schedule changes
- Uniform modification
- Permission to telework
- Temporary duty changes
- Permission to carry bags or use refrigerator
- Anything reasonable that lactating worker needs to protect their health!



# ●● How are accommodations provided?

## Interactive Process

If original accommodation request was not reasonable, what other options are available?

- ✓ Timely
- ✓ Good Faith
- ✓ Interactive
- ✓ Process





# Are there exceptions?



# What is an undue hardship?

Accommodations typically do not need to be provided if they cause an “**undue hardship**” because they are significantly difficult or expensive.

## High Bar for Lactation Accommodation Exemptions:

- Most lactation accommodations are simple and cheap
- Presumption not a hardship due to Break Time for Nursing Mothers
- Reasonable accommodation laws require a good faith effort to find other accommodations that work



Photo Source: United States Breastfeeding Committee

## ●● Example Reasonable Accommodation

Michelle is scheduled to return to her rotations 2 weeks postpartum, as her leave has run out. She will be dropping into a fast-paced setting.

When asked about lactation breaks, her residency coordinator told her there is no way to guarantee pump breaks. Michelle is also concerned about COVID exposure.



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# Anti-Discrimination Laws



# Anti-Discrimination Laws

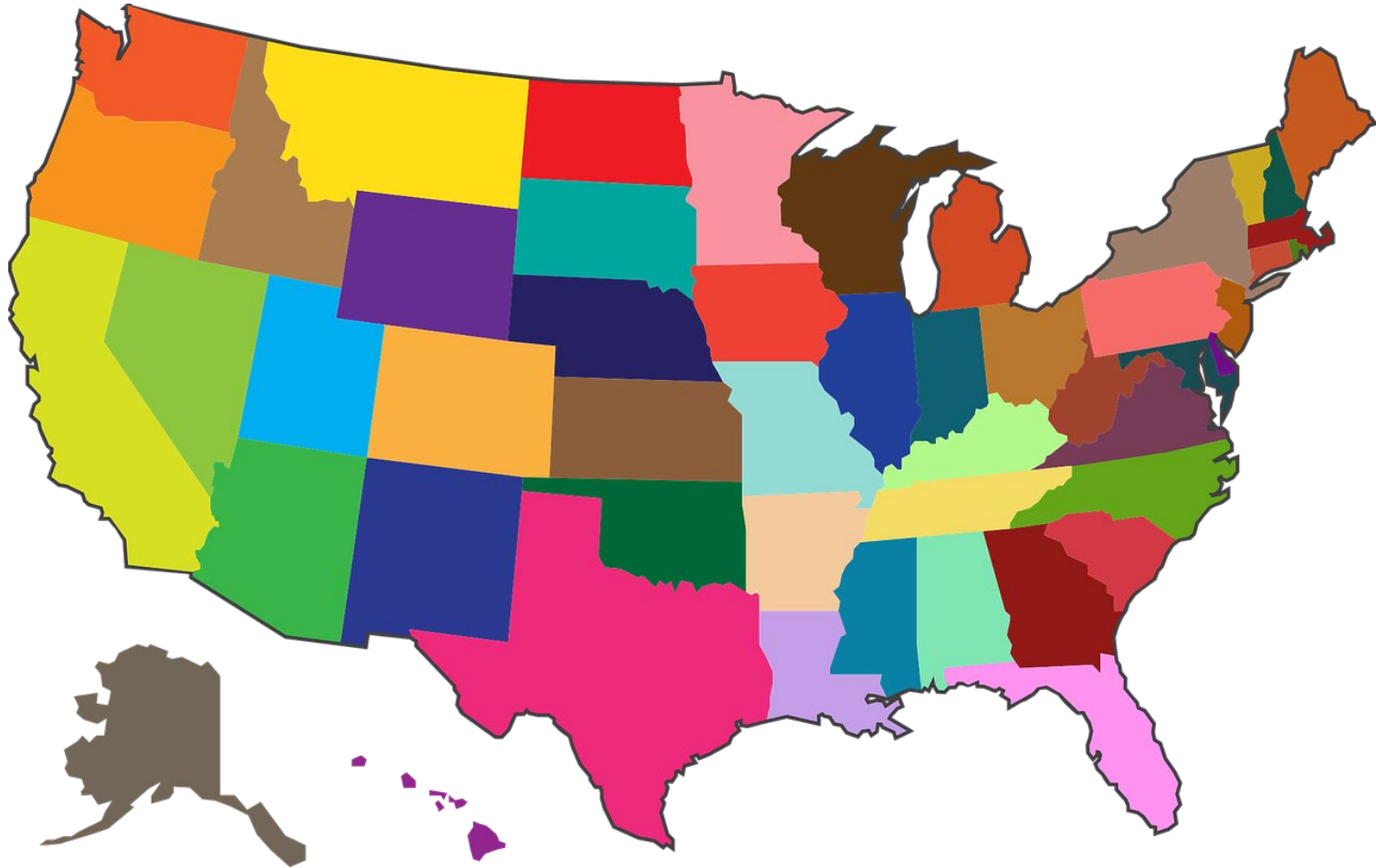
Sex discrimination: treating a worker differently “on the basis of sex” in a way that impacts the terms or conditions of employment.

