

Policy 4033: Lactation Accommodation

Status: ADOPTED

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CSBA NOTE: Pursuant to Labor Code 1034, districts are mandated to develop policy regarding lactation accommodation with specified components, as provided below.

Both federal and state law require that employees be provided reasonable break time and an appropriate location to accommodate their desire to express breast milk for their infant children. Title IX (20 USC 1681-1688), and its implementing regulation 34 CFR 106.57, as amended by 89 Fed. Reg. 33474, require districts to provide reasonable break time for employees to express breast milk or breastfeed, and to ensure that employees have access to a lactation space, as specified. Additionally, the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act (29 USC 218d) requires employers to provide reasonable break time for nursing employees to express breast milk for one year after the child's birth, and to ensure that employees have access to a lactation space, as specified. In addition, the Pregnant Workers Fairness Act (PWFA) (42 USC 2000gg-2000gg-6) requires employers to provide reasonable accommodation to employees due to pregnancy, childbirth, or related medical conditions, including lactation. State law (Labor Code 1030-1034; Government Code 12925-12954) also applies to all district employees. Where provisions of the laws conflict, the statute providing greater protections for employees supersedes. The district should consult CSBA's District and County Office of Education Legal Services or district legal counsel if questions arise about the application of conflicting laws to a particular employee.

Government Code 12926 includes breastfeeding or medical conditions related to breastfeeding within the definition of "sex" for purposes of sex discrimination under the California Fair Employment and Housing Act. Additionally, 34 CFR 106.10, as amended by 89 Fed. Reg. 33474, provides that "sex" for purposes of sex discrimination under Title IX includes lactation and related medical conditions or recovery. In addition, Labor Code 1033 prohibits an employer from discharging, or in any manner discriminating or retaliating against, an employee for exercising or attempting to exercise any right related to lactation accommodation. Pursuant to Labor Code 1033, violation of Labor Code 1030-1034 may result in a citation from the Labor Commissioner and/or a civil penalty.

Districts are required to prohibit retaliation when a right or privilege secured by Title IX is interfered with, including when a person reported possible sex discrimination, made a sex-discrimination complaint, or participated or refused to participate in any way in the district's Title IX process. Pursuant to 34 CFR 106.71, as amended by 89 Fed. Reg. 33474, when the district has information about conduct that reasonably may constitute retaliation under Title IX, the district is required to respond to such conduct using the procedures used for other forms of sex discrimination as specified in 34 CFR 106.44 and 106.45; see AR/E(1) 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

The district should ensure consistency of this policy with provisions in the district's collective bargaining agreement, if any, related to break times or other employment issues.

The Governing Board recognizes the immediate and long-term health benefits of breastfeeding and desires to provide a supportive environment for any district employee to express breast milk for an infant child upon returning to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee for seeking an accommodation to express breast milk for an infant child while at work.

CSBA NOTE: Labor Code 1034 mandates that the district's policy regarding lactation accommodation include the process by which the employee is to make a lactation accommodation request and the district's obligation to respond to the request. The following paragraph should be modified to reflect the district's process.

For more information regarding workplace accommodations, see AR 4032 - Reasonable Accommodation and for temporary assignments, see BP 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment.

An employee shall notify the employee's supervisor or other appropriate district administrator in advance of the intent to request an accommodation. The supervisor or appropriate district administrator shall respond to the request and shall work with the employee to make arrangements. If needed, the supervisor or appropriate district administrator shall address scheduling in order to ensure that the employee's essential job duties are covered during the break time.

CSBA NOTE: Pursuant to Labor Code 1032, all districts are required to grant lactation accommodation except when granting the accommodation would "seriously disrupt" district operations. "Serious disruption" is not defined in the law.

