

Board Policy – Lactation Accommodation Policy
Board Policy 4033

Bridges School Board recognizes the immediate and long-term health advantages of breastfeeding for infants and mothers and desires to provide a supportive environment for any district employee to express milk for her infant child upon her return to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee who chooses to express breast milk for her infant child while at work.

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 1030-1033 does not set a specific limit on the infant child's age and therefore provides greater benefits to employees.

Bridges shall provide a reasonable amount of break time to accommodate an employee each time she has a need to express breast milk for her infant child. (Labor Code 1030)

Labor Code 1030 and 29 USC 207 do not require Bridges to compensate non-exempt employees for breaks taken for the purpose of expressing milk. However, an employee who uses break time already provided by Bridges 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 school chooses to provide compensation during extended break time, it should modify the following paragraph accordingly. Bridges also may provide flexible scheduling for those employees who choose to make up for any unpaid break time.

To the extent possible, such break time 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)

Labor Code 1031 requires Bridges to make reasonable efforts to provide an employee with the use of a private room or other location, except a toilet stall, in close proximity to the employee's work area, which may include the place where the employee normally works if the location otherwise meets legal requirements. 29 USC 207, applicable to classified employees, specifies that the location must be shielded from view and free from intrusion from coworkers and the public. A fact sheet issued by the U.S. Department of Labor's (DOL) Wage and Hour Division, Break Time for Nursing Mothers under the FLSA, clarifies that the location provided by the school could be a space temporarily created or converted into a space for expressing milk as long as it is functional and meets all requirements of law.

The DOL has preliminarily interpreted an employee's right to express milk for her infant child to include the ability to safely store the milk. According to the DOL, this might include providing access to a refrigerator or ice chest or allowing the employee to bring an insulated food container to work.

A fact sheet issued by the California Department of Public Health, Minimum Requirements of the California Lactation Accommodation Law, recommends that the location should have the following items: a comfortable chair, small table, electrical outlet, a sink with a safe water source, disinfectant dish soap, and paper towels.

The employee shall be provided a private location, other than a restroom, which is in close proximity to her work area and meets the requirements of Labor Code 1031 and 29 USC 207, as applicable.

Employees are encouraged to notify their supervisor or other appropriate personnel in advance of their intent to make use of the accommodations offered for employees who are nursing mothers. As needed, the supervisor shall work with the employee to address arrangements and scheduling in order to ensure that the employees' essential job duties are covered during the break time.

Labor Code 1032 provides exceptions to the requirement for lactation accommodation when providing such accommodation would "seriously disrupt" district operations. "Serious disruption" is not defined in the law. 29 USC 207 provides exceptions 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 school. In this case, the exception is limited to districts with fewer than 50 employees and applies to classified employees only.

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 school.

Lactation accommodations may be denied only in limited circumstances in accordance with law. (Labor Code 1032; 29 USC 207)

Before the Director makes a determination to deny lactation accommodations, he/she shall consult the legal opinion. In any case in which lactation accommodations are denied, the Director or designee shall document the options that were considered and the reasons for denying the accommodations.

Legal Reference:

EDUCATION CODE

200-262.4 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

12940 Discriminatory employment practices

12945 Discrimination based on pregnancy, childbirth, or related medical conditions

LABOR CODE

1030-1033 Lactation accommodation

CODE OF REGULATIONS, TITLE 2

7291.2-7291.16 Sex discrimination; pregnancy and related medical conditions

UNITED STATES CODE, TITLE 29

207 Fair Labor Standards Act; lactation accommodation