

## Montana Guidelines for Drafting Work Accommodation Notes for Pregnant and Postpartum Patients

These guidelines **apply only in Montana**. Visit [www.PregnantAtWork.org](http://www.PregnantAtWork.org) for other states.

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Health care providers can play an important role in enabling patients to receive the accommodations they need to keep their jobs during pregnancy and following childbirth. ACOG's Committee Opinion on Employment Considerations (#733) recommends that obstetric care providers assist their patients to obtain accommodations by writing appropriate notes to employers following the guidelines below.

In most cases, the goal is to write a note that will help your patient receive the accommodation you believe would be helpful to them so they are able to work comfortably and safely while continuing to earn an income to support their family. A work note that is too vague or broad could result in a pregnant patient being forced to take unpaid leave or losing their job. (See page 3 for a cautionary note about recommending unpaid leave.) These guidelines are intended to help you write an effective note.



If your patient needs break time and space for expressing breast milk at work, please [see our template note](#) that educates employers about lactation needs. If your patient needs other types of accommodations for lactation, such as to avoid toxic exposure, use these guidelines.

### Understanding the Law:

The Pregnant Workers Fairness Act requires employers that have 15 or more employees<sup>1</sup> to provide reasonable accommodations for pregnancy, childbirth, and related conditions such as lactation, miscarriage, stillbirth, abortion, infertility, and menstruation. While employees with pregnancy-related disabilities and complications are eligible for accommodations under this law, such a condition is *not* required. Under the law, employers must provide requested accommodations that promote pregnancy health and that allow the pregnant patient to work comfortably. These accommodations must be made unless it would be significantly difficult or expensive for the employer to provide.

The Center for WorkLife Law at the University of California Law, SF is available to answer your questions about notes and accommodations at no charge. You can email us at [info@worklifelaw.org](mailto:info@worklifelaw.org) or leave a message for us at 415-565-4640. You can also get more information at our [Pregnant@Work website](#).



The Center for WorkLife Law also operates a **free and confidential helpline for workers and students** who have questions about their legal rights at work and school during pregnancy and postpartum. Email [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org) or call 415-703-8276.

<sup>1</sup> **Total** number of employees employed by the employer, not at a particular worksite.

## Guidelines for Writing Notes

An effective pregnancy or postpartum accommodation work note includes five components:

- 1. State that your patient has a limitation due to pregnancy, childbirth, or a related condition for which they need an accommodation.** Under the Pregnant Workers Fairness Act, employers with 15 or more employees are required to make reasonable accommodations for an employee *if the employer knows* that the employee needs the accommodation because of a limitation that is related to pregnancy, childbirth, or related conditions. Your note may be the first notice the employer receives, so it is important to state that the limitation is “due to pregnancy” or “a condition related to pregnancy.”

**Sample language:** “I am the treating physician/nurse midwife of Patrice Williams. She has a limitation due to her pregnancy that requires work accommodation.”

**What is a “related condition” under the law?** It is broadly defined to include:

- Common pregnancy-related symptoms like morning sickness, back ache, fatigue, swelling, and bladder control issues
- Conditions like gestational diabetes, preeclampsia, and postpartum depression
- Pregnancy and postpartum risks, such as risks of miscarriage, preterm labor, and birth defects
- Other reproductive conditions like lactation, menstruation, infertility, miscarriage, stillbirth, and abortion

**Appendix B** lists pregnancy-related limitations and responsive accommodations.

**If your patient does not want to disclose their pregnancy,** you may still be able to write them a note that will help them to get accommodations under a different law. See our [guidelines for drafting their work accommodation notes here](#).

- 2. Identify your patient’s limitation with specificity.** Employers with 15 or more employees must accommodate limitations related to pregnancy or childbirth that make it uncomfortable, unhealthy, unsafe, impossible, or riskier for your patient to do their job without modification.

Be as **specific** and **clear** as possible in describing the limitations. For example, say your patient:

- Should not stand for more than 20 minutes when it is practicable to sit instead
- Should not harvest crops that have been sprayed with agricultural pesticides
- Should not commute to her office and work outside of her home on days when she is experiencing nausea and vomiting of pregnancy
- Should eat snacks every two or three hours throughout the day
- Should rest in a reclining position for at least 20 minutes every four hours

- Should not lift more than 50 pounds
- Should sip water approximately every 10 minutes throughout the day
- Should not climb ladders

**Avoid identifying limitations that are vague or overly broad.** If the employer cannot identify an accommodation that would allow your patient to continue working given their limitation, your patient could be put out on unpaid leave or lose their job. For example, DO NOT recommend:

- “Light duty.” Instead, state specifically which activities the patient should avoid or limit, e.g., the maximum number of pounds the patient can safely lift.
- “No stress.” All jobs have stress. Instead, describe the stressful activity that should be minimized or avoided.
- “No physical activity.” Be more specific; few jobs require no physical activity at all.

