



## Interpretive Notice & Formal Opinion (“INFO”) #7: Workplace Accommodations for Nursing Parents

### Overview

- This INFO summarizes nursing employees’ rights to pump at work under:
  - the Colorado [Workplace Accommodations for Nursing Mothers Act \(C.R.S. § 8-13.5-101\)](#); and
  - the federal [Providing Urgent Maternal Protections Act \(“PUMP Act”\)](#), which took effect December 29, 2022.<sup>1</sup>
- This Division does not enforce these laws,<sup>2</sup> but instead, provides “information and links to other web sites where employers can access information regarding methods to accommodate nursing mothers in the workplace.”
- Resources for employees and employers on nursing in the workplace are linked and listed on page 5.

### Coverage and Exemptions

#### **Colorado Law:**

- Employers covered: **all public and private employers** employing one or more employees in the state.
- Employees covered: **nursing employees for two years** from the birth of their child.
- Exemptions: **none**.

#### **Federal Law:**

- Employers covered: **all employers** covered by the Fair Labor Standards Act (“FLSA”).<sup>3</sup>
- Employees covered: **nursing employees for one year** from the birth of their child.
- Exemptions: **limited** exemptions from pump at work provisions:
  - **By job type:** crew members of air carriers, and (until December 29, 2025), some employees of rail carriers and motorcoach services operators.
  - **Undue hardship for small employers**<sup>4</sup>: employers with fewer than 50 employees that demonstrate, **for each instance an employee needed a nursing break**, that the requirements would impose an undue hardship by causing the employer significant difficulty or expense, considered in relation to the size, financial resources, nature, or structure of the business.

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<sup>1</sup> For more information about the substance of federal law or to file a PUMP Act claim, you may consult the United States Department of Labor (“USDOL”), Wage and Hour Division, 1-866-487-9243, and its [online materials](#).

<sup>2</sup> The Division does enforce rest and meal periods required by Colorado law, which may coincide with pumping time. For information about rest and meal break requirements, see [INFO #4](#).

<sup>3</sup> Federal law covers work for either (1) employers with annual revenue of at least \$500,000, (2) hospitals, schools, or care facilities, (3) government agencies, or (4) any job participating in interstate commerce.

<sup>4</sup> See USDOL Wage and Hour Division [Field Assistance Bulletin 2023-02](#) at 5 (“Because the law requires only space and time for unpaid breaks for one year after a child’s birth, and the employer must be able to demonstrate “significant” difficulty or expense, employers will be exempt only in limited circumstances.”).

## Accommodations

**Colorado Law** requires employers to provide covered employees (1) pumping time and (2) pumping space:

1. Employers must “provide **reasonable unpaid break time** or permit an employee to use **paid break time, meal time, or both, each day to allow the employee to express breast milk** for the nursing child for **up to two years** after the child’s birth.”
2. Employers must “make **reasonable efforts** to provide a **room or other location in close proximity to the work area**, other than a toilet stall, where an employee can express breast milk **in privacy**.”
  - “**Reasonable efforts**” means any effort that **would not impose undue hardship on the operation** of the employer’s business.
  - “**Undue hardship**” means any action that requires **significant difficulty or expense**, when considered in relation to **factors such as the business’s size, financial resources, or nature and structure of its operation, including any special circumstances of public safety**.

**Federal Law** also requires employers to provide covered employees (1) pumping time and (2) pumping space:

1. Employers must provide **reasonable pumping time**, as judged by the **employee’s health needs**. The **frequency, duration, and timing of breaks will vary** depending on the employee’s needs, and any **agreed-upon schedule may need to be adjusted** as the employee’s pumping needs change.

**Example 1:** “Irina, a shift manager at a fast-food restaurant, takes four 25-minute pump breaks each day when she first returns to work after the birth of her child. Irina’s need to pump changes as her baby grows and, when the baby is six months old, she reduces her pump breaks to 25 minutes twice a day.”<sup>5</sup> This example shows two schedules of reasonable pumping time that Irina’s employer must allow over the course of the year after the birth of Irina’s child.

**Example 2:** “Ashley starts a part-time job in commercial real estate when her nursing child is six-months old. Starting with her first week of work, she takes a 20-minute pump break every day.”<sup>6</sup> This is also reasonable pumping time that Ashley’s employer must allow under the FLSA.

