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New York City Council Voted to Impose New Obligations Upon Employers

In the midst of reports of widespread discrimination faced by pregnant workers and those returning to work following giving birth, the New York City Council passed a legislative package imposing new burdens on employers with respect to nursing employees. The newly passed legislation, which is awaiting Mayor DiBlasio's signature, will require employers to provide lactation rooms and adopt lactation accommodation policies.

Currently, all employers in New York are required to provide employees with unpaid break time to express breast milk for up to three years after the birth of a child and a private location, other than a restroom, where they can express breast milk, unless it would be extremely difficult to do so. The room must contain a chair and a small table, or other flat surface. Under the new laws, employers in New York City will need to provide breastfeeding employees with an increased level of accommodation.

New York City Employers Face Increased Requirements for Lactation Rooms

Under the new legislation, companies in New York City with more than 15 employees will be required to provide breastfeeding employees with a lactation room in reasonable proximity to the employee's work area that, at a minimum, includes an electrical outlet, a chair, a surface to place a breast pump and other personal items upon, and nearby access to running water. The employer must also provide employees with a refrigerator in reasonable proximity to the employee's work area for the purpose of storing breast milk. Moreover, if the designated lactation room is also used for another purpose, the primary purpose of the room must be for lactation and the employer must provide notice to all its employees that use of the space for lactation purposes takes precedence over all other purposes.

If providing such a space to an employee would impose an undue hardship on the employer due to the significant expense or operational difficulty, after an analysis of the employer's circumstances, an employer may be exempt from the requirements imposed by the City law. However, the employer must engage in a cooperative dialogue with the employee to determine whether any other options are available to meet the employee's needs.

New York City Employers Must Issue a Formal Policy on Lactation

In addition to providing an appropriate space for expressing breast milk, New York City employers must adopt and implement a policy regarding the lactation room. The policy must be distributed to all employees and contain the following information:

1. A statement that employees have the right to request a space to express breast milk;
2. The process for an employee to request a space to express breast milk. The policy must state:
 - a. how an employee can submit such a request;
 - b. that the employer is required to respond to the request within five (5) days;
 - c. that if the employer does not provide a lactation room, the employer will provide a written response detailing why the request was denied; and
 - d. that the employer will provide reasonable unpaid break time to express breast milk in compliance with New York Labor Law § 206-c.

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The policy should also include a procedure to follow when two or more individuals need to use the lactation room at the same time. The City will be issuing a model policy that employers can review and adapt to their needs.

Employers must retain copies of all written requests for a lactation space and records establishing how the employer resolved the request. Such records must be maintained for three years.

Employers Should begin to Plan for Implementation of the Laws

Although the Mayor has not signed the lactation legislation into law yet, he is expected to do so shortly. The laws will go into effect 120 days after the Mayor signs them into law. In anticipation of these new laws going into effect, New York City employers should survey their premises and determine where they can establish a compliant lactation room and begin preparing a compliant lactation policy.

For more information on Meyer Suozzi's Employment Law practice, [click here](#).

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