

Making Lactation Breaks Affordable for All Workers

The Problem: Lactation Breaks Are Out of Reach for Too Many Employees

Although federal and state laws¹ provide a right to lactation breaks for most employees nationwide, these breaks are often unpaid and, as such, unaffordable for workers who rely on their full wages to support themselves and their families. Due to racial inequities in the labor market, Black and Latinx families are disproportionately impacted.²

When breaks are unpaid, lactating parents must choose whether to go without the wages they need to survive or without regular pumping breaks. When a lactating parent cannot pump, their milk can dry up and they may be unable to continue nursing, resulting in health impacts and additional costs.³ Racial inequities in who can afford to take lactation breaks reinforce existing disparities in breastfeeding rates that break down along economic and racial lines, compounding health inequities for the parent and child.

For more information about breastfeeding parents' health needs at work and practical policy solutions, visit [Exposed: Discrimination Against Breastfeeding Workers](#).

The Solution: Policy Changes that Make Lactation Breaks Affordable for All

Changing public policy can help lactating parents afford the pumping breaks they need. The policy solutions below can be implemented to address lactation break unaffordability and are already required in some states. For more information about existing law or model policies, please contact the Center for WorkLife Law at policy@worklifelaw.org.

Require Paid Lactation Breaks: Requiring paid breaks is the most effective way to ensure the most marginalized workers can express milk during the workday and therefore be able to both work and feed their child. Unfortunately, federal law does not require employers to provide paid lactation breaks for all workers. While most salaried employees cannot have their pay reduced for the time they spend pumping, the same protections do not extend to most hourly employees, where Black and Latinx workers tend to be overrepresented. Under the federal system, workers and employers are left to navigate a complex set of rules to determine if the employee's situation falls into one of the eight situations⁴ when an employee must be paid for the time they spend

¹ Center for WorkLife Law, Workplace Lactation Laws, available at <https://www.pregnantatwork.org/state-workplace-lactation-laws/>.

² "A Profile of the Working Poor," BLS Reports, U.S. Bureau of Labor Statistics, 2020, available at <https://www.bls.gov/opub/reports/working-poor/2020/home.htm>.

³ Liz Morris et al., *EXPOSED: Discrimination Against Breastfeeding Workers*, THE CENTER FOR WORKLIFE LAW, UC HASTINGS COLLEGE OF THE LAW 8 (2019), <https://www.pregnantatwork.org/wp-content/uploads/WLLBreastfeeding-Discrimination-Report.pdf>.

⁴ Center for WorkLife Law, Lactation Rights at Work: Are Pumping Breaks Paid or Unpaid?, available at <https://pregnantatwork.org/wp-content/uploads/Are-Pumping-Breaks-Paid-or-Unpaid.pdf>.



pumping. This system can lead to employers inadvertently violating the law, harming employers and the health of its workers and their families. Having a clear and straightforward requirement that all lactation breaks are paid can benefit employers and workers alike. For more information about when federal law requires pumping breaks to be paid, visit [Lactation Rights At Work: Are Pumping Breaks Paid or Unpaid?](#).

Current State Law Requiring Paid Lactation Breaks:

In the absence of federal requirements, states and localities can and should step in to fill these inequitable gaps in public policy. Four states already require employers to provide paid lactation breaks: Georgia, Illinois, Minnesota, and New York.⁵ Some other states, like Indiana and Oklahoma,⁶ require public state employers to do so.

Georgia's law, arguably the most protective state law, requires employers to compensate employees paid by the hour for reasonable time spent on lactation breaks and prohibits reducing the compensation or paid time off of any employee for time spent in lactation breaks. The law, which was signed by a Republican governor in 2020, has strong language requiring that lactation break time "be paid at the employees' regular rate of compensation."⁷ It also requires that "[if] the employee is paid on a salary basis, the employer shall neither require the salaried employee to use paid leave during any break time nor reduce the employee's salary as a result of the salaried employee taking a break to express milk."⁸ This groundbreaking legislation can serve as a model for what is possible around the country.⁹ However, while the language of the law is strong, current enforcement limitations prohibit the law from being as effective as it could. Policymakers can learn from this and ensure any future laws include both strong policy language and effective enforcement mechanisms.