2. Employers must provide **functional pumping space**: a place, other than a bathroom, that is **shielded from view, free from intrusion** from coworkers and the public, and is **available each time** an employee needs to express breast milk. The space must be **functional** to express breast milk. A functional space “must contain a place for the nursing employee to sit, and a flat surface, other than the floor, on which to place the pump. Employees must be able to safely store milk while at work, such as in a personal cooler or refrigerator.”<sup>7</sup>

**Example 3<sup>8</sup>:** Ali’s employer offers four options for pumping space, but none satisfy the law:

- 1) A bathroom (expressly prohibited);
- 2) A room without a place to sit (not functional);
- 3) A room with a window but no curtain (not private); and
- 4) A conference room that Ali may use *only if* coworkers aren’t using the room (not available each time Ali needs to express breast milk).

<sup>5</sup> See USDOL Wage and Hour Division [Field Assistance Bulletin 2023-02](#) at 2.

<sup>6</sup> See USDOL Wage and Hour Division [Field Assistance Bulletin 2023-02](#) at 2.

<sup>7</sup> See USDOL Wage and Hour Division [Field Assistance Bulletin 2023-02](#) at 4.

<sup>8</sup> National Employment Lawyers Association, [An Introduction to the PUMP Act](#), June 15, 2023.

## **Compensation**

Under both Colorado and federal law, pumping breaks may be **unpaid only if the employee is completely relieved of duties**.<sup>9</sup> If an employee uses **regularly paid break time** to pump, that time must be paid at their **regular rate of pay**. **Salaried employees cannot have their pay reduced** due to pumping breaks.

**Example 4:** Julia, a nonexempt employee, “is on a pump break when she receives a call on her work cell phone from a coworker who provides her with instructions regarding a work project. After she finishes the work call, Julia completes her pump break. Because Julia was not relieved from duty, the time she spent on the call must be counted as hours worked.”<sup>10</sup>

**Example 5:** “Cameron is a salaried exempt administrative employee at an assisted living center who has a four-month-old child. Cameron takes three pump breaks a day. Cameron’s employer cannot deduct the time used for pump breaks from their salary.”<sup>11</sup>

**Example 6:** “Madison works on a farm. Madison’s employer provides all employees with two paid 15-minute rest breaks each day. Madison chooses to use both of the paid 15-minute breaks to pump breast milk for her 6-month-old infant. If Madison needs additional breaks to pump, the additional break time does not have to be compensated as long as Madison does not perform any work during the breaks.”<sup>12</sup>

## **Enforcement**

The Division **does not accept claims of pump break violations** under state or federal law, or administer the required mediation under state law (**but does accept claims for rest and meal period violations**, which may coincide with pumping time).

### **Colorado Law:**

Employees can file claims in court for violations of the Workplace Accommodations for Nursing Mothers Act, but only after nonbinding employer-employee mediation. Parties may wish to contact an attorney for advice.

### **Federal Law:**

Employees can file PUMP Act claims for (1) failure to accommodate or (2) retaliation (both detailed below) with the USDOL Wage and Hour Division or as a private cause of action.

- **Failure to Accommodate:** Employers may be liable if they fail to provide reasonable break time or a functional space for the covered employee’s nursing needs. If an employer fails to provide a functional space, the employee must **notify the employer** of the failure and **wait ten days** before filing a claim.<sup>13</sup>

**Example 7 (Pumping Space)**<sup>14</sup>: Ali, the employee in Example 3, may either file a claim with the USDOL Wage and Hour Division or file a private lawsuit if her employer fails to provide a functional space. Because this claim is about the failure to provide pumping space, Ali must notify her employer of the need for space and wait ten days to file the lawsuit.

**Example 8 (Pumping Time):** Sam needs and asks for a 20-minute unpaid pump break but the employer denies the break, or only offers 10 minutes. Sam may file a lawsuit claiming a failure to provide reasonable pumping time without notifying the employer or waiting.

<sup>9</sup> See the [INFO #20](#) series for more information on what counts as time worked under Colorado law.

<sup>10</sup> See USDOL Wage and Hour Division [Field Assistance Bulletin 2023-02](#) at 3.

<sup>11</sup> See USDOL Wage and Hour Division [Field Assistance Bulletin 2023-02](#) at 3-4.

<sup>12</sup> See U.S. Department of [Labor Fact Sheet #73](#): FLSA Protections for Employees to Pump Breast Milk at Work. For details about breaks required for agricultural work under Colorado law, see the [INFO #12](#) series.

<sup>13</sup> No waiting period is required to file claims for failure to provide reasonable break time or for retaliation claims.

<sup>14</sup> Examples 7 and 8 are based on NELA materials. See footnote 8 above.

- **Retaliation: Employers may be liable if they take adverse action** against an employee or interfere with an employee's rights to reasonable break time or functional space to pump breast milk.