**Be aware: If you identify limitations that cannot be reasonably accommodated, your patient could be forced to take unpaid leave or even fired. Be sure to ask your patient what accommodations seem feasible in their workplace. Balance the likelihood that a particular accommodation can be provided with the medical necessity of your recommendations and your patient’s stated economic needs.** For example, if your patient suffers from hyperemesis gravidarum, it would be reasonable to recommend that they reduce their hours and work from home, especially if they are a graphic designer whose job can be done entirely remotely. On the other hand, if your patient works with customers in a grocery store and shares that their commute increases their fatigue, recommending full-time leave would likely not be in the best interest of your patient. The key is to discuss these considerations with your patient.

**CAUTION: Recommending Leave or a reduced schedule:**

Leave is a reasonable accommodation under the Pregnant Workers Fairness Act, so long as it can be provided without imposing significant difficulty or expense on the employer. However, before you recommend that your patient take leave or reduce their working hours, rather than seeking a different accommodation, discuss two considerations with your patient:

- *Leave is often unpaid.* Your patient should determine if they have the financial resources to take leave or if there are sources of money available to them (e.g., an employer-provided short-term disability insurance program, or a state-administered temporary disability insurance program).
- *Your patient may exhaust their family and medical leave* and have limited leave available for purposes of bonding with their infant. Note:
  - Even if a patient has exhausted their family and medical leave, postpartum leave that is medically indicated for the *patient’s own health* (e.g. 6-8 week for recovery from childbirth; time off for postpartum depression) would still be available under the Pregnant Workers Fairness

Act if the employer has a total of 15 more employees and the leave can be provided without significant difficulty or expense.

- Employers typically reduce family and medical leave allotments when employees work a reduced schedule (e.g., if you recommend that your patient work an 80% schedule, their amount of protected leave will be reduced by 1 day for every week that they work the 80% schedule).

**If your patient is unsure of their leave eligibility or is fired for taking leave,** encourage them to contact WorkLife Law’s free legal hotline without delay (see below).

**Protecting Privacy:** Your patient may wish to keep the details of their symptoms and diagnosis private from their managers and coworkers. Employers are not entitled to receive medical information, beyond that the patient has a limitation due to pregnancy or a pregnancy-related condition. It may be helpful to disclose some of your patient’s symptoms in your note, *with their consent*, to better communicate their needs to the employer (e.g., my patient should not commute on days when she is experiencing nausea and vomiting of pregnancy), but keep in mind that pregnant and lactating workers may face harassment at work and have a right to medical privacy.

- 3. Affirmatively state that your patient is able to continue working with an accommodation, if true.** This will safeguard against the employer putting your patient out on unpaid leave. Omit this step if you recommend full-time leave, but see the cautionary note about recommending leave above.

**Sample Language:** “She is able to continue to work with an accommodation.”

- 4. Recommend reasonable accommodation(s).** Employers are required to identify and provide a reasonable accommodation to address the limitation you described (above), regardless of whether you suggest a particular accommodation that will address that limitation. However, patients typically have a much better chance of receiving the accommodations they need if their health care provider suggests it.

*A reasonable accommodation* is any change to the work environment or the way things are usually done at work, which does not impose a significant difficulty or expense on the employer. Speak with your patient about what may be possible at their workplace. As a healthcare provider, you are not responsible for determining what is reasonable.

**See Appendix B for suggestions of appropriate accommodations.**

*What if I don’t know enough about my patient’s workplace to recommend an accommodation?* So long as you clearly explain your patient’s limitations and what they can and cannot do, you are not required to recommend a specific accommodation.

- 5. Provide the expected duration of the need for accommodation.** State how long you expect your patient’s need for accommodation to last. If the end date of the accommodation is uncertain, you may choose to state a date by which you will have reevaluated your patient—the date can be extended or changed in the future.