Illinois and Minnesota also require paid lactation breaks but use less direct language. In 2018, Illinois' Republican governor signed the nation's first paid lactation break law amending an existing lactation break time and space law to require that: "An employer may not reduce an employee's compensation for time used for the purpose of expressing milk or nursing a baby."¹⁰ Minnesota followed suit, adopting the same language in 2021 in a bill introduced by two nursing moms, a [Republican and a Democratic lawmaker](#).

The Minnesota Department of Labor and Industry, which is the agency responsible for enforcing the state law, has a [webpage dedicated to the rights of pregnant workers and new parents](#), and a [FAQ for employers](#) on the law that requires paid lactation breaks, the Women's Security Act. The agency interprets the legislation to mean that an employer cannot reduce an employee's compensation, including accrued leave benefits (sick, vacation, or paid time off) for pumping breaks, nor can they require the employee to make up the time they used to express milk.

⁵ For more information on these laws, see the chart on the last page of this document.

⁶ Ind. Code § 5-10-6-2 (2008); Okla. Stat. Ann. tit. 40, § 435 (West 2020).

⁷ Ga. Code Ann. § 34-1-6 (2020).

⁸ *Id.*

⁹ Contact the Center for WorkLife Law at policy@worklifelaw.org for assistance incorporating paid breaks into existing laws of other states.

¹⁰ 820 Ill. Comp. Stat. 260/10 (2018).



Another approach, taken by New York, is to require employers to provide a fixed amount of paid break time for lactation. Under New York’s recently enacted legislation, employers must provide “paid break time for thirty minutes, and permit an employee to use existing paid break time or mealtime for time in excess of thirty minutes, to allow an employee to express breast milk for such employee’s nursing child.”¹¹ New York’s Department of Labor, the state agency responsible for enforcing the law, has interpreted this to mean the employer must provide 30-minute paid breaks each time the employee needs to express milk.¹² This approach resembles the way that nine states¹³ already require employers to provide paid rest breaks of a minimum fixed duration.

These various approaches taken by the states all have benefits and drawbacks and it is important for policymakers and advocates to understand them when considering what approach to use. For example, the language in the Georgia law that break time must “be paid at the employees’ regular rate of compensation” is stronger than the Minnesota/Illinois language that employers “may not reduce an employee’s compensation” as it leaves less room for interpretation. Under the Georgia language, it is clear that hourly employees, who most need these protections, must receive their normal wages during lactation breaks. The Minnesota/Illinois language, on the other hand, allows employers, state agencies, or courts the opportunity to interpret what constitutes a reduction to an employee’s compensation.

The Georgia law language describing the paid breaks is also stronger than the New York law language as it does not set a time limit on paid breaks that might not be sufficient for some workers. Unlike typical paid rest breaks, lactation breaks must continue for as long as is necessary to complete the milk expression and the amount of time lactating employees need to express milk varies; some lactating employees may require longer than 30 mins. As a result, New York’s fixed-duration approach does not guarantee all workers, especially hourly workers, will receive fully paid breaks if they need more than 30 minutes.

However, while the Georgia law language provides the most readily understood and expansive legal right,¹⁴ it might not always be preferable from a political advocacy and messaging perspective. For instance, it may be more palatable to use the Illinois and Minnesota language to require that employers “not reduce compensation” than that they “provide paid breaks.” Similarly, using New York’s fixed-duration approach can ease common employer fears around the economic burden of providing paid lactation breaks.

Advocates and policymakers considering paid lactation break legislation should reach out to the Center for WorkLife law to discuss what approach may be best for them.