Additionally, the PUMP Act (29 USC 218d) and Labor Code 1031 provide an exception for districts with fewer than 50 employees when lactation accommodation would result in "undue hardship" based on significant difficulty or expense in relation to the size, financial resources, nature, or structure of the district. In addition, the PWFA (42 USC 2000gg-1) applies to districts with 15 or more employees, but provides an exception for accommodations that would impose an "undue hardship." When a district is able to demonstrate undue hardship, Labor Code 1031 only requires that reasonable efforts be made to provide the employee with the use of a room or other location in close proximity to the employee's work area for the employee to express breast milk in private. Pursuant to Labor Code 1031, the provided room or location may not be a toilet stall.

Regardless of the size of the district, the determination of serious disruption or undue hardship should be made on a case-by-case basis and only in limited, stringent circumstances. The burden of demonstrating why accommodation could not be made, even if on a temporary basis or for less time than requested, would likely fall to the district.

Lactation accommodations shall be granted unless limited circumstances exist as specified in law. (Labor Code 1031, 1032; 29 USC 218d, 42 USC 2000gg-1)

CSBA NOTE: Labor Code 1034 mandates that the district's policy include a statement that the district provide a written response to an employee if the district is unable to comply with the break time or location requirements.

34 CFR 106.57, as amended by 89 Fed. Reg. 33474, requires the district to provide "reasonable" break time for an employee to express breast milk or breastfeed, but does not have any qualification related to the requirement to provide a lactation space. Additionally, it would be unlikely that a district would have a valid reason to deny a lactation accommodation pursuant to the PWFA. Thus, districts should proceed with caution before denying a lactation accommodation, and consult CSBA's District and County Office of Education Legal Services or district legal counsel as necessary.

Before a determination is made to deny lactation accommodations to an employee, the employee's supervisor shall consult with the Superintendent or designee. When lactation accommodations are denied, the Superintendent or designee shall document the options that were considered and the reasons for denying the accommodations.

The Superintendent or designee shall provide a written response to any employee who was denied the accommodation(s). (Labor Code 1034)

CSBA NOTE: Labor Code 1034 mandates that the district's policy regarding lactation accommodation be distributed to employees as provided in the following paragraph.

Additionally, pursuant to 34 CFR 106.8, as amended by 89 Fed. Reg. 33474, the district's policy regarding the prohibition of sex discrimination, which includes lactation and related conditions, is required to be published, and the district's notice of nondiscrimination on the basis of sex is required to be posted on the district's website and appear in each handbook, catalog, announcement, bulletin, and application that the district makes available to employees and applicants for employment.

The district shall include this policy in its employee handbook or in any set of policies that the district makes available to employees. In addition, the Superintendent or designee shall distribute this policy to new employees upon hire and when an employee makes an inquiry about or requests parental leave. (Labor Code 1034)

Break Time and Location Requirements

CSBA NOTE: Although the PUMP Act (29 USC 218d) limits the length of time that an employee is entitled to lactation accommodation to one year after the birth of the child, Labor Code 1030 and the PWFA (42 USC 2000gg-1) do not set a specific limit on the infant child's age and therefore provides greater benefits to employees.

Additionally, 34 CFR 106.57, as amended by 89 Fed. Reg. 33474, which requires districts to provide reasonable break time for an employee to express breast milk or breastfeed, does not specify a duration of time from birth of the child.

The district shall provide a reasonable amount of break time to accommodate an employee each time the employee has a need to express breast milk for an infant child. (Labor Code 1030; 42 USC 2000gg-1; 34 CFR 106.57)

CSBA NOTE: Labor Code 1030 and the PUMP Act (29 USC 218d) do not require the district to compensate non-exempt employees for breaks taken for the purpose of expressing breast milk. However, an employee who uses break time already provided by the district as paid time must be compensated for that break time in the same manner as any other employee. Any additional time beyond the authorized paid break time could be uncompensated, provided the employee is completely relieved from duty during that time. If the district instead

chooses to provide compensation for such additional break time, it should modify the following paragraph accordingly. The district also may provide flexible scheduling for those employees who choose to work extra time to make up for any uncompensated break time beyond the authorized break time.

