

## Lactation Support Policy

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### § 1. Purpose

This policy provides guidelines that will assist agencies in the development of work/life balance initiatives to support the wellness and health of employees of North Carolina State Government. Work/life balance initiatives have proven to be effective recruitment and retention strategies as agencies compete for a diverse workforce to deliver efficient services to the citizens of North Carolina.

Research has shown that lactation support is beneficial to the working, nursing employee, as well as to employers by decreasing medical expenses; reducing absenteeism; increasing employee retention; and improving morale in the workplace. This policy is intended to give agencies a general outline of the minimum level of support to be provided to employees who are nursing. An agency may adopt additional areas of support that are consistent with this policy.

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### § 2. Policy

It is the policy of North Carolina State Government to assist working parents with the transition back to work following the birth of a child by providing lactation support. A lactation support program allows nursing employees to express their milk periodically during the workday. This policy applies to all state employees. See the Reasonable Accommodation policy for information about accommodation under the Pregnant Workers Fairness Act (PWFA).

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### § 3. Office of State Human Resources Responsibility

The Office of State Human Resources will designate a program coordinator to assist agencies and employees with questions regarding this policy. If an employee contacts OSHR with concerns under Section 5 of this policy, OSHR will provide guidance to the agency and employee about how federal law and this policy should be applied.

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### § 4. Agency Responsibilities

State agencies shall provide space, privacy, and time for nursing employees to express their milk, as required under the Fair Labor Standards Act.

Agencies may not retaliate against an employee if an employee files or makes any sort of complaint, whether oral or written, that alleges the employee is not receiving the time or space for expressing milk as required under the FLSA or PWFA.

#### § 4.1. Designated, Private Space

When needed, the agency shall provide a private space that is not in a restroom or other common area. The space shall be shielded from view and free from intrusion from staff and the public with a door that can be secured or locked, adequate lighting and seating, and electrical outlets for pumping equipment.<sup>1</sup> If a space is not dedicated to the nursing employee's use, it must be available when needed by the employee in order to meet the requirement under the law. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing employee is sufficient provided it meets the minimum requirements listed above.

In identifying a designated space for lactation, the agency should consider the proximity of the space to the employee's work area. Additionally, agencies should consider the distance of the space in relation to a source of running water.

Employees who telework must also be free from observation by any employer-provided or required video system, including computer camera, security camera, or web conferencing platform.

Agencies are encouraged, if possible, to provide a designated, permanent space available for use by nursing employees. However, agencies should still be willing to

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<sup>1</sup> 29 U.S.C. 218d(a)(2)

## Lactation Support Policy (cont.)

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consider requests by the nursing employee about the space available for expressing milk to meet the individual nursing employee's specific needs.

### § 4.2. Time

The nursing employee has the right to take reasonable break time to express their milk for their nursing child.<sup>2</sup> The frequency and duration of breaks needed to express milk will likely vary depending on factors related to the nursing employee. Agencies may not deny an employee a needed break to express milk. Agencies may not require an employee to adhere to a fixed schedule that does not meet the employee's need for break time each time the employee needs to pump. Generally, under the FLSA, short breaks of 20 minutes or less must be counted as time worked.<sup>3</sup> If the employee is completely relieved from duty, and the break is:

- 20 minutes or less, the break is considered work time.
- more than 20 minutes, the entire break must be documented as paid or unpaid leave, or if appropriate, the employee may flex their workday to make up the time.<sup>4</sup>

If the employee is not completely relieved from duty, the time to express milk is counted as work time.<sup>5</sup> Refer to the Hours of Work and Overtime Compensation policy for more information about the FLSA.

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### § 5. Employee Responsibility

The employee will be responsible for storage of their expressed milk.

The nursing employee should contact their supervisor or HR department if they believe an appropriate space for expressing milk has not been provided. Nursing employees may contact OSHR if they believe their agency is not responsive to concerns raised about the agency obligations under this policy. Employees may visit the US Department of Labor, Wage and Hour division website for more information.

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<sup>2</sup> 29 U.S.C 218d(a)(1)

<sup>3</sup> 29 CFR 785.18

<sup>4</sup> 29 U.S.C. 218d(b)(1)

<sup>5</sup> 29 U.S.C. 218d(b)(2)

## Lactation Support Policy (cont.)

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### § 6. Sources of Authority

This policy is issued under any and all of the following sources of law:

- [N.C.G.S. § 126-4\(5\) and \(10\)](#)
- Providing Urgent Maternal Protections for Nursing Mothers Act ([PUMP Act](#)), part of the FLSA of 1938 (29 U.S.C. 218d).

It is compliant with the Administrative Code rules at:

- [25 NCAC 01N Section .0600](#), Lactation Support

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### § 7. History of This Policy

Date	Version
July 1, 2010	<ul style="list-style-type: none"><li>• First version. This policy is in compliance with The Patient Protection and Affordable Care Act (H.R. 3590) which was signed into law on March 22, 2010.</li></ul>
February 15, 2024	<ul style="list-style-type: none"><li>• Revised policy for compliance with The Providing Urgent Maternal Protections for Nursing Mothers Act (H.R. 3110) (the PUMP Act) which was signed into law on December 29, 2022.</li><li>• Revised policy to replace mother with employee and breast milk with milk</li><li>• In Section 2, added a statement that this policy applies to all employees and a cross reference to the Reasonable Accommodation policy and Pregnant Workers Fairness Act.</li><li>• In Section 3, added a statement that OSHR will investigate concerns raised by employees to OSHR and provide guidance to the agency and employee about how federal law and the policy should be applied.</li><li>• In Section 4, clarified that this policy is related to a provision of the Fair Labor Standard Act, that agencies are required to provide time and space for expressing milk, and may not retaliate against an employee for any complaints that allege an agency is not complying with the Act.</li></ul>

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	<ul style="list-style-type: none"><li>• Created section 4.1 that details the agency requirements and considerations related to the designated, private space for an employee to express milk.</li><li>• Created section 4.2 that details the requirement for an agency to allow an employee the time needed to express milk, including when that time is considered time worked.</li><li>• Added that an employee has a responsibility to notify their supervisor or HR Department if they believe the agency has not provided a designated, private space for expressing milk.</li><li>• Added the PUMP Act as source of authority.</li></ul>
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