¹¹ New York Labor Law Section 206-c

¹² New York State Department of Labor, Policy on the Rights of Employees to Express Breast Milk in the Workplace, available at https://dol.ny.gov/system/files/documents/2024/06/p705-policy-on-the-rights-of-employees-to-express-breast-milk-in-the-workplace_-24-1.pdf.

¹³ U.S. Department of Labor, Minimum Paid Rest Period Requirements Under State Law for Adult Employees in Private Sector (Jan. 1, 2019), available at <https://www.dol.gov/whd/state/rest.htm>.

¹⁴ Contact the Center for WorkLife Law for model language. WorkLife Law suggests making clear that employers cannot require *any* employee, including those paid by the hour, to use PTO for lactation breaks (not just salaried employees).



Key Policy Changes for Paid Lactation Breaks:

Drafters of future paid-break policies should consider whether it is politically feasible to introduce legislation that does all the following:

1. Provides that all employees must be paid, or not docked pay, for time spent on lactation breaks;
2. Provides that paid time off (like vacation, sick, or personal days) and other benefits of employment shall not be reduced for time spent on breaks;
3. Clarifies that the compensable lactation break time includes all time necessary to express milk (e.g., traveling to and from the lactation space, storing milk, etc.);
4. Prohibits employers from requiring employees to make up time used to express milk;
5. Ensures that there is an effective enforcement mechanism in place to recover wages that are wrongfully withheld in violation of the law; and
6. Allows paid breaks for as long as the employee needs to express milk regardless of the child's age.

Prohibit Deductions for Travel Time: Although requiring employers to pay employees for time spent expressing milk is the most effective way to make lactation breaks economically realistic for all workers, a narrower solution is to allow unpaid breaks, but require that the time spent traveling between the employee's workstation and the pumping location and milk-storage location be compensable. Because the pumping location is within the employer's control, this may be more politically feasible, and will incentivize employers to provide lactation spaces that are readily accessible.

For model language, consider the rules interpreting San Francisco's Lactation in the Workplace Ordinance: "The time that it takes an Employee to get to and from the Employer's designated Lactation Location and, if at a separate location, to and from a refrigerator and a sink with running water, shall not be included as part of the Employee's break time."¹⁵

Ensure Effective Enforcement: Paid lactation break laws should have an effective enforcement mechanism for collecting wages that are wrongfully withheld. Statutory language should include clear language around how an employee can recover lost wages when an employer fails to pay them for their lactation breaks, including waiting time penalties. If a worker is not relieved of their duties during their lactation breaks, state laws that already require compensating employees for all hours worked to prohibit wage theft may provide additional relief. The federal Fair Labor Standards Act also requires employers to count all time when an employee is not relieved of work duties as "hours worked" for purposes of calculating minimum wage and overtime due.¹⁶ However, it is important that paid lactation laws include their own enforcement and remedies language.

¹⁵ City and County of San Francisco, Office of Labor Standards Enforcement, Rules Implementing the Lactation in the Workplace Ordinance, Rule 1.2, available at <https://sfgov.org/olse/sites/default/files/Final%20Lactation%20in%20the%20Workplace%20Rules%20-%20July%2025%202018.pdf>.

¹⁶ U.S. Department of Labor, Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA), available at <https://www.dol.gov/whd/regs/compliance/whdfs22.pdf>.



Option to Continue Working While Expressing Milk: Some employees wish to continue working while expressing milk to avoid losing wages during an unpaid break or to avoid staying late at work to make up missed work. Many breastfeeding parents work jobs that can be done while expressing milk, particularly with the use of a hands-free pump or other device to hold the pump parts in place. Whether this option is feasible depends on whether the parent can afford a hands-free device, as well as the unique physical needs of the nursing parent and the nature of their work, but it may be realistic and preferable for some employees.

