Making Lactation Breaks Affordable for All Workers

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

Although federal and state laws provide a right to break time for expressing milk for most employees nationwide, in reality, taking these breaks is unaffordable for many low- and middle-income earners. Black and Latinx families are disproportionately impacted.

When breaks are unpaid, lactating parents must choose whether to go without essential wages or without regular pumping breaks. When a nursing parent cannot pump, their milk can dry up and they may be unable to continue nursing. 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 disparities.

For more information about breastfeeding and chestfeeding parents’ health needs at work and practical policy solutions, visit Exposed: Discrimination Against Breastfeeding Workers.

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

Changing public policy can help lactating parents be able to 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.

Paid Lactation Breaks: Requiring paid breaks is the most effective way to ensure the most vulnerable workers are able to express milk during the workday. Three states already require all employers to provide paid lactation breaks: Georgia, Illinois, and Minnesota. Some other states, like Indiana and Oklahoma, require public state employers to do so.

The most protective law requires employers to compensate employees paid by the hour for reasonable time spent on lactation breaks and prohibit reducing the compensation or paid time off (PTO) of any employee for time spent in lactation breaks. Georgia’s 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.” 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

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3 For more information on these laws, see the chart on the last page of this document.
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taking a break to express milk.” This groundbreaking legislation can serve as a model for what is possible around the country.

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 that amended 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.”

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 offers a webpage and webinar for pregnant workers and new parents, as well as an FAQ for employers on the Women’s Economic Security Act (the law that requires paid lactation breaks). In sum, the Minnesota Department of Labor and Industry, which is the agency responsible for enforcing the law, interprets the legislation to mean that “your employer can’t cut your pay or require you to make up time used to express milk.” Additionally, the Department clarifies that employers cannot reduce an employee’s sick time, vacation, or other paid time off for pumping breaks.

Compare the Georgia mandate that break time must “be paid at the employees’ regular rate of compensation” to the Minnesota/Illinois mandate that employers “may not reduce an employee’s compensation.” The Georgia language is stronger from a legal perspective because it makes crystal clear that hourly employees, who most need these protections, must receive their normal wages during lactation breaks. The Minnesota/Illinois language is less clear and could therefore be misinterpreted by employers, absent clarifying guidance.

While the clearer language from Georgia provides the most readily understood legal right, the language from Illinois and Minnesota may be preferable from a political advocacy and messaging perspective, as it may be more palatable to require that employers “not reduce compensation” than that they “provide paid breaks.” Advocates should understand the tradeoffs of each approach, and the Center for WorkLife Law is available to discuss them.

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6 Id.

7 Contact the Center for WorkLife Law for assistance incorporating paid breaks into existing laws of other states.


9 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).
Drafters of future paid-break policies should consider whether it is politically feasible to introduce legislation that does 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; and
5. Ensures that there is an effective enforcement mechanism in place to recover wages that are wrongfully withheld in violation of the law.

**Fixed-Time Paid Lactation Breaks:** An alternative to requiring compensation for all time spent during a lactation break is to require employers to provide a fixed amount of paid break time each workday for purposes of lactation (e.g., a 20-minute paid break for every three hours worked), in the same way that the laws of nine states currently require employers to provide paid rest breaks of fixed duration. Unlike typical paid rest breaks, however, lactation breaks must continue for as long as is necessary to complete the milk expression - even if only a fixed portion of the break must be paid. As a result, under fixed-time paid break policies, any pumping break time that exceeds the fixed period may be unpaid. The amount of time lactating employees will need to express milk will vary, and some require longer than 20 minutes to express milk because of their own anatomy, parenting twins, having access to only an inefficient pump, or being required to walk a long distance from their workstation to get to the pumping and/or milk storage locations.

**No 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 more moderate 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.”

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11 City and County of San Francisco, Office of Labor Standards Enforcement, Rules Implementing the Lactation in the Workplace Ordinance, Rule 1.2, available at
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Clarification of Work Time: For break time and space laws that allow unpaid breaks, the law should always make clear that any lactation break during which the employee is not completely relieved of all work duties must be paid as normal work time. For example, if an employee is “on call” or required to answer phones when they are expressing milk, the time must be paid. That applies even if the employee is allowed to pump from a private space and is relieved of some duties.

The law should have an effective enforcement mechanism for collecting wages that are wrongfully withheld. Care must be taken in drafting statutory language to avoid sending the message that it is generally permissible to not relieve lactating workers of their duties during milk expression breaks. Compensating employees for all hours worked is already required by the laws of states that prohibit wage theft, like California. The federal Fair Labor Standards Act 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.\(^\text{12}\)

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 and chestfeeding 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 because they need to relax to let down milk, or because 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. 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.

Note that laws requiring employers to provide lactation spaces do not require employers to force employees to use them if they do not wish to do so. Still, employees who wish to pump at their workstation often encounter resistance. Employees who work in states that provide a right to


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Accommodation for pregnancy and lactation should already be entitled to express milk while continuing to work as a reasonable accommodation (assuming the other requirements of the law are satisfied, which could include providing a healthcare provider note). Similarly, an argument can be made that employees must be allowed to pump milk while performing their work duties under the federal Pregnancy Discrimination Act, when the employer allows other employees to attend to their own personal needs while working (e.g., eating food or drinking, listening to the radio, continuously monitoring their blood sugar, or wearing other personal health devices).

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

State Laws Requiring Paid Lactation Breaks for Expressing Milk

Laws that Apply to Private Employers (updated July 2021)

**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).

*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).