

El Nido Elementary School District

Board Policy

Lactation Accommodation

BP 4033

Personnel

Note: Pursuant to Labor Code 1034, as added by SB 142 (Ch. 720, Statutes of 2019), districts are mandated to develop policy regarding lactation accommodation with specified components, as provided below.

Note: Both federal and state law require that employees be provided reasonable break time and an appropriate location to accommodate their desire to express milk for their infant children. 29 USC 207 requires employers to provide reasonable break time for nursing employees, but applies only to employees who are not exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA). State law (Labor Code 1030-1034) applies to all district employees. Where provisions of the two laws conflict, the statute providing greater protections for employees supersedes. The district should consult legal counsel if questions arise about the application of these laws to a particular employee.

Note: 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, Labor Code 1033, as amended by SB 142, 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.

Note: 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 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.

(cf. 4030 - Nondiscrimination in Employment)

Note: Labor Code 1034, as added by SB 142, 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.

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

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.

Note: Additionally, Labor Code 1031, as amended by SB 142, provides 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. When such 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 milk in private. Pursuant to Labor Code 1031, the provided room or location may not be a toilet stall.

Note: 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 207)

Note: Labor Code 1034, as added by SB 142, 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.

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)

Note: Labor Code 1034, as added by SB 142, mandates that the district's policy regarding lactation accommodation be distributed to employees as provided in the following paragraph.

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 the policy to new employees upon hire and when an employee makes an inquiry about or requests parental leave. (Labor Code 1034)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Break Time and Location Requirements

Note: Although 29 USC 207 limits the length of time that a classified employee is entitled to lactation accommodation to one year after the birth of the child, Labor Code 1030 does not set a specific limit on the infant child's age and therefore provides greater benefits to employees.

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)

Note: Labor Code 1030 and 29 USC 207 do not require the district to compensate non-exempt employees for breaks taken for the purpose of expressing 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 207)

Note: Labor Code 1031, as amended by SB 142, requires the district to provide an employee with the use of a room or location, other than a bathroom, to express 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 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.

The employee shall be provided the use of 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. The room or location provided shall meet the following requirements: (Labor Code 1031; 29 USC 207)

1. Is shielded from view and free from intrusion while the employee is expressing 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 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

Note: The following paragraph is mandated pursuant to Labor Code 1034, as added by SB 142.

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)

(cf. 4144/4244/4344 - Complaints)

Legal Reference:

EDUCATION CODE

200-262.4 Educational equity; prohibition of discrimination on the basis of sex

CIVIL CODE

43.3 Right of mothers to breastfeed in any public or private location

GOVERNMENT CODE

12926 Definition of sex; breastfeeding

12940 Unlawful discriminatory employment practices

12945 Unlawful discrimination based on pregnancy, childbirth, or related medical conditions

LABOR CODE

1030-1034 Lactation accommodation

6382 Procedure for listing hazardous substances

CODE OF REGULATIONS, TITLE 2

11035-11051 Unlawful sex discrimination; pregnancy and related medical conditions

UNITED STATES CODE, TITLE 29

207 Fair Labor Standards Act; lactation accommodation

Management Resources:

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS

Rest Periods/Lactation Accommodation, Frequently Asked Questions

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH PUBLICATIONS

Lactation Accommodation for Employers

CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLICATIONS

Lactation Support Program Toolkit

FEDERAL REGISTER

Reasonable Break Time for Nursing Mothers, December 21, 2010, Vol. 75, No. 244, pages 80073-80079

OFFICE OF THE SURGEON GENERAL PUBLICATIONS

The Surgeon General's Call to Action to Support Breastfeeding, 2011

HEALTH RESOURCES AND SERVICES ADMINISTRATION PUBLICATIONS

The Business Case for Breastfeeding: Steps for Creating a Breastfeeding Friendly Worksite, Toolkit, 2008

U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, PUBLICATIONS

Frequently Asked Questions- Break Time for Nursing Mothers

Fact Sheet #73: Break Time for Nursing Mothers under the FLSA, rev. April 2018

WEB SITES

California Department of Industrial Relations, Division of Labor and Standards Enforcement:

<http://www.dir.ca.gov/dlse> California Department of Public Health: <http://www.cdph.ca.gov>

California Women, Infants and Children Program: <http://www.wicworks.ca.gov>

Centers for Disease Control and Prevention: <http://www.cdc.gov>

Health Resources and Services Administration: <http://www.hrsa.gov>

Office of the Surgeon General: <http://www.surgeongeneral.gov>

U.S. Department of Labor, Wage and Hour Division, Break Time for Nursing Mothers:

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

Board Approved:

3/10/20

(7/11) 12/19