

Hi, this is Chris Micheli. A principal with the Sacramento governmental relations firm of Aprea & Micheli and adjunct professor at McGeorge School of Law. Today's podcast is on SB 142 by Scott Wiener that was enacted in the 2019 session. It was signed into law on October the 10th as Chapter 720.

Basically, SB 142 requires an employer to provide a lactation room or location that includes proscribed features and would require an employer, among other things, to provide access to a sink and refrigerator in close proximity to the employee's workspace.

The bill deems denial of reasonable break time or adequate space to express milk to be a failure to provide a rest period in accordance with state law. The bill prohibits an employer from discharging, or in any other manner discriminating or retaliating against an employee for exercising or attempting to exercise their rights under these provisions and establishes remedies that include filing a complaint with the Labor Commissioner's Office.

The bill authorizes employers with fewer than 50 employees to seek an exemption from the requirements of these provisions if the employer demonstrates that the requirement posed an undue hardship by causing the employer significant difficulty or expense. In addition, the bill requires an employer who obtains an exemption to make a reasonable effort to provide a space for an employee to express milk in private. The bill also requires an employer to develop and implement a policy regarding lactation accommodation and make that policy available to employees.

Section 1 of the bill amends Labor Code Section 1030 to specify that every employer, both private and public, must provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child each time that the employee has a need to express milk.

Section 2 of the bill amends Labor Code Section 1031 by first eliminating the requirement that an employer shall make reasonable efforts to provide an employee with a location to express milk in private. By striking the phrase "make reasonable efforts to" it's now a mandate to provide. In addition, the bill eliminates the close proximity requirement. In other words, the bill struck the phrase "other than a bathroom in close proximity to the employee work area."

SB 142 also struck the requirement that an employer who makes a temporary lactation location available to any employee shall be deemed to be in compliance with the law when specified conditions are met. Instead, now the law provides that the lactation room or location shall not be a bathroom and shall be in close proximity to the employee's work area, shielded from view and free from intrusion while the employee is expressing milk.

In addition, the bill eliminates an exception to the requirement when an employer is unable to provide a permanent lactation location because of operational, financial, or space limitations. In its place, there are new requirements that the lactation location must meet. Also, the employer is required to provide access to a sink with running water as well as a refrigerator suitable for storing milk. And those must be in close proximity to the employee's workspace.

There are also special rules for dealing with multi-tenant buildings or a multi-employer worksite as well as special rules when dealing with subcontractor's employees. SB 142 provides that an employer may comply with this mandate by designating a lactation location that is temporary due to operational, financial, or space limitations. But these temporary spaces cannot be a bathroom and must be in close proximity to the employee's work area. Also, the temporary location must be shielded from view and free from intrusion while the employee is expressing milk and be otherwise compliant with the remaining provisions of this particular law.

Note that Section 3 of the bill amends Labor Code Section 1033. And this Section was amended to provide that a denial of reasonable break time or adequate space to express milk shall be deemed a failure to comply with Labor Code Section 226.7 which subjects an employer to a penalty and thereafter the employee may file a complaint with the state's Labor Commissioner and the employee may report a violation to the Labor Commissioner's field office enforcement unit and the local commission may impose a civil penalty of \$100 for each day the employee was denied reasonable break time or adequate space to express milk.

And then, as mentioned earlier, Section 4 of the bill amends Labor Code section 1034 to require an employer to develop and implement a policy regarding lactation accommodation. And of course, the policy must include specified information and the employer must provide the information in the employee handbook and shall distribute that policy to new employees.

Thanks for joining this podcast on Senate Bill 142.