**Sample language :** “I anticipate that Ms. Williams will need these accommodations until she delivers, on or about [date].”

### **Have Questions?**

You or your patient can contact WorkLife Law’s free legal hotline at [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org) or (415) 703-8276. WorkLife Law experts are available to deliver grand rounds or for other educational opportunities on this topic.

Thank you for your work and commitment to your patients.

**Appendix A is a sample work note that maximizes the likelihood that your patient will receive the accommodation they need.**

**Appendix B lists pregnancy-related limitations and appropriate accommodations.**

Appendix A

**Montana: Sample Pregnancy and Postpartum Accommodation Work Note**

[Health Care Provider's Letterhead]

[Date]

**RE: [Patient name] –Accommodation for [Pregnancy/Pregnancy-Related Condition]**

To Whom It May Concern:

I am the treating [physician/nurse-midwife] of [Patient] who is under my care [during their pregnancy/for a pregnancy-related condition]. [ They have an expected due date of \_\_\_\_.]

[Patient] has a limitation due to their [pregnancy/pregnancy-related condition] that requires work accommodation. Specifically, they should [not stand for more than 20 minutes when it is practicable for them to sit instead.]

[Patient] is able to continue to work with accommodations. I recommend that [they be given a stool to sit on while checking out customers at the cash register.]

I anticipate that [patient] will need these accommodations until [DATE].

Thank you.

[Signature]

## Pregnancy, Childbirth, and Related Medical Conditions: Common Workplace Limitations and Reasonable Accommodations Explained

Working during pregnancy is generally safe.<sup>1</sup> Many pregnant and postpartum employees need work accommodations, whether because of risks posed by their particular job duties, medically complicated pregnancies, or simply the normal physical changes that occur during pregnancy. Employees may also have work limitations resulting from related medical conditions like lactation, abortion, miscarriage, pregnancy loss, fertility treatment, and menstruation. This guide provides an overview of these workplace needs for non-medical professionals. It may be particularly useful to lawyers and HR professionals.

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### Questions?

For information about the laws that give rights to employees who need accommodations for pregnancy and related conditions, contact the Center for WorkLife Law Hotline at 415-703-8276 or [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org).

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<sup>1</sup> Am. Coll. of Obstetricians and Gynecologists, No. 733, *Employment Considerations During Pregnancy and the Postpartum Period*, in 131 *Obstetrics & Gynecology* 115-23 (2018), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2018/04/employment-considerations-during-pregnancy-and-the-postpartum-period>.

## **Accommodations Employees May Need During a Typical Pregnancy**

During pregnancy, people experience normal physical changes that impact numerous bodily systems. These differ from person to person, and may include pain in the back, abdomen, or thighs; swelling in limbs and joints; increased breast size and breast tenderness; nosebleeds; heartburn; dizziness or lightheadedness; fatigue; hemorrhoids; leg cramps or muscle spasms; nausea and vomiting; numb or tingling hands; increased need for urination and bladder control issues; and increased hunger and thirst.

Depending on the nature of their work, employees may require reasonable accommodations related to these typical physical changes. Common pregnancy accommodations include:

- Extra breaks for rest, snacks, water, and restroom use
- Uniform changes
- Changes to job duties, work location, or other modifications needed to reduce or avoid bending, lifting, climbing, walking, and/or standing (e.g., permission to sit on a chair, or moving workstation closer to the bathroom)
- Ability to more frequently drink water and eat during the workday
- Schedule changes or excusal from absence and tardiness control policies (“attendance points”)
- Time off for regular prenatal care appointments
- Leave prior to childbirth, and for 6-8 weeks after birth for physical recovery

## **Accommodations Employees May Need to Avoid Hazardous Work**

Certain occupations expose employees to conditions that could be harmful to the health of a pregnant person or the health of their pregnancy. An individual pregnant person should be free to decide their personal risk tolerance in consultation with their healthcare provider.

Accommodations may be needed to avoid hazardous duties.

## **Exposure to Toxins**

Employment sectors at particular risk of potentially hazardous exposures during pregnancy include agriculture (pesticides), manufacturing (organic solvents and heavy metals), dry cleaning (solvents), custodial and cleaning services (solvents), beauty salons (solvents and phthalates), and health care (biologics and radiation).<sup>2</sup> Toxic exposures have been associated with infertility and miscarriage, obstetric outcomes such as preterm birth and low birth weight, neurodevelopmental outcomes such as autism and attention deficit hyperactivity disorder, and adult and childhood cancer.<sup>3</sup>

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<sup>2</sup> Am. Coll. of Obstetricians and Gynecologists, No. 832, *Reducing Prenatal Exposure to Toxic Environmental Agents*, in 138 *Obstetrics & Gynecology* 40-54 (2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reducing-prenatal-exposure-to-toxic-environmental-agents>.

