

NEW RIGHTS FOR NEW YORK NURSING MOTHERS AT WORK

by Laurie Berke-Weiss*

In August 2007, New York State advanced the rights of nursing mothers in the workplace with passage of New York Labor Law § 206-c, the Right of Nursing Mothers to Express Breast Milk (the "Nursing Mothers' Law"). The statute states in its entirety:

An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

N.Y. Lab. Law § 206-c (2008).

The Nursing Mothers' Law filled in a gap left after women gained the right to breastfeed in public without being charged with indecent exposure. See N.Y. Civ. Rights Law § 79-e (2008); N.Y. Penal Law §§ 245.01, 245.02 (2008). Although these statutes granted women important rights, they did not address a nursing mothers' need to express milk during the day at convenient times and in comfortable surroundings. Notably, in 2003, the Appellate Division, Third Department, dismissed the claim of Kathleen Landor-St. Gelais who alleged she was discriminated against when her company implemented a lactation policy that forced her to express milk either during her regular break times, or by punching out for the time she needed and working a longer shift to make up the lost time. Landor-St. Gelais alleged that the restrictive policy made her uncomfortable and led to a decline in her milk production. In refusing to find employer liability, the court held that, "the language of the statute unambiguously refers only to breast-feeding, not to expressing milk." *Landor-St. Gelais v. Albany Int'l Corp.*, 763 N.Y.S.2d 369, 370, 307 A.D.2d 671, 673 (3d Dep't 2003). Under the Nursing Mothers' Law, however, nursing mothers cannot be discriminated against for expressing milk at work, and also have gained flexibility in determining when and where they will do so.

The impact of the Nursing Mothers' Law is demonstrated by guidelines recently issued by the New York State Department of Labor's Division of Labor Standards (the "Guidelines"). These are intended to encourage employer compliance with the statute and to set parameters for employers' policies on expressing milk at work. The Guidelines apply to all employers, regardless of the number of employees and nature of the business, but they are not mandatory. Still, the Guidelines provide a template to employers and suggest the potential impact of the law on the workplace.

As a starting point, the Guidelines require employers to notify nursing mothers of their rights. But, the Guidelines go further, providing detailed instructions for compliance with the statute, as follows:

- Reasonable unpaid break time should be made available at least once every three hours, if requested.
- Reasonable efforts for privacy must be made by the employer. Specifically, "Employers should make reasonable efforts to provide a private room or other location for the purpose of expression of breast milk." The Guidelines dictate that this room cannot be a restroom or toilet stall but, rather, a dedicated lactation room or vacant office that is well lit. Moreover, if the room has a window, the employer should provide curtains or blinds for privacy. The Guidelines further specify that the room should contain a chair and a flat surface, and, if possible, an outlet, clean water supply, and access to refrigeration.
- "Suggested employer activities" include allowing breastfeeding women to have flexible work hours and scheduling, providing educational information about breastfeeding, and including protection for pregnant and breastfeeding mothers in the company's sexual harassment policy.

N.Y.S. Dep't of Labor, Division of Labor Standards, LS-702, Guidelines Regarding the Rights of Nursing Mothers to Express Breast Milk in the Work Place (2008).

New York is ahead of the federal government in protecting nursing mothers at work. In 2007, Representative Carolyn B. Maloney of New York's 14th District, introduced the Breastfeeding Promotion Act of 2007, HR2236, in the United States House of Representatives, whose purpose was to, "clarify that breastfeeding and expressing breast milk in the workplace are protected conduct under the amendment made by the Pregnancy Discrimination Act of 1978 to title VII of the Civil Rights Act of 1964." Materials presented in support of the bill include a variety of research studies that have established the plethora of health related benefits of breastfeeding for mothers and their children. No vote was taken on Congresswoman Maloney's bill, however, and, to date, it has not been reintroduced to the House.

The legislative history of the Nursing Mothers' Law acknowledges both the benefits associated with breastfeeding, and the personal and public policy concern that a mother who does not breastfeed or express her milk for an extended period of time risks losing her ability to continue to do so. Mem. in Support of Legislation, 2007 Legis. Bill Hist. NY A.B. 1060 (2008). Because the law requires all New York employers to provide nursing mothers of children under 3 years with a comfortable, private location to express breast milk, and the freedom to take time during the work day to do so without fear of discrimination, the Nursing Mothers' Law allows women to return to the workplace after pregnancy without forcing them to sacrifice the choice to breastfeed their infants. As a result, employers need to be aware of this statute and the Guidelines to understand their obligation to accommodate nursing mothers in order to be in compliance with the law and avoid liability.

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