

# **WE ARE YOUR DOL**



**Right to Express Breast Milk in the Workplace  
and  
NYS Paid Prenatal Leave**

# EXPRESSION OF BREAST MILK IN THE WORKPLACE – OVERVIEW

## Legal Requirements of Labor Law section 206-c

- Employers must provide 30 minutes of paid break time to allow an employee to express milk.
- Must provide paid breaks “each time” an employee has a “reasonable need” to express.
- Employees may use other existing break or meal times beyond the 30 minutes as needed.
- Employees may use these rights for up to 3 years after childbirth.

# EMPLOYER OBLIGATIONS

## Expression Room or Location

- Employers must provide a designated room or location for expression.
- Room or location must:
  - Be in close proximity to work area.
  - Be well lit.
  - Shielded from view and protected from intrusion.
  - Include a chair, a working surface, nearby access to clean running water.
  - Where workplace has electricity, an electrical outlet.
- Room or location cannot:
  - Be a restroom or bathroom stall.
  - Cannot be used for any other purpose while in use for milk expression.

# EMPLOYER OBLIGATIONS (con't)

## Notice Requirements

- Employers must provide employees written notice of their rights under LL section 206-c.
- Must provide employees with a copy of NYS Department of Labor's Policy on the Rights of Employees to Express Breast Milk in the Workplace.
  - A copy is included in these materials and maybe found (in 16 languages) at:  
  
<https://dol.ny.gov/expressing-breast-milk-workplace>
  - May be provided in either electronic or paper format.

# EMPLOYEE RESPONSIBILITIES

## Written Notice:

- Employees must provide advance written notice of intent to use breaks for milk expression.
  - Written notice must be sent to employee's direct supervisor or staff designated by the employer to process such requests.
  - Written notice should be provided prior to employee's return to work.
  - Written notice should include:
    - Number of anticipated breaks.
    - Preferred times.

As needs change, employees should provide as much notice as is reasonably foreseeable.

## OTHER PROVISIONS

- Employers cannot require employees to make-up time used for expression.
- Employers cannot require employees to change their work hours around expression.
- Employers cannot require employees to work during their break time.
- If the workplace or location has refrigeration, employers must allow access to employees for storage of expressed milk.
- Under the Fair Labor Standards Act, any breaktime used to express milk does not count toward overtime eligibility.



# NYS PRENATAL LEAVE ACT – OVERVIEW

## Legal Requirements of Labor Law section 196-b

- Private Employers must provide **ALL** employees with 20 hours of paid prenatal leave during any 52-week calendar period.
  - Applies to both part- and full-time employees.
  - 20 hours are “in addition to” any other leave.
  - Accrues immediately and is available over 52-weeks after triggering event.
    - The first time an employee uses Paid Prenatal Leave triggers the beginning of 52-week period for that employee. For example, the triggering date is the date that the leave is first recorded on an employee’s timesheet.
    - Leave must be paid at any employee’s regular rate of pay or the applicable minimum wage, whichever is greater.

# LEAVE ELIGIBILITY - REASONS FOR USE

**Types of Leave Covered:** Leave taken for health care services received by an employee during their pregnancy or related to such pregnancy, including:

- Physical examinations;
- Medical procedures;
- Monitoring and testing; and
- Discussion with a health care provider related to the pregnancy.
- Can be used for: (a) fertility treatment or care appointments, including in vitro fertilization, and (b) end-of-pregnancy care appointments.
- Cannot be used : (a) for post-natal or postpartum purposes, or (b) by spouses, partners, or other support persons to attend prenatal appointments with an eligible employee



## OTHER PROVISIONS

- Employer cannot require an employee to: (a) Choose one leave type over another or (b) exhaust one type of leave before using Paid Prenatal Leave.
- Can be used in 1-hour increments.
- This leave does not carryover from year-to-year and does not need to be paid out after separation.
- Employees must be paid at their regular rate of pay, or the applicable minimum wage, whichever is greater.
- Employers may only ask for documentation if permitted under NYS Paid Sick Leave, but can **NEVER** ask for confidential medical information.

## RESOURCES

### Expression of Breast Milk in the Workplace

- <https://dol.ny.gov/expressing-breast-milk-workplace>

### Paid Prenatal Leave

- <https://www.ny.gov/programs/new-york-state-paid-prenatal-leave>

### Filing Complaints

- Electronic Forms
  - Expression [https://apps.labor.ny.gov/DOL\\_Complaint\\_Form/EBMWComplaintForm1.faces](https://apps.labor.ny.gov/DOL_Complaint_Form/EBMWComplaintForm1.faces)
  - Prenatal Leave [https://apps.labor.ny.gov/DOL\\_Complaint\\_Form/PreNatalLeave.faces](https://apps.labor.ny.gov/DOL_Complaint_Form/PreNatalLeave.faces)
- Send an Email to [LSAsk@labor.ny.gov](mailto:LSAsk@labor.ny.gov).
- For assistance in filing a complaint, call 1-888-4-NYSDOL (1-888-469-7365)
- Mail

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Division of Labor Standards  
Harriman State Office Campus  
Building 12, Room 185B  
Albany, NY 12226

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