

Understanding Employer Obligations Under the PUMP Act

Frequently Asked Questions: Must Employees Use the “Designated” Pumping Space?

Federal laws, including the PUMP Act¹ and the Pregnant Workers Fairness Act (PWFA),² require employers to provide a private, functional, non-bathroom space for lactating employees to use for expressing breast milk. This space must be made available whenever the lactating employee needs to pump. However, some employees will request to pump someplace other than the designated lactation space, such as at their desk or in a shared break room. Read on to learn what the law requires and how to respond to these requests.

What do the PUMP Act and PWFA require?

The PUMP Act and PWFA are federal laws that require employers to accommodate lactating employees. The PUMP Act requires employers to provide reasonable break time and a private space (other than a bathroom) for expressing breast milk for up to one year after a child’s birth. The PWFA requires employers to provide reasonable accommodations for employees with known limitations related to pregnancy, childbirth, or related medical conditions (including lactation), unless the accommodation would cause the employer undue hardship. To learn more, see [PUMP Act guidance](#) from the Department of Labor and [PWFA Guidance](#) from the EEOC.³

Why might an employee request to pump milk someplace other than the designated lactation space?

There are many reasons why an employee may make this request, ranging from comfort and convenience to work productivity and health needs. For example, pumping milk is challenging for many lactating employees; they may feel more at ease in their normal workspace and therefore be better able to produce milk there in a shorter period of time and with less pain. Conditions like claustrophobia and depression may make pumping in the designated space more challenging. It is best for employers to avoid asking for the specific reasons why an employee has requested to pump outside of the designated area, and indeed, doing so may violate federal law in certain circumstances.⁴

¹ [29 U.S.C. § 218d](#).

² [42 U.S.C. §§ 2000gg et seq.](#)

³ Additional resources for employers are available at our website. *Accommodating Breastfeeding Employees: Ensuring Your Company Is in Compliance*, PREGNANT@WORK, <https://pregnantatwork.org/accommodating-breastfeeding-employees/>.

⁴ The ADA prohibits medical inquiries that are not job related and consistent with business necessity. [29 C.F.R. § 1636.3\(l\) Appendix A ¶ 120](#). Under the PWFA, an employer is prohibited from seeking medical documentation for requests related to break time and space for pumping at work, or a time to nurse during



Does the PUMP Act require lactating employees to express milk in a designated lactation space?

No. The PUMP Act says that employers must provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which *may* be used by an employee to express breast milk.”⁵ Nothing in the law requires employees to use that designated space. Once an employer has provided a suitable space, it has fulfilled its legal obligation under the PUMP Act and similar laws. Likewise, the PWFA does not require employees to use a designated lactation room.

What if the space the employee requests to use for pumping does not meet the requirements for private space under the PUMP Act and the PWFA?

So long as a compliant space has been offered to the employee for use, the employer has met its obligation. An employee is free to choose to pump in a place that would not comply with the laws’ requirements. Employers may wish to document with the employee that a legally compliant, private space was offered, and that the employee has requested to pump elsewhere.

Must an employer allow an employee requesting to pump outside of the designated pumping space to do so?

An employee’s desire to pump milk at their desk, workstation, or some other area on the employer’s premises other than the designated lactation space should be viewed as a request for a reasonable accommodation under the PWFA (see above) and similar state laws.⁶ This is true even if the employee does not make a formal request or use the words “reasonable accommodation.” As such, the employee should be permitted to pump in the alternative space, unless it would impose an undue hardship (see next question for more on this).

Additionally, prohibiting an employee from pumping at their desk or in another commonly used area could also violate the Pregnancy Discrimination Act (PDA), which prohibits discrimination based on pregnancy and related medical conditions, such as lactation.⁷ The PDA requires employers to give lactating employees the same privileges and freedoms that non-lactating employees enjoy. Thus, limiting what lactating employees do in their workspace could be illegal if the employer does

work hours when the workplace location makes nursing possible because the child is in close proximity. [29 C.F.R. § 1636.3\(l\)\(1\)\(iv\)](#).

⁵ [29 U.S.C. § 218d\(a\)\(2\)](#) (emphasis added)

⁶ A map of workplace lactation laws is available on our website. *Workplace Lactation Laws*, PREGNANT@WORK, <https://pregnantatwork.org/workplace-lactation-laws/>.

⁷ [42 U.S. Code § 2000e\(k\)](#).



not similarly limit other employees.⁸ If an employer allows eating, drinking, socializing, personal phone calls, medication administration, or other personal freedoms in a particular space, prohibiting the use of a breast pump in that same space could constitute unlawful discrimination by singling out a lactating employee for differential treatment.

What if allowing an employee to pump in their normal workspace causes a problem?

