



Lori Droste
Councilmember, District 8

CONSENT CALENDAR
January 24, 2017

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Lori Droste

SUBJECT: Berkeley Mothers Initiative

RECOMMENDATION

Request that the City Manager ensure that all City buildings provide and maintain at least one private place reasonably close to an employee's workspace for breastfeeding mothers to pump.

BACKGROUND

In 2010, the federal "Break Time for Nursing Mothers" law allowed for breastfeeding mothers to have access to a private room and reasonable break time in order to pump. In California, Assembly Bill 1025 Lactation Accommodation specified similar provisions in addition to clarifying that a toilet stall is not an acceptable place to pump. The City of Berkeley is known as a leader in gender equity and workplace rights. As a result, female workers must be able to have time and private physical space so they can express milk for their children.

FISCAL IMPACTS

Staff time

ENVIRONMENTAL SUSTAINABILITY

No adverse effects

CONTACT PERSON

Lori Droste, City Councilmember, District 8, 510-981-7180

Attachments

- 1: Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision
- 2: AB 1025 Bill Text

Wage and Hour Division (WHD): Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision

<https://www.dol.gov/whd/nursingmothers/>

Effective March 23, 2010, the Patient Protection and Affordable Care Act amended the FLSA to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child. The amendment also requires that employers provide a place for an employee to express breast milk.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

(r)(1)

An employer shall provide—

a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

(2)

An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(3)

An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

(4)

Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

Assembly Bill No. 1025

CHAPTER 821

An act to add Chapter 3.8 (commencing with Section 1030) to Part 3 of Division 2 of the Labor Code, relating to employment.

[Filed with Secretary of State October 13, 2001. Approved
by Governor October 12, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1025, Frommer. Lactation accommodation.

Existing law imposes various requirements upon employers concerning safety, working conditions, and other matters regarding the workplace, but no requirement upon private employers to accommodate employees desiring to express breast milk.

This bill would require employers to provide a reasonable amount of break time to employees desiring to express milk. The break time would be required to run concurrently, if possible, with any break time already provided. The bill would provide further that in the event it is not possible for the break time for expressing milk to run concurrently with the break time that is already provided to the employee, the break time for expressing milk shall be unpaid. Employers would also be required to provide the use of a room, or other location, other than a toilet stall, in close proximity to the employees' work area. The bill would permit the room or other location provided by employers to employees for the purpose of expressing milk to include the place where the employee normally works as long as that location meets the bill's other requirements.

This bill would exempt an employer from its requirements if the employer's operations would be seriously disrupted by providing break time to employees desiring to express milk. The bill would subject employers who violate these provisions to specified civil penalties and would authorize the Labor Commissioner to issue citations for such violations. The bill further provides procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for violations of the bill's provisions and would impose a state-mandated local program by requiring, through incorporation of an existing provision, clerks of superior courts to issue judgments upon receipt of a prescribed filing by the Labor Commissioner.

Existing law provides that certain violations of the Labor Code are misdemeanors.

This bill would provide that, notwithstanding any provision of the Labor Code, violation of the bill's provisions shall not be a misdemeanor. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

DIGEST KEY

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Chapter 3.8 (commencing with Section 1030) is added to Part 3 of Division 2 of the Labor Code, to read:

CHAPTER 3.8. Lactation Accommodation

1030.

Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid.

1031.

The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.

1032.

An employer is not required to provide break time under this chapter if to do so would seriously disrupt the operations of the employer.

1033.

(a) An employer who violates any provision of this chapter shall be subject to a civil penalty in the amount of one hundred dollars (\$100) for each violation.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a violation of this chapter has occurred, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for violations of this chapter shall be the same as those set forth in Section 1197.1.

(c) Notwithstanding any other provision of this code, violations of this chapter shall not be misdemeanors under this code.

SEC. 2.

No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.