To the extent possible, any break time granted for lactation accommodation shall run concurrently with the break time already provided to the employee. Any additional break time used by a non-exempt employee for this purpose shall be unpaid. (Labor Code 1030; 29 USC 218d)

CSBA NOTE: Labor Code 1031 requires the district to provide an employee with the use of a room or location, other than a bathroom, to express breast milk in private. This may include the place where the employee normally works if the location otherwise meets legal requirements, as specified below. Labor Code 1031 authorizes the district to designate a temporary location to express breast milk if the district is unable to provide a permanent location due to operational, financial, or space limitation, as long as the space is in close proximity to the employee's work area, shielded from view, free from intrusion while breast milk is being expressed, and is otherwise compliant with law.

Additionally, the PUMP Act (29 USC 218d) and Title IX (34 CR 106.57, as amended by 89 Fed. Reg. 33474) require the district to ensure that an employee can access a lactation space, other than a bathroom, that is clean, shielded from view, and free from intrusion from others.

The employee shall be provided a lactation space which may be used by the employee for expressing breast milk or breastfeeding as needed. The lactation space shall be a private room or location, other than a bathroom, which may be the employee's work area or another location that is in close proximity to the employee's work area, and shall meet the following requirements: (Labor Code 1031; 29 USC 218d; 34 CFR 106.57)

1. Is shielded from view and free from intrusion while the employee is expressing breast milk
2. Is safe, clean, and free of hazardous materials, as defined in Labor Code 6382
3. Contains a place to sit and a surface to place a breast pump and personal items
4. Has access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump
5. Has access to a sink with running water and a refrigerator or, if a refrigerator cannot be provided, another cooling device suitable for storing breast milk in close proximity to the employee's workspace

If a multipurpose room is used for lactation, among other uses, the use of the room for lactation shall take precedence over other uses for the time it is in use for lactation purposes. (Labor Code 1031)

Dispute Resolution

CSBA NOTE: Pursuant to 34 CFR 106.11 and 106.44, as amended by 89 Fed. Reg. 33474, a district with knowledge of alleged conduct, which occurs in a district program or activity on or after August 1, 2024, that reasonably may constitute sex discrimination under Title IX, including sex-based harassment, is required to follow Title IX grievance procedures when investigating and resolving a complaint based on the alleged conduct. As such a complaint may also fall within the complaint process as specified in AR 4030 - Nondiscrimination in Employment, it is unclear whether districts would additionally be required to follow the procedures specified in AR 4030 - Nondiscrimination in Employment. Due to this uncertainty, it is recommended that districts consult CSBA's District and County of Office Education Legal Services or district legal counsel prior to utilizing such a complaint process for this purpose. For more information regarding the Title IX grievance procedures, see AR 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Additional remedies may be available for violation of the PUMP Act (29 USC 218d) under the Fair Labor Standards Act, the PWFA (42 USC 2000gg-2), and state law pursuant to Labor Code 1030-1034 and Government Code 12925-12954.

Complaints alleging sex discrimination under Title IX shall be investigated and resolved in accordance with the procedures specified in 34 CFR 106.44 and 106.45 and Administrative Regulation 4119.12/4219.12/4319.12 - Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures.

Additionally, an employee may file a complaint with the Wage and Hour Division of the U.S. Department of Labor for an alleged violation of the Providing Urgent Maternal Protections for Nursing Mothers Act and/or the Equal Employment Opportunity Commission for failure to provide reasonable accommodations pursuant to the Pregnant

Workers Fairness Act. (29 USC 218c, 218d, 42 USC 2000gg-2).

CSBA NOTE: The following paragraph is mandated pursuant to Labor Code 1034.