<sup>3</sup> Id.



Responsive accommodations may include change in job duties, switching to less hazardous chemicals, use of personal protective equipment (note PPE may need to be adjusted to fit properly during pregnancy), temporary transfer to an alternate position, or leave when economically feasible (consider disability insurance benefits when leave is the only safe option). For more information about specific workplace exposures that can be hazardous during pregnancy and breastfeeding, visit <https://www.cdc.gov/niosh/topics/repro/specificexposures.html>.

### **Physically Demanding Work**

Everyday physical activities are appropriate for most pregnant people, however physically demanding work such as heavy lifting, excessive repetition, awkward postures, and prolonged periods of sitting or standing could increase chances of miscarriage, preterm birth, or injury during pregnancy, according to the National Institute for Occupational Safety and Health (NIOSH),<sup>4</sup> which publishes specific lifting recommendations for pregnant workers.<sup>5</sup> Positions that tend to be physically demanding include healthcare workers, manufacturing workers, construction crews, service workers, flight attendants, firefighters and first responders, childcare providers, and farm and greenhouse workers.

Responsive accommodations may include ability to sit or stand as needed (e.g., providing a chair, a sit-stand workstation, or additional rest breaks), mechanical assistance with lifting or hauling, modification or reassignment of job duties, assistance from co-workers, and temporary transfer to light duty or an alternate position.

### **Excessive Heat**

Exposure to excessive heat at work could increase the risk of reproductive harms, including birth defects, according to the National Institutes for Occupational Safety and Health (NIOSH).<sup>6</sup> Pregnant people are more likely to get heat exhaustion, heat stroke, and dehydration sooner than nonpregnant people.<sup>6</sup> Workers most commonly exposed to heat include those who work outdoors and in buildings without climate control during hot weather, cooks and dishwashers in commercial kitchens (e.g., restaurants), certain manufacturing workers, and firefighters.<sup>7</sup>

Responsive accommodations may include additional breaks to cool down or drink water, portable cooling devices (AC or fan), provision of shade, modification of job duties or productivity metrics, permission to drink water more frequently, and temporary transfer to an alternate position.

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<sup>4</sup> Nat'l Inst. for Occupational Safety and Health, *Physical Job Demands-Reproductive Health*, CDC.GOV, <https://www.cdc.gov/niosh/topics/repro/physicaldemands.html>.

<sup>5</sup> Leslie A. MacDonald et al., *Clinical Guidelines for Occupational Lifting in Pregnancy: Evidence Summary and Provisional Recommendations*, 209 Am. J. Obstetrics Gynecology 80 (2013), <https://www.sciencedirect.com/science/article/abs/pii/S0002937813002421>.

<sup>6</sup> Nat'l Inst. for Occupational Safety and Health, *Heat-Reproductive Health*, CDC.GOV, <https://www.cdc.gov/niosh/topics/repro/heat.html>.

<sup>6</sup> Id.

<sup>7</sup> Id.

### **Long Working Hours and Overnight Shifts**

Working long hours and working at night has been correlated with miscarriages and preterm birth, according to the National Institutes for Occupational Safety and Health (NIOSH).<sup>8</sup> Americans workers in a wide range of industries have long work hours. Healthcare workers, flight attendants and pilots, law enforcement workers, and workers in the service industry commonly work rotating or night shifts.

Responsive accommodations may include schedule modifications, modification of job duties, temporary excusal from overnight shifts, relief from mandatory overtime, temporary transfer to an alternate position, and reduced work hours or part-time status.

### **Risk of Falls**

Falls are the leading cause of occupational injury among the general population. Pregnant people are at an increased risk of falls because of joint laxity and a shifting center of gravity, particularly later in pregnancy.<sup>9</sup> Falls can be caused by slippery floors, hurried pace, climbing, or carrying a child or object. They are therefore more likely to occur in occupations like food services, farmwork, and childcare.<sup>10</sup>

Responsive accommodations may include mechanical assistance with carrying objects (e.g., a wagon or cart), slower pace of work, modification of duties, assistance of coworkers, and temporary transfer to an alternate position.

