

Lactation Law Update: New York and Illinois

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Recent developments require employers to reevaluate their lactation and nursing policies and practices to ensure that they are in compliance with newly enacted local laws in New York City and Illinois.

Changes to New York City Lactation Laws: Effective March 17, 2019

Since 2007, New York City employers with four or more employees have been required to provide reasonable unpaid break time (or to allow an employee to use paid break/meal time) to express breast milk in the workplace, for up to three years following the birth of a child, and to make reasonable efforts to provide a room, other than a restroom, to express milk in private.

Additional lactation-related obligations for New York City employers with four or more employees go into effect on March 17, 2019. For example, by that date, a covered employer must provide lactating employees with a sanitary “lactation room,” which is not a restroom, and which has, at minimum, an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water. The lactation room must be made available to the employee for lactation purposes only when it is needed (and notice to other employees regarding the same is required), and a refrigerator and the room itself must be in “reasonable proximity” to the employee’s work area.

Notably, the required lactation room must be provided unless the employer can establish an “undue hardship,” in which case the employer must engage in a cooperative dialogue with the employee to determine alternative accommodations and issue a final written determination to the employee that identifies any accommodation(s) that were granted or denied.

In addition, by March 17, 2019, a covered employer in New York City must implement a written lactation room accommodation policy, which states that employees have the right to request a lactation room and identifies the process (as outlined in the Administrative Code) by which an employee may request a lactation room. All new employees must receive the lactation room policy upon hire.

Changes to Illinois’s Lactation Law: Effective August 2018

Like many employers in New York, Illinois employers with five or more employees have been required, since 2001, to provide employees with reasonable unpaid break time to express breast milk, in an appropriate room that is not a toilet stall.

Effective August 2018, the Illinois Nursing Mothers in the Workplace Act was amended. Now, Illinois employers with at least five employees must provide “reasonable break time” each time an employee needs to express breast milk, for up to one year following the child’s birth. While the break time “may” run concurrently with any other break time, the employee’s pay cannot be reduced due to the time spent expressing milk or nursing a baby – meaning, in effect, that any additional break time needed to express milk or nurse must be paid. Further, covered employers in Illinois who do not provide the requisite break time must show, if challenged, that providing the breaks is an “undue hardship” – a heightened burden than that previously imposed under the Act.

Employers should act quickly to ensure full compliance with all of the requirements of the new lactation laws. If you have any questions concerning New York City's or Illinois's lactation laws please contact **Elizabeth N. Hall** at (312) 609-7795, **Grace L. Urban** at (312) 609-7619, **Blythe E. Lovinger** at (212) 407-7770, **Haley P. Tynes** at (212) 407-6997 or any other Vedder Price attorney with whom you have previously worked.

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