In addition, an employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034. (Labor Code 1034)

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

	Description
2 CCR 11035-11051	Unlawful sex discrimination; pregnancy, childbirth, and related medical conditions
29 USC 218c	Fair Labor Standards Act; protections for employees
Civ. Code 43.3	Right of mothers to breastfeed in any public or private location
Ed. Code 200-262.4	Prohibition of discrimination
Gov. Code 12925-12954	Unlawful discriminatory employment practices
Gov. Code 12945	Unlawful discrimination based on pregnancy, childbirth, or related medical conditions
Lab. Code 1030-1034	Lactation Accommodation
Lab. Code 6382	Procedure for listing hazardous substances

Federal References

	Description
20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
29 CFR 1636	Implementation of the Pregnant Workers Fairness Act
29 USC 218d	Fair Labor Standards Act; Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act
34 CFR 106.1-106.82	Discrimination on the basis of sex; effectuating Title IX
42 USC 2000gg-2000gg-6	Pregnant Workers Fairness Act

Management Resources References

	Description
CA Department of Industrial Relations Publication	Rest Periods/Lactation Accommodation, Frequently Asked Questions
California Civil Rights Department Decision	Department of Fair Employment and Housing v. Acosta Tacos (Chavez), FEHC Precedential Decision 09-03P, 2009
California Department of Public Health Publication	Lactation Accommodation for Employers
Federal Register	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, April 29, 2024, Vol. 89, No. 83, pages 33474-33896
Federal Register	Reasonable Break Time for Nursing Mothers, December 21, 2010, Vol. 78, No. 244, pages 80073-80079
Office of the Surgeon General Publication	The Surgeon General's Call to Action to Support Breastfeeding, 2011
U.S. DoL, Wage and Hour Div., Publication	Education FAQs
U.S. DoL, Wage and Hour Div., Publication	Frequently Asked Questions - Pumping Breast Milk at Work
U.S. DoL, Wage and Hour Div., Publication	Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, rev. January 2023
U.S. HHS Office on Women's Health Publication	The Business Case for Breastfeeding: Steps for Creating a Breastfeeding Friendly Worksite, Toolkit, 2008
Website	CSBA District and County Office of Education Legal Services
Website	Equal Employment Opportunity Commission

Management Resources References

Website	California Department of Industrial Relations, Division of Labor and Standards Enforcement
Website	California Department of Public Health
Website	California Women, Infants and Children Program
Website	Centers for Disease Control and Prevention
Website	Health Resources and Services Administration
Website	Office of the Surgeon General
Website	U.S. Department of Labor, Wage and Hour Division, FLSA Protections to Pump at Work

Cross References

	Description
0410	Nondiscrimination In District Programs And Activities
4030	Nondiscrimination In Employment
4030	Nondiscrimination In Employment
4032	Reasonable Accommodation
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4113.4	Temporary Modified/Light-Duty Assignment
4119.11	Sex Discrimination and Sex-Based Harassment
4119.11	Sex Discrimination and Sex-Based Harassment
4119.12	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4119.12-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4144	Complaints
4144	Complaints
4161.8	Family Care And Medical Leave
4212.9	Employee Notifications
4212.9-E(1)	Employee Notifications
4213.4	Temporary Modified/Light-Duty Assignment
4219.11	Sex Discrimination and Sex-Based Harassment
4219.11	Sex Discrimination and Sex-Based Harassment
4219.12	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4219.12-E(1)	Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures
4244	Complaints
4244	Complaints
4261.8	Family Care And Medical Leave
4312.9	Employee Notifications
4312.9-E(1)	Employee Notifications
4313.4	Temporary Modified/Light-Duty Assignment
4319.11	Sex Discrimination and Sex-Based Harassment

Cross References

4319.11

4319.12

4319.12-E(1)

4344

4344

4361.8

Description[Sex Discrimination and Sex-Based Harassment](#)[Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures](#)[Title IX Sex Discrimination and Sex-Based Harassment Complaint Procedures](#)[Complaints](#)[Complaints](#)[Family Care And Medical Leave](#)