Discrimination because of sex =  
because of pregnancy & related medical  
conditions  
= *because of lactation*

Prohibited by Title VII/PDA (employers with 15+ employees) and Title IX (educational programs)

# ●● Anti-Discrimination Laws Nationwide

Sex discrimination: treating a worker differently on the basis of lactation in a way that impacts the terms or conditions of employment.





# Anti-Discrimination Law: General Protections



- **Prohibits Discrimination**  
(firing, penalizing, or refusing to hire)
- **Prohibits Harassment**
- **Requires equal accommodation:**  
Lactating employees must have the same freedoms as other employees to address their needs (e.g., schedule changes, breaks, modified duties)



# ●● Discrimination Example 1

Erica is a resident.

When she uses her supervisor's office to pump, colleagues stand outside the door and moo at her.

At her latest performance evaluation, her supervisor says, "isn't it about time you got your baby on formula so you can focus on your job?"



## Discrimination Example 2

Barbara is a nurse at a hospital.

She is never allowed to take lactation breaks when she needs them, even though her colleagues take smoke and meal breaks as-needed.

Barbara's boss tells her they're just too short-staffed to provide regular lactation breaks.





It just became too much. It affected my home life. It affected my baby. My milk supply dropped. It was spiraling downhill.

**Barbara,**

*Emergency Room Nurse*



A teal-tinted photograph of a doctor examining a baby held by a smiling mother. The doctor is on the left, looking down at the baby. The mother is on the right, smiling and holding the baby. The baby is in the center, looking towards the camera.

# Discussion Scenarios



# Scenario 1

The Departmental policy for lactation breaks states that staff are entitled to two pumping breaks of 15 minutes each, and can facilitate coverage only during that time.

A resident has come to you because that isn't enough to accommodate their pumping needs.

What are your options and legal obligations?

## Scenario 2

A physician at your institution has been pumping and working, while covered, in a shared office. Others who use the space object.

What are your options and legal obligations?





Use language that leaves room for variations in pumping schedules

**Instead of:**

“Pumping breaks will be provided for 20 minutes every 3 hours...”

**Try:**

“As often as needed...”

“Each persons’ needs vary and may change over time. Often, employees will need...”



Use language that allows reasonable accommodations, if needed

### Try:

“For other lactation workplace accommodations, contact...”

“[Institution] will provide reasonable accommodations for lactating employees, including reasonable break time...”

## Make compliance non-discretionary for managers

### Instead of:

“Employees and supervisors should agree upon a schedule that meets both their needs...”

### Try:

“Employees should inform their supervisor of their pumping schedule and make a coverage plan that addresses...”

“Employees should contact [trained 3<sup>rd</sup> party] for assistance planning lactation breaks...”

## Encourage accountability

### Instead of:

“Contact the lactation support team for accommodation ideas...”

### Try:

ALSO include a contact well versed in the law and with the authority to require accommodations. Spell out who is responsible.

Not just a contact for problems, but also for updates.

# **Want to know more? Contact us!**

**Presentation follow up questions:** Email presenter Jessica Lee at [leejessica@uchastings.edu](mailto:leejessica@uchastings.edu)

**Free legal hotline for workers and students with general breastfeeding or caretaking issues**  
call 415-703-8276 or email [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org).

**Free legal hotline and resources for workers and students with  
COVID-19 related issues:**

**415-851-3308 or email [COVID19Helpline@worklifelaw.org](mailto:COVID19Helpline@worklifelaw.org)**

**Resources and practical tips for health care providers  
and employees:**

[www.pregnantatwork.org/](http://www.pregnantatwork.org/)

**Resources for management attorneys:**

<https://www.pregnantatwork.org/management-attorneys/>

**Legal resources and practical tips for  
higher education:**

[www.ThePregnantScholar.org](http://www.ThePregnantScholar.org).

