



## Personnel Memorandum, No.1, 2010

To: All Superintendents; All Principals; ISC Executive Directors; CFN Network Leaders; ISC Deputy Executive Directors; ISC HR Deputy Directors; Chief Executives and Heads of Offices

From: **Lawrence E. Becker**

Date: October 1, 2010

Re: Leave to Express Breast Milk Services

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### **I. Background**

New York joins a growing number of states that have enacted laws to meet the needs of nursing mothers in the workplace. Section 206-c of the New York State Labor Law requires employers to permit breastfeeding employees to use break time to express breast milk for up to three years following childbirth. The law also requires employers to make reasonable efforts to provide a room in close proximity to the work area where breastfeeding employees can express breast milk in privacy. Finally, the law prohibits discrimination in any way against employees who choose to express breast milk in the workplace.

### **II. Summary of the Law**

#### **A. When An Employee Can Express Breast Milk**

Nursing mothers are permitted to utilize non-instructional time or break period, including lunch breaks, to express breast milk during regular work hours and during any per session hours worked. Each break shall last approximately twenty minutes, plus time for the employee to walk to and from the lactation room, although an employee can elect to take shorter breaks. The employee's principal or head of the office shall arrange an appropriate schedule with the employee so as to minimize interference with her job duties and responsibilities, provided that she shall be permitted to take break time for expression purposes every three hours, if so requested. An employee may be required to postpone scheduled break time for up to thirty minutes if she cannot be separated from her duties until appropriate coverage arrives.

In the event that an employee utilizes paid break time to express breast milk, the principal or head of the office may ask the employee to make up that time either before or after her regularly scheduled work hours. This is to be determined on a case-by-case basis.

## **B. Location to Express Breast Milk**

In accordance with the law, the principal or the head of the office must make reasonable efforts to identify a location to express breast milk that is both private, meaning it should not be open to individuals other than nursing mothers using the room for expression purposes, and in the same building as the employee's work area. The room or location provided for this purpose cannot be a restroom or toilet stall. The room or location should have a door equipped with a functional lock.<sup>1</sup> The room or location must be clean and well lit, and must contain a chair and small table, desk, counter or other flat surface, and, to every extent possible, an electrical outlet. If possible, the room should also contain a clean water supply.

The principal or head of the office may establish a schedule to accommodate the needs of multiple employees to express breast milk in one room or location. If space constraints make it impracticable to provide a dedicated lactation room or other location, the principal or the head of the office may allow the use of a vacant office or other available room on a temporary basis for the expression of breast milk, provided the room is not accessible to other individuals while the nursing employee is using the room for expression purposes.<sup>2</sup>

## **C. Reasonable Notice**

Written notice of the provisions of Section 206-c must be provided to all employees who return to work following the birth of a child. An employee who decides to express breast milk at work is required to give her principal or head of the office reasonable advance notice so that a schedule can be arranged and a location can be established.

## **D. Prohibition of Discrimination**

The legislation specifically prohibits discrimination in any way against an employee who chooses to express breast milk in the workplace. Encouraging or allowing a work environment that is hostile to the right of nursing mothers to express breast milk in the workplace can constitute discrimination under the law.

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<sup>1</sup> If it is not possible to provide a room or location with a door and functional lock, the principal or head of the office, as a last resort, shall utilize a sign indicating that the room or location is in use and is not accessible to other employees or to any other individuals.

<sup>2</sup> If it is not possible to provide a vacant office or other available room on a temporary basis, as a last resort, the principal or head of the office may allow the use of a cubicle for expression purposes, provided it is fully enclosed with a partition, has walls at least seven feet tall to insure the nursing mother's privacy, and is not otherwise accessible to the public or other employees while it is in use.

### **III. Recommended Procedures**

The following points may assist you in implementing procedures in accordance with the law:

- A.** School employees may use non-instructional time or break periods, including lunch breaks, to express breast milk for up to three years after child birth.
- B.** Each break to express breast milk shall last approximately twenty minutes, plus time for the employee to walk to and from the lactation room, although an employee can elect to take shorter breaks.
- C.** Employees who wish to express breast milk at the workplace must notify an appropriate DOE employee as soon as possible.
- D.** Employees are not entitled to absent themselves from their work areas for expression purposes without prior approval. When an employee needs to change a previously agreed upon schedule, the employee must obtain approval to do so.
- E.** This benefit is available to employees within the basic workweek as well as during any additional time worked, including per session hours. An employee may be required to work before or after her regularly scheduled work hours to make up the amount of time used during paid break times to express milk, so long as the additional time requested falls within regular DOE work hours.
- F.** An employee may be required to postpone a scheduled time to express breast milk for up to thirty minutes if she cannot be spared.
- G.** The room or location identified for expressing breast milk must be private and in the same building as the employee's work space.
- H.** Affected employees should be notified that they are entitled to this benefit.

For additional information, please contact HR Connect at 718-935-4000.