### **Accommodations Employees May Need for Medical Conditions Caused or Exacerbated by Pregnancy**

Pregnant employees with medical conditions beyond pregnancy (e.g., gestational diabetes or perinatal depression) may need reasonable accommodations to meet the limitations of their medical condition. The following chart is based on the Appendix of *A Sip of Cool Water: Pregnancy Accommodations after the ADA Amendments Act*.<sup>11</sup> It was prepared by with assistance from Drs. Marya Zlatnik and Megan Huchko of the Center for WorkLife Law's Pregnancy Accommodation Working Group.

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<sup>8</sup> Nat'l Inst. for Occupational Safety and Health, *Work Schedule-Reproductive Health*, CDC.GOV, <https://www.cdc.gov/niosh/topics/repro/workschedule.html>.

<sup>9</sup> Am. Coll. of Obstetricians and Gynecologists, No. 733, supra n. 1.

<sup>10</sup> H.M. Salihu et al., *Pregnancy in the workplace*, 62 Occupational Med. 88 (2012), <https://academic.oup.com/occmed/article/62/2/88/1480061?login=false>.

<sup>11</sup> Joan C. Williams, *A Sip of Cool Water: Pregnancy Accommodation after the ADA Amendments Act*, 32 Yale L. & Pol'y Rev. 97 (2015), [https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2276&context=faculty\\_scholarship](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2276&context=faculty_scholarship).

**Table of Pregnancy-Related Conditions and Responsive Accommodations**

<b>Pregnancy-Related Conditions</b>	<b>Reasonable accommodations</b>
Anemia	Provide employee with stool or chair to sit on while working; more frequent rest breaks; assistance with lifting
Carpal Tunnel Syndrome	Frequent breaks from manual tasks or typing; expert ergonomic evaluation of workstation and appropriate ergonomic equipment; specialized programs that allow for dictation instead of typing
Cholestasis of pregnancy	Time off for medical appointments; breaks to take medication;
Chronic migraines	Change lighting in the work area; limit exposure to noise and fragrances; schedule changes such as flexible schedules or work from home, which may include a transfer to a position that provides necessary flexibility
Deep vein thrombosis, pulmonary embolism, stroke	Modification of work station to allow more comfortable movement of legs; breaks to stretch and move extremities; allow refrigerator storage and privacy for injections; prohibit travel by air or that requires long periods of sitting
Dependent edema	Provide employee with stool or chair to sit on while working; modification of workstation to allow elevation of legs; more frequent breaks for rest or to move extremities; modification of footwear requirements
Dyspnea	Provide employee with stool or chair to sit on while working; more frequent rest breaks
Fatigue	Modification of job duties to avoid strenuous activity; flexible or reduced hours; breaks for rest; exemption from mandatory overtime; work from home, which may include a transfer to a position that provides necessary flexibility
Gastroesophageal reflux (GERD)	Breaks for food as needed; provide space for medications to be stored
Gestational diabetes	Provide more frequent breaks for bathroom use, rest, blood testing, and eating small snacks during work hours; provide a cot for lying down; provide a space to store medications; modified schedules; time off for medical appointments
Hemorrhoids	Provide frequent breaks from sitting; allow use of a special cushion

High-risk pregnancy	Time off for medical appointments; provide a stool or chair for employee to sit on while working; limit lifting and bending requirements; modify job duties to avoid strenuous activity; flexible or reduced hours; breaks for rest; schedule changes or excusal from absence and tardiness control policies (“attendance points); exemption from mandatory overtime; work from home, which may include a transfer to a position that provides necessary flexibility; leave
Hyperemesis gravidarum	Provide more frequent breaks for bathroom use, rest, and eating small snacks during work hours; provide a cot for lying down; modified schedules; work from home, which may include a transfer to a position that provides necessary flexibility
Hypertension, preeclampsia	Provide a stool or chair for employee to sit on while working; limit lifting and bending requirements; work from home while on bedrest, which may include a transfer to a position that provides necessary flexibility; leave
Insomnia	Modification of job duties to avoid strenuous activity; flexible or reduced hours; breaks for rest; schedule changes or excusal from absence and tardiness control policies (“attendance points); exemption from mandatory overtime; work from home, which may include a transfer to a position that provides necessary flexibility
Intrauterine Growth Restriction	Time off for medical appointments; work from home, which may include a transfer to a position that provides necessary flexibility
Lumbar Lordosis and other musculoskeletal pain	Use of a heating pad; sitting instead of standing; lifting assistance or limitations; use of assistive equipment to lift; modification of workstation; modification of the duties of the job, such as temporarily removing job duties that require movement that causes pain
Multiple gestation	Provide a stool or chair for employee to sit on while working; limit lifting and bending requirements; provide more frequent breaks for bathroom use, rest, and eating small snacks during work hours; provide a cot for lying down; modified schedules; work from home while on bedrest, which may include a temporary transfer to a position that provides this kind of flexibility; time off for medical appointments; leave
Oligohydramnios	Time off for medical appointments; allow carrying of water bottle; provide a stool or chair for employee to sit on while working; limit lifting and bending requirements; work from home, which may include a transfer to a position that provides necessary flexibility

