

# CLIENT ALERT

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## NYC Employers: Time to Put a Lactation Room Policy in Place

To Our Clients and Friends:

March 15, 2019

Effective March 18, 2019, New York City employers must comply with expanded requirements to provide lactation accommodations to their employees. The new laws require employers, by March 18, 2019, to (i) make a compliant lactation room available for employees upon request, and (ii) implement a written policy and procedure for employees to request lactation accommodations. The new requirements only apply to New York City employers with four or more employees.

Passed by the New York City Council last year, the two new laws -- Local Laws 185 and 186 -- amend the New York City Human Rights Law and expand upon the existing requirements under state and federal law. Currently, state and federal law require employers to provide employees with a private location that is not a bathroom to express milk during the workday and allow employees to take unpaid breaks to do so.

### **Lactation Room Requirements**

Under Local Law 185, employers in New York City will be required to provide both a lactation room that meets certain minimum specifications and a refrigerator suitable for

breast milk storage to employees who need to express breast milk during the workday. "Lactation room" is defined as a sanitary place, other than a restroom, that can be used to express breast milk shielded from view and free from intrusion. At a minimum, the room must also include an electrical outlet, a chair, a flat surface on which to place a breast pump (*e.g.*, a table or counter), and nearby access to running water. The lactation room and refrigerator must be in reasonable proximity to the requesting employee's work area.

The designated lactation room may be used for other purposes, but not when an employee is utilizing the room to express breast milk. Employers are also required, if the lactation room is used for multiple purposes, to provide notice to other employees seeking to use the room that preference is given for lactation use. In practice, we recommend (i) designating a room with a locking door, (ii) informing other employees that the room is designated a lactation room, and (iii) when the room is occupied for lactation purposes, posting a sign that discreetly says "Occupied" or "Do Not Disturb."

If providing a lactation room is an “undue hardship” to the employer, the employer must engage in a “cooperative dialogue” with the employee to determine whether there are any alternative accommodations available. Following a dialogue with the employee (which may be had orally or in writing), the employer must inform the employee of its final determination in writing pursuant to the new cooperative dialogue law effective as of October 15, 2018.

### **Lactation Room Policy and Notice Requirements**

Local Law 186 requires that employers develop and implement a written policy regarding its lactation room accommodations. The policy must include a statement that employees have a right to request a lactation room and identify the process by which employees can make any such request. Specifically, the policy must:

- Specify how the employee may submit a request;
- Require the employer to respond to any such request within a reasonable amount of time not to exceed five (5) days;
- Provide for a procedure when multiple employees request use of the lactation room at the same time;
- Identify a contact person to handle requests for accommodations and scheduling issues;
- State that the employer shall provide reasonable break time for an employee to express breast milk pursuant to Section 206-c of the Labor Law; and
- State that if the employee’s request for a lactation room poses an undue hardship on the employer, the employer shall engage in cooperative dialogue (as discussed above).

The new law directs the New York City Commission on Human Rights (“CCHR”) to establish and make available a model lactation accommodation policy for employers to use and a model lactation room request form. The CCHR has not yet made any such materials available on its website.

Employers must distribute the new lactation policy to all new employees, and should do the same with respect to current employees. We suggest that employers incorporate the policy into any employee handbooks distributed to all employees, as well as provide notice of the policy to any employees returning to work following parental leave.

New York City employers should review their relevant policies and procedures to ensure compliance with the new laws. Please call your primary contact at Golenbock Eiseman Assor Bell & Peskoe or a member of our Labor and Employment Group with any questions.

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