

Client Alert

New York City's New Lactation Room Laws Take Effect

March 22, 2019 – As of March 18, 2019, two new laws will update already-existing lactation room requirements for certain New York City employers under the New York City Human Rights Law (NYCHRL). Specifically, Local Laws 185 and 186 will now require employers with 4 or more employees to accommodate nursing mothers who choose to express breast milk in the workplace by providing (i) a lactation room and (ii) a written policy and a procedure for requesting a lactation room.

Lactation in the workplace is governed statewide by section 206-c of the New York Labor Law. The law applies to “all public and private employers in New York State, regardless of the size or nature of their business.” Employers are required to give notice to and provide nursing mothers with paid or unpaid breaks or meal times to express breast milk in a private location (not a restroom) in close proximity to the workplace, for up to three years after childbirth. These breaks must be provided in twenty or thirty minute increments, and employers are prevented from denying employees this benefit due to difficulty in finding a location. If the location is separate from the workplace, it must be within walking distance and considered private. Where multiple employees wish to use the lactation room, employers should establish a schedule to accommodate each of those employees.

Local Law 185 and Local Law 186, both passed by the New York City Council last fall, impose stricter requirements on New York City employers.

[Local Law 185](#) requires employers to provide a lactation room and a refrigerator suitable for breast milk storage “in reasonable proximity to an employee’s work area.” The lactation room must be a sanitary place, other than a restroom, that can be used to express breast milk out of view and free from intrusion. It must also include, at minimum, an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water. Employers may designate an already-existing room as the lactation room, so long as when that room is used to express milk it is restricted solely to that use and remains private during that period. It is also incumbent on the employer to provide written notice to other employees that the room is given preference for use as a lactation room when a nursing employee is using it for that purpose and privacy during that period should be strictly maintained.

The law further provides that where the lactation room requirements pose an undue hardship on the employer, the employer must affirmatively engage in a cooperative dialogue with employees to determine whether or not an alternative accommodation is available. The employer must then notify the employee, in writing, of the employer's determination regarding the accommodation.

[Local Law 186](#) requires employers to develop and implement a written policy regarding the provision of a lactation room for distribution to all new hires. Notably, there is no requirement that the policy be distributed to current employees, though we recommend informing all employees of its existence, and to include this in employee handbooks prospectively. The policy must make clear that employees have a right to request a lactation room, and implement a process by which such a request may be made. Specifically, this policy must include:

- 1) The means by which an employee may submit a request for a lactation room;
- 2) A requirement that an employer respond to a request for a lactation room within a reasonable amount of time not to exceed five business days;
- 3) A procedure to follow when two or more individuals need to use the lactation room at the same time, including contact information to resolve any scheduling related issues;
- 4) A statement that the employer shall provide reasonable break time for an employee to express breast milk pursuant to Section 206-c of the New York Labor Law; and
- 5) A statement that if a request for a lactation room poses an undue hardship on the employer, the employer shall engage in a cooperative dialogue with the employee(s).

The New York City Commission on Human Rights, in collaboration with the Department of Health and Mental Hygiene, has developed several model lactation room accommodation policies in conformance with the new NYCHRL requirements, along with a model lactation room request form. Those documents are publicly available [here](#).

If you require any additional information concerning lactation room laws, or any other employment-related issue, please feel free to contact:

[Jeffrey P. Englander](#)

(212) 735-8720

jenglander@morrisoncohen.com

[Keith A. Markel](#)

(212) 735-8736

kmarkel@morrisoncohen.com

[Christopher W. Pendleton](#)

(212) 735-8783

cpendleton@morrisoncohen.com

[Basil C. Sitaras](#)

(212) 735-8849

bsitaras@morrisoncohen.com