



**PHILLIPS LYTLE LLP CLIENT ALERT**  
**FOR BNHRA MEMBERS**  
**LABOR & EMPLOYMENT**



**JANUARY 2023**

## *Federal and New York State Laws Expand Rights of Pregnant and Nursing Employees in the Workplace*

Two new federal laws contained in the Consolidated Appropriations Act, 2023 were enacted on December 29, 2022: the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP for Nursing Mothers Act or PUMP Act). As the result of the enactment, employers nationwide will now have to provide greater workplace accommodations for pregnant and nursing employees. And under a recent amendment to New York State Labor Law (NYSLL) § 206-c, New York State employers will need to provide nursing mothers with increased accommodations above those required under federal law.

### **PWFA**

The PWFA applies to employers with 15 or more employees and becomes effective on June 27, 2023. The preamble of the law states that its purpose is “[t]o eliminate discrimination and promote women’s health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.” The PWFA requires covered employers to provide pregnant employees with known limitations related to pregnancy, childbirth or related medical conditions with reasonable accommodations, unless doing so would impose an undue hardship on the employer’s business. “Reasonable accommodation” and “undue hardship” under the PWFA have the same meanings as under the Americans with Disabilities Act.

In addition to requiring employers to reasonably accommodate an employee’s limitation related to

pregnancy, childbirth or related medical conditions, the PWFA also makes it unlawful for employers to:

- Require a qualified employee to accept an accommodation not arrived at through the interactive process
- Deny employment opportunities to a qualified employee if the denial is based on the need to make a required reasonable accommodation for such employee
- Require a qualified employee to take paid or unpaid leave if another reasonable accommodation can be provided
- Take adverse action against a qualified employee on account of the employee requesting or using a reasonable accommodation

A “qualified employee” under the PWFA “means an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position.”

### **PUMP ACT**

The PUMP Act expands existing federal protections for nursing employees and takes effect on April 28, 2023. Under prior federal law, which applied only to non-exempt employees, employers were required to provide nursing mothers with reasonable break time to express breast milk for the employee’s nursing child for one year after the child’s birth as well as provide a place, other than a bathroom, shielded from view and free from intrusion from coworkers and the public, to express breast milk. While continuing the duty of employers to provide a



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shielded location (other than a bathroom) for employees to express breast milk, the PUMP Act expands the right to express breast milk in the workplace to all nursing employees regardless of overtime eligibility. Thus, both hourly and salaried employees are covered. The PUMP Act also does the following:

- Expands the period during which employees may express breast milk in the workplace to two years beginning on the date on which the circumstances related to such need arises
- Provides that employees are not entitled to be paid for breaks, unless required by federal, state or local law
- Requires employers to compensate employees if they perform any work during the break

Employers with fewer than 50 employees are exempt from the PUMP Act if they can establish that complying with the law would impose an undue hardship by causing significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business.

### NEW YORK STATE LABOR LAW § 206-C

Prior to the amendment, NYSLL § 206-c, similar to federal law before the PUMP Act, required employers to allow employees to take breaks to express breast milk for the employee's nursing child and provide a room or location where an employee could do so in privacy. When the amendment to § 206-c takes effect on June 7, 2023, it will significantly expand the obligation of New York State employers to accommodate nursing employees, including beyond those required under the PUMP Act.

As amended, NYSLL § 206-c will require employers to provide reasonable unpaid break time or permit an employee to use paid break or meal time to express breast milk for the employee's nursing child for up to three years

following birth. Breaks must be provided "each time such employee has reasonable need to express breast milk."

Upon request of an employee who chooses to express breast milk in the workplace, an employer must designate a room or other location for use by the employee which is:

- In close proximity to the employee's work area
- Well lit
- Shielded from view
- Free from intrusion from other persons in the workplace or the public

The room or location must provide, at a minimum, a chair, a working surface, nearby access to clean running water and, if the workplace is supplied with electricity, an electrical outlet. The room or location cannot be a restroom or toilet stall. If the room or location provided is not dedicated for employees to express breast milk, it must be made available when an employee needs to express breast milk and, during such time, it cannot be used for any other purpose. In addition, a notice must be provided to all employees as soon as practicable when the room or other location has been designated for use by employees to express breast milk.

If the workplace has access to refrigeration, the employer must make it available for purposes of storing expressed breast milk.

Section 206-c also directs the Commissioner of the New York State Department of Labor to develop a written policy regarding the rights of nursing employees to express breast milk in the workplace. Employers will be required to provide this policy to each employee upon hire, as well as annually, and to employees upon returning to work following the birth of a child. The mandatory policy will include, among other things, a provision specifying the means by which a request may be submitted to the



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employer for a room or other location to express breast milk. It will also require the employer to respond to such request within a reasonable timeframe not to exceed five business days.

Unlike the PUMP Act, under § 206-c there is no exemption from providing breaks to nursing employees due to undue hardship. Rather, undue hardship is recognized only in regards to providing a room or location and where such an undue hardship exists, an employer must make reasonable efforts to provide a room or other location, other than a restroom or toilet stall, where an employee can express breast milk in privacy that is in close proximity to the employee's work area.

Section 206-c prohibits employers from discriminating and retaliating against any employee for exercising their rights under the law.

To the extent NYSLL § 206-c imposes obligations above those required under the PUMP Act, New York employers will be required to comply with them.

#### Additional Assistance

*Our attorneys remain ready to provide advice and guidance on complying with these new laws or any other workplace issues. For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■*



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