

PERSONNEL SERVICES BULLETINS (PSBs)

440-13

Subject: Leave to Express Breast Milk

Source: New York State Labor Law, Section 206-c

Date: December 2, 2009

I. Background

The New York State Labor Law was recently amended by adding the new Section 206-c below requiring employers to permit nursing mothers to express breast milk.

Section 206-c. Right of Nursing Mothers to Express Breast Milk.

An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace.

This Personnel Services Bulletin provides guidance on the application of this new provision of the law.

II. Policy

A. Time to Express Breast Milk

Agencies are required to allow a nursing mother who wishes to express breast milk to use:

1. Reasonable unpaid break time; and/or
2. Meal time.

B. Using Existing Meal Periods

Agencies are required to permit nursing mothers to express breast milk during their meal periods if the employee elects to utilize meal periods for this purpose. However, an employee cannot be required to use meal periods for this purpose and may elect to express breast milk at other reasonable times during the work shift.

The legislation does not authorize the granting of additional paid break time beyond that already provided by the employer, if any. Accordingly, if an agency does not provide paid breaks now, there is no obligation to create paid breaks solely to permit an employee to express breast milk.

C. Using Unpaid Break Time

Employees may elect to use the unpaid break time authorized by Section 206-c instead of, or in combination with, meal periods. Employees must be permitted to charge their annual leave and compensatory time balances during the unpaid breaks authorized by Section 206-c.

The statutory benefit is available to employees within their basic workweeks as well as during any additional time worked, including overtime shifts.

D. Eligibility to Earn Leave Accruals

It is critical that agencies advise employees who use unpaid break time authorized by Section 206-c, and do not charge their leave balances during such unpaid break time, that this may affect their ability to earn monthly annual and sick leave accruals. Since employees returning from child care leave may have low leave balances, agencies must ensure that employees understand the impact on eligibility to earn leave accruals if they elect to utilize unpaid break time and not charge their leave balances.

E. Location to Express Breast Milk

In accordance with Section 206-c, agencies must make reasonable efforts to identify a location that is both private and in close proximity to the employee's work area. This may necessitate a balancing of the need for privacy and the proximity of the location to the work area. In some work environments it may be necessary for the designated location to be farther from the work area in order to ensure privacy.

Possible locations might include an office or conference room where steps can be taken to ensure that the employee can express breast milk in privacy. In many work locations, space is at a premium and is utilized for multiple purposes. In such cases scheduling a nursing mother's access to a particular location may be necessary in order to comply with both the legislation and the agency's space needs.

An employee who wishes to utilize this benefit is expected to give her Agency Human Resources Division reasonable notice so that a schedule can be arranged and a location identified. Normally, this consultation should take place prior to a nursing mother's return to work from child care leave. The Agency Human Resources Division will consult with the employee's supervisor to arrange for the use of this benefit. It is also expected that an employee will provide her agency notice when time for expressing breast milk is no longer required. In no event is the benefit available beyond three years from the date of birth of the child.

III. Procedure

A. Affected employees are required to make advance arrangements to utilize this benefit. Optimally, consultation with the agency should occur prior to the nursing mother's return to work from child care leave. If this is not possible, employees should notify their agencies of their intent to express breast milk as soon as practicable, but no later than three days before they plan to begin.

B. In the case of an employee who is returning from child care leave, agencies should already have sufficient documentation in connection with the employee's request for child care leave to establish eligibility for this benefit. In the case of a new employee, appropriate documentation must be provided.

C. Employees are not entitled to absent themselves from their work areas for this purpose without prior approval. Prior approval should normally be obtained at the time the initial arrangements are made and a schedule is agreed upon. When an employee needs to change a previously agreed upon schedule, the employee must obtain approval to do so.

D. When making a request to utilize this benefit, employees must specify whether they plan to use unpaid break time; or meal time; or a combination. Unpaid break time used to express breast milk is to be charged against annual leave or compensatory time balances on a minute-for-minute basis. Employees with no accrued annual leave or compensatory time balances may be advanced annual leave to be charged against future annual leave accruals.

E. In work settings where coverage is an issue, agencies are obligated to schedule adequate support staff to ensure that the operations of agencies and services to the public are not adversely affected. Employees are expected to verify that the coverage is in place prior to leaving their work areas to express breast milk.

F. Employees may be required to postpone a scheduled time to express breast milk for a brief period of time if they cannot be spared.

G. Time required to express breast milk includes the time required for the nursing mother to reach and return from the location identified by the agency for expressing breast milk.

H. The amount of time needed to express breast milk may vary and there is no set limit on the number of breaks provided per day. They must, however, be reasonable and approved by the employer.

I. The benefit is available to employees within the basic workweek as well as during any additional time worked, including overtime shifts.

J. Agencies cannot use the difficulty in arranging time or location as a means of denying employees access to this statutory benefit.

K. Agencies should notify affected employees currently on child care leaves and affected employees who have recently returned to work after child care leaves that they are entitled to this benefit.

IV. Prohibition of Discrimination

The legislation specifically prohibits discrimination in any way against an employee who chooses to express breast milk in the workplace.

Martha K. Hirst
Commissioner