The legally relevant question under the PWFA is whether using the normal workspace for pumping would impose an undue hardship, which is a significant difficulty or expense. This is a high bar and a very situation-specific question.⁹ For example, it would likely present an undue hardship to allow milk expression in a controlled environment, such as in the pharmaceutical or aerospace industries. However, the noise of a breast pump in a space where a coworker normally talks on the phone would likely not rise to the level of undue hardship.

In the event of true undue hardship, the employer should engage in an interactive process with the employee to figure out another accommodation that will meet their needs.¹⁰ In this situation, it is appropriate to ask the employee questions to understand what needs they are seeking to meet with their accommodation request. (However, it is unlawful to request medical documentation for pumping-related requests in most situations.¹¹) For example, many employees who want to pump in a location other than the designated lactation space want to save time (such as by avoiding lengthy walks to and from the lactation space) and/or money (such as hourly workers choosing¹² to continue to work while pumping so their breaks are paid). To meet those needs, for example, an alternative accommodation may be to offer the employee a private office where they can pump and work at the same time, or to add a computer or wi-fi to the lactation room.

⁸ See U.S. EQUAL EMP'T OPPORTUNITY COMM'N, [ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION AND RELATED ISSUES](#), at § I(A)(4)(b) (June 25, 2015).

⁹ In determining whether a requested reasonable accommodation would constitute an undue hardship, courts consider the following factors: (1) the nature and net cost of the accommodation needed; (2) the financial resources of the covered entity and the facilities involved in the provision of the reasonable accommodation, the size of the business of the covered entity with respect to the number of its employees, and the number, type, and location of its facilities; (3) the type of operation or operations of the covered entity; and (4) the impact of the accommodation upon the operation of the facility. [29 C.F.R. § 1636.3\(j\)\(2\)](#).

¹⁰ [42 U.S.C. § 2000gg\(7\)](#); [29 C.F.R. § 1636.3\(k\)](#).

¹¹ [29 C.F.R. § 1636.3\(l\)\(1\)\(iv\)](#).

¹² An employer must relieve employees of all duties during milk expression breaks under the PUMP Act. However, some hourly employees may choose to work while pumping to meet their own financial needs, when the alternative is being taken off the clock. To learn more about whether lactation breaks should be paid or unpaid, see our guide [Understanding Employer Obligations Under the PUMP Act: Frequently Asked Questions: When Must Lactation Breaks be Paid?](#).



Keep in mind that any accommodation provided must be effective for the employee's needs, and it must provide the employee with an equal employment opportunity by providing the same terms, conditions, and privileges of employment.¹³ Because the ability to work and earn money is a term, condition, and privilege of employment, failing to provide an accommodation requested to allow an employee to work while pumping (such as restricting them to the designated lactation space), would likely violate the PWFA.¹⁴

What if a coworker is uncomfortable or believes they are being sexually harassed by a lactating employee who is using a breast pump outside of the designated lactation space?

As with other areas of discrimination law, the preferences or discomfort of others cannot override an employee's legal rights.¹⁵ Additionally, simply being in the presence of someone who is pumping is not grounds for a sexual harassment claim. To prove a hostile work environment claim, an employee must show they have been harassed because of their sex. While a hostile work environment claim may be based on being forced to see something of a sexual nature,¹⁶ breast pumping is not sexual. In the pumping context, the breasts are being made visible to produce food for an infant, not to harass, excite, or oppress the coworker. Moreover, a hostile work environment exists only where a reasonable person would find the behavior intimidating, hostile, or abusive, a standard which would not be met in the pumping context.

If a coworker is uncomfortable with a lactating employee pumping in their presence, the employer can address this discomfort in a way that does not retaliate against the coworker or discriminate against the employee who needs to pump. For example, an employer can move the uncomfortable coworker to another workspace. This way, the lactating employee is still able to pump in the space that meets their needs, and the coworker will receive a non-retaliatory response to their complaint.

¹³ [29 C.F.R. § 1636.4\(a\)\(4\)](#); [29 C.F.R. § 1636.4\(a\)\(4\) Appendix A ¶ 11](#).

¹⁴ See [42 U.S.C. § 2000gg-1\(1\)](#) (prohibiting failure to make reasonable accommodations); [42 U.S.C. § 2000gg-1\(5\)](#) (prohibiting adverse actions against an employee on account of the employee requesting or using a reasonable accommodation); [42 U.S.C. § 2000gg-2\(f\)](#) (prohibiting retaliation).

¹⁵ See U.S. EQUAL EMP'T OPPORTUNITY COMM'N, [ENFORCEMENT GUIDANCE ON HARASSMENT IN THE WORKPLACE](#), at § IV(C)(3)(b)(ii)(b) note 365 (June 25, 2015) (explaining that coworkers finding conduct irritating or unwelcome does not constitute an undue hardship in the religious accommodation context, because an employer "must accept some degree of coworker discomfort when providing an accommodation").

¹⁶ *Id.* at § II(A)(5)(a) (harassing conduct of a sexualized nature includes "discussing or displaying visual depictions of sex acts").