Not all lactating parents can express milk while working. For example, many workers need to relax to let down milk, or they are physically unable to engage in hands-free pumping. Therefore, the key is that the law must require employers to give employees the nonmandatory *option* of continuing to perform work suitable to be done during milk expression periods. Employees should not be *required* to continue working if they prefer to be relieved of their duties, and such requirements are often illegal under federal laws. For example, the law could state,

Employees who request to continue performing their work duties while expressing milk should be allowed to do so if reasonable in light of the nature of their work duties. Employees who do not request to continue performing work while expressing milk shall be provided a lactation break under this section and must be completely relieved of all duties.

As noted above, federal law already requires employers to pay workers during their lactation breaks if they are performing work. Recent guidance from the U.S. Department of Labor makes clear that an employee who is working during their lactation break should not be taken off the clock, even if the work they are doing is different or less than what they would normally be doing.¹⁷ State laws should follow federal law and have clear statutory language that while an employee cannot be required to work while pumping, if they choose to work, the break must be paid. Of course, this language is only necessary if the law does not provide for paid lactation breaks generally.

Note that if an employee chooses to continue to work during their lactation breaks, this may require the employer to provide additional accommodations to make this possible, such as setting up a workstation in a lactation space or permission to pump in a shared space.¹⁸

For more information about policies that support lactating workers and existing law, please visit www.pregnantatwork.org/policy-resources or contact the Center for WorkLife Law at policy@worklifelaw.org or 415-565-4640.

¹⁷ U.S. Department of Labor, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, available at <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers#:~:text=Compensation%20for%20Break%20Time%20to%20Pump%20Breast%20Milk&text=Further%2C%20when%20employers%20provide%20paid,are%20compensated%20for%20break%20time.>

¹⁸ Under federal law, employees may have a right to pump at their workstation, or another location of their choosing and are not required to use the lactation space designated by the employer.



State Laws Requiring *Paid* Lactation Breaks for Expressing Milk Laws that Apply to Private Employers (updated July 2024)

Georgia

Employers must provide reasonable break time for employees who want to express milk at the worksite during work hours. Such break time is to be paid at employees' regular compensation rate. Employees paid on a salary basis must not be required to use paid leave during break time nor may their salary be reduced because they took leave to express milk during the workday. Paid break time need not be provided to employees on days when they work away from the employer worksite. Employers with fewer than 50 employees who would face undue hardship are not subject to such requirements. Ga. Code Ann. § 34-1-6 (2020).

Illinois

An employer shall provide reasonable break time to an employee who needs to express breast milk for her nursing infant child each time the employee has the need to express milk for one year after the child's birth. The break time may run concurrently with any break time already provided to the employee. An employer may not reduce an employee's compensation for time used for the purpose of expressing milk or nursing a baby. An employer shall provide reasonable break time as needed by the employee unless to do so would create an undue hardship as defined by item (J) of Section 2-102 of the Illinois Human Rights Act. 820 Ill. Comp. Stat. 260/10 (2018).

Minnesota

An employer must provide reasonable break times each day to an employee who needs to express breast milk for her infant child during the twelve months following the birth of the child. The break times must, if possible, run concurrently with any break times already provided to the employee. An employer is not required to provide break times under this section if to do so would unduly disrupt the operations of the employer. An employer shall not reduce an employee's compensation for time used for the purpose of expressing milk. Minn. Stat. Ann. § 181.939 (West 2022).

New York

Employers are required to provide employees 30 minutes of paid lactation breaks each time the employee has a reasonable need to express breast milk. Employers must also permit employees to use other existing paid break time for lactation breaks that last longer than 30 minutes. Employees must request lactation breaks in advance (preferably before returning from leave) and in writing (such as by text or email). Employers must respond in writing within five days. Employees have a right to receive paid lactation breaks for up to 3 years following the birth of their child. No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace. [New York Labor Law § 206-C](#).

*Note that some states require **public employers** to provide paid breaks (e.g. Indiana and Oklahoma). Ind. Code § 5-10-6-2 (2008); Okla. Stat. Ann. tit. 40, § 435 (West 2020).