**Example 9:** "Leslie is a delivery truck driver for a department store and takes breaks to pump breast milk a couple of times each day. The supervisor complains that the breaks are interfering with the delivery schedule and moves Leslie to a lower-paying job as a result. In this example, Leslie has experienced unlawful retaliation under the FLSA."<sup>15</sup>

**Example 10:** "Charlie works in retail sales and is nursing their 8-month-old child. On Friday, their store manager tells them they must work an additional 3 hours on Saturday to be able to meet the employer's sales quotas for the week due to the time they spent taking pump breaks during the week. Charlie cannot be required to make up the time they took pump breaks because adding work time to their normal schedule could be considered an adverse action made in retaliation for exercising their pump at work rights. Additionally, their employer cannot hold the time they took for pump breaks against them when determining whether they met a sales quota."<sup>16</sup>

- "Remedies for PUMP Act violations may include employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages, compensatory damages and make-whole relief, such as economic losses that resulted from violations, and punitive damages where appropriate."<sup>17</sup>
- To file a PUMP Act claim with the USDOL Wage and Hour Division, visit its [complaint page](#).

### **Other Workplace Protections for Pregnant and Nursing Workers**

In addition to nursing rights, both Colorado and federal law provide rights for reasonable accommodations for workers with health conditions related to pregnancy.

#### **Colorado Law:**

- Colorado's [Pregnant Workers Fairness Act](#) makes it a **discriminatory or unfair employment practice** if an employer of any size **fails to provide reasonable accommodations** to an applicant or employee who is pregnant, physically recovering from childbirth, or a related condition.
- Under the Act, if an applicant or employee who is pregnant or has a condition related to pregnancy or childbirth requests an accommodation, an employer must **engage in the interactive process** with the applicant or employee and **provide a reasonable accommodation** to perform the essential functions of the applicant or employee's job unless the accommodation would impose an undue hardship on the employer's business.
- For more information, contact the [Colorado Civil Rights Division](#).

#### **Federal Law:**

- The federal [Pregnant Workers Fairness Act](#) took effect June 27, 2023, applies to private employers with 15 or more employees, and makes it **unlawful for an employer to refuse to make reasonable accommodations to a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions**, unless it would impose an undue hardship on the operation of the employer's business.
- For more information or to file a claim, contact the [Equal Employment Opportunity Commission](#).

<sup>15</sup> See U.S. Department of [Labor Fact Sheet #73](#): FLSA Protections for Employees to Pump Breast Milk at Work.

<sup>16</sup> See USDOL Wage and Hour Division [Field Assistance Bulletin 2023-02](#) at 7-8.

<sup>17</sup> See USDOL Wage and Hour Division [Field Assistance Bulletin 2023-02](#) at 7.

**Resources for Employees**

The following links contain information on breastfeeding, breast pumps, storing milk, and returning to work:

- [Know Your Rights](#) - U.S. Department of Labor
- [Know Your Rights: Colorado](#) - A Better Balance
- [Breastfeeding & Work: Your Survival Guide to the First Year](#) - Medela & Mamava
- [Breastfeeding and Going Back To Work](#) - U.S. Department of Health and Human Services
- [Talking to Your Boss About Your Bump](#) - Center for Worklife Law & A Better Balance
- [Talking to Your Boss About Your Pump](#) - Center for Worklife Law & A Better Balance
- [FAQ: Pumping Breast Milk at Work](#) - U.S. Department of Labor

**Resources for Employers**

The following links contain information on how to make workplace accommodations for nursing parents, creating lactation support programs, how employers can benefit, and support for breastfeeding policies:

- [Supporting Nursing Moms at Work](#) - United States Department of Health and Human Services
- [Common Workplace Limitations and Reasonable Accommodations Explained](#) - Center for Worklife Law
- [How to Write a Workplace Lactation Accommodation Policy](#) - Mamava
- [How to Design a Lactation Space](#) - Mamava
- [Pumping at Work Door Hanger](#) - U.S. Department of Labor
- [Business Case for Breastfeeding](#) - United States Department of Health and Human Services

**Relevant Online Resources**

- [Colorado Breastfeeding Coalition](#)
- [Colorado Breastfeeding Laws](#) - Mamava
- [La Leche League of Colorado](#)
- [Colorado Department of Public Health and Environment Information for Women, Infants and Children \(WIC\)](#)
- [American Academy of Pediatrics](#)
- [Guidance for Healthcare Providers on How to Write Effective Work Accommodation Notes](#)
- [9to5, National Association of Working Women](#)
- [Pregnant and Nursing Worker Protections](#) - National Employment Lawyers Association
- [Colorado Civil Rights Division](#)

**Additional Information**

Visit the Division's [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).