

LEGISLATIVE DIGEST

[Police, Building Codes - Lactation in the Workplace]

Ordinance amending the Police Code to require employers to provide employees breaks and a location for lactation and to have a policy regarding lactation in the workplace that specifies a process by which an employee will make a request for accommodation, defines minimum standards for lactation accommodation spaces, requires that newly constructed or renovated buildings designated for certain uses include lactation rooms, and outlines lactation accommodation best practices; amending the Building Code to specify the technical specifications of lactation rooms for new or renovated buildings designated for certain use; making findings, including environmental findings and findings regarding the California Health and Safety Code; and directing the Clerk of the Board of Supervisors to forward this Ordinance to the California Building Standards Commission upon final passage.

Existing Law

The California Labor Code and the federal Fair Labor Standards Act require employers to provide breaks and a location to employees who desire to express milk in the workplace. The City does not currently impose lactation accommodation requirements on private employers.

Amendments to Current Law

The proposed ordinance amends the Police Code to impose a local requirement that an employer provide breaks and a location for an employee who desires to express milk in the workplace for the employee's child. Breaks may run concurrently with the employee's normal paid breaks, and any additional break time would be unpaid.

The employer must provide a location for lactation that is not a bathroom, that is free of intrusion, and that is safe, clean and free of toxic or hazardous materials, contains a surface, such as a table or counter, a chair, and has access to electricity. The employer may meet the obligation to provide the lactation location by designating a room or space to provide the accommodation that is also used for other purposes, provided that the employee's lactation breaks take precedence over other uses during the accommodation period. An employer in a multi-tenant building that cannot accommodate the employee within the employer's workspace may meet the lactation location requirement by designating a room or space that is shared with other tenants in the building. Employers who can show that providing the lactation break or location accommodations would impose an undue hardship may be entitled to an exemption from these requirements.

The proposed ordinance also requires employers to have a lactation accommodation policy. The policy must provide a process for an employee to request lactation accommodation,

which specifies the means to request the accommodation, that the employer respond to the request within five business days, and that the employer and employee engage in an interactive process to determine how the employee can be accommodated. The employer must retain documents regarding each lactation accommodation request.

The proposed ordinance requires that new construction and renovations of buildings in certain use categories include the addition of lactation rooms. The ordinance specifies when the addition of lactation rooms is triggered based on the size and employee occupancy of the building or space being renovated. The proposed ordinance amends the Building Code to identify the specifications of the rooms, including square footage. A room must be at least 50 square feet, and have a sink, refrigerator, and a door that can be locked from the inside. Where the size and occupancy of a project require multiple rooms, the project sponsor may combine the required square footage and provide a larger room or rooms that contain multiple lactation stations with one sink and refrigerator for the room, provided the room otherwise meets the requirements of the ordinance.

The Office of Labor Standards Enforcement (“OLSE”) enforces the lactation accommodation requirements of the ordinance through administrative penalties. Where the code requires installation of lactation rooms in connection with a new or renovated building, the Department of Building Inspection is responsible for ensuring that the rooms are contained on the building plans and are built to code specifications. Where such rooms are later improperly converted for other uses or do not contain a refrigerator or appropriate signage, OLSE may investigate and impose penalties.

Finally, the proposed ordinance tasks the Department of Public Health with creating and disseminating best practices for lactation accommodation in the workplace. Among other things, the best practices must include guidelines for employers to provide temporary lactation spaces that will fulfill the requirements of the ordinance through the use of screening or curtains.

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