Perinatal and postpartum depression	Time off to attend therapeutic sessions; temporary transfer to a less distracting environment; work from home, which may include a temporary transfer to a position that provides this kind of flexibility; leave
Preterm labor risk	Provide a stool or chair for employee to sit on while working; limit lifting and bending requirements; time off for medical appointments; work from home while on bedrest; leave
Subchorionic hematoma, abnormal placentation (placental abruption, placenta accreta, placenta percreta, placenta increta, placenta previa, vasa previa)	Time off for medical appointments; work from home, which may include a temporary transfer to a position that provides this kind of flexibility; lifting assistance from coworkers or use of assistive equipment to lift; temporarily modify job duties to remove physically demanding duties; move workstation close to restrooms
Susceptibility to infectious diseases	Separation from populations that could be infected; personal protective equipment that is sized appropriately for pregnancy; work from home, which may include a transfer to a position that provides necessary flexibility
Symphyseal separation (i.e. pubic symphysis separation)	Limit lifting requirements; provide a stool or chair to sit on; more frequent breaks; schedule modifications; work from home, which may include a transfer to a position that provides necessary flexibility
Syncope or near-syncope	Provide a stool or chair to sit on; more frequent breaks
Thrombocytopenia	Time off for medical appointments; modification of job duties to temporarily eliminate activities that could cause bruising
Urinary tract or bladder infection	Provide more frequent bathroom breaks; allow carrying a bottle of water
Varicose veins	Provide more frequent breaks for rest or to move legs; allow sitting or standing as needed
Wound complications	Time off for medical appointments; lifting assistance from coworkers or use of assistive equipment to lift; temporarily modify job duties to remove physically demanding duties; allow sitting and standing as needed; provide more frequent bathroom breaks

## **Accommodations Employees May Need for Other Related Medical Conditions**

### **Lactation**

Most nursing parents must use a breast pump<sup>12</sup> to remove milk from their body during the workday. Physicians instruct lactating parents to express milk on the same schedule as they feed their child—which is typically every two to three hours for young infants—to maintain their milk supply and avoid serious health consequences.<sup>13</sup> If a nursing parent suddenly changes their pumping schedule or misses pumping sessions, their body will likely respond by beginning to produce less milk (as the body constantly produces breast milk on a demand-and-supply basis). The diminution of milk supply may mean the nursing parent can no longer produce enough milk to meet their infant’s feeding needs.<sup>14</sup> Additionally, inability to pump milk on schedule can cause considerable discomfort or illness for the nursing parent, including painful breast engorgement, infections, and mastitis.<sup>15</sup> Lactating employees who are not producing milk for their own child may also need to pump in cases of surrogacy or infant loss.

### **Break Time**

Breastfeeding, chestfeeding, and pumping employees generally require sufficient break time and a private, non-bathroom space to express milk on an as-needed basis. According to the U.S. Department of Health and Human Services, a pumping break should allow fifteen to twenty minutes for expressing milk, plus time for (i) set up, (ii) clean up, and (iii) the walk to and from the work area and the pumping space, if any.<sup>16</sup> Longer may be needed due to certain physical or workplace conditions.

### **Pumping Space**

The space must not be a bathroom; pumping requires a sanitary environment to reduce the risk of contaminating the breast milk, which is food for a baby.<sup>17</sup> Many parents also require a private space because using a pump exposes the breast/chest. The pumping space should have a seat and a flat surface on which to place the pump. It should be clean and a comfortable

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<sup>12</sup> A breast pump is equipment that creates a rhythmic suction mimicking the pace and physical effect of a nursing baby to remove breast milk from the body. Breast pumps typically require access to an electrical outlet. U.S. Food and Drug Admin., *What to Know When Buying or Using a Breast Pump*, FDA.GOV, <https://www.fda.gov/consumers/consumer-updates/what-know-when-buying-or-using-breast-pump>.

<sup>13</sup> U.S. Dep’t of Labor, Wage & Hour Div., *Reasonable Break Time for Nursing Mothers*, 75 Fed. Reg. 80073, 80075 (Dec. 21, 2010).

<sup>14</sup> Susan Reslewic Keatley, *How to Deal with Low Breastmilk Supply*, N.Y. TIMES (Apr. 17, 2020), <https://www.nytimes.com/article/increase-breastmilk-supply.html>.

<sup>15</sup> *Breast Engorgement*, CHILDREN’S HOSP. OF PHILA., <https://www.chop.edu/pages/breast-engorgement>; see also *Engorgement*, WIC BREASTFEEDING SUPPORT—U.S. DEPT. OF AGRIC., <https://wicbreastfeeding.fns.usda.gov/engorgement>.

<sup>16</sup> *Time for breaks*, OFF. ON WOMEN’S HEALTH—U.S. DEPT. OF HEALTH & HUM. SERV., <https://www.womenshealth.gov/supporting-nursing-moms-work/break-time-and-private-space/time-breaks>.

<sup>17</sup> *What employers need to know*, OFF. ON WOMEN’S HEALTH—U.S. DEPT. OF HEALTH AND HUM. SERV., <https://www.womenshealth.gov/supporting-nursing-moms-work/what-law-says-about-breastfeeding-and-work/what-employers-need-know> See also U.S. Dep’t of Labor, Wage & Hour Div., *Reasonable Break Time for Nursing Mothers*, 75 Fed. Reg. 80073, 80076 (Dec. 21, 2010).

temperature. Employees may also need access to electricity (e.g., an outlet or extension cord), access to a refrigerator or permission to carry a cooler to store the milk, and running water to clean their hands and pump parts.

### **Other Lactation Accommodations**

Lactating employees sometimes need accommodations that extend beyond reasonable break time and a private space, either because of personal health needs or the nature of their jobs.<sup>18</sup> For example, a lactating employee may need:

- time off or remote work for a lactation-related complication such as mastitis
- modified work duties, PPE, or a temporary transfer to avoid exposure to toxic chemicals or other hazards that can contaminate human milk<sup>19</sup>
- excusal from long-distance travel, or flight schedules and layovers that allow for pumping
- telecommuting or permission for a caretaker to bring the employee's infant to the workplace when the employee is physically unable to pump breast milk
- assignment to work locations where pumping is feasible
- modification of a work uniform that compresses the chest and therefore hinders milk production

### **Fertility Treatment, Miscarriage, and Pregnancy Loss**

Employees may need time off for medical appointments and procedures, counseling, physical recovery, and/or bereavement. Employees under fertility treatment may need breaks at specific times of day to administer medication.

### **Abortion**

Employees may need time off for medical procedures, including travel to abortion providers, physical recovery, and/or bereavement.

### **Menstruation**

Employees may need accommodations for issues related to mensuration, including menstrual disorders like abnormal bleeding or premenstrual dysphoric disorder (PMDD). Employees may need modified or work hours, excusal from overnight shifts,<sup>20</sup> additional restroom breaks, or time off for medical appointments.

### **Questions?**

For information about the laws that give rights to employees who need accommodations for pregnancy and related conditions, contact the Center for WorkLife Law's free legal hotline at 415-703-8276 or [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org).

<sup>18</sup> Ctr. for WorkLife Law, *Exposed: Discrimination Against Breastfeeding Workers* (2016) at 31, <https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf>.

<sup>19</sup> Nat'l Inst. for Occupational Safety and Health, *Learn about Specific Exposures during Pregnancy & Breastfeeding*, CDC.GOV, <https://www.cdc.gov/niosh/topics/repro/specificexposures.html>.

<sup>20</sup> Working at night and working long hours has been related to menstrual disorders. See Nat'l Inst. For Occupational Safety and Health, *Work Schedule-Reproductive Health*, CDC.GOV, <https://www.cdc.gov/niosh/topics/repro/workschedule.html>.