

AMENDED IN ASSEMBLY JULY 3, 2019

AMENDED IN ASSEMBLY JUNE 20, 2019

AMENDED IN SENATE APRIL 30, 2019

AMENDED IN SENATE APRIL 11, 2019

SENATE BILL

No. 142

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Gonzalez)

(Coauthors: Senators Durazo, Jackson, and Leyva)

(Coauthors: Assembly Members Carrillo, Chiu, Cristina Garcia,
Jones-Sawyer, Kalra, Limón, and Wicks)

January 18, 2019

An act to add Section 18941.12 to the Health and Safety Code, and to amend Sections 1030, 1031, and 1033 of, and to add Sections 1034 and 1035 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 142, as amended, Wiener. Employees: lactation accommodation.

(1) The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval and adoption. The commission is required to adopt specific building standards, including standards for graywater systems and electric vehicle charging infrastructure. Existing law requires the commission to publish, or cause to be published, editions of the California Building Standards Code in its entirety once every 3 years.

This bill would require the commission to develop and propose for adoption building standards for the installation of lactation space for

employees using the Lactation in the Workplace Ordinance adopted in the San Francisco Police Code as the starting point and amending those standards as necessary.

(2) *Existing law prohibits an employer, who is required by law to give an employee a rest period during a workday, from requiring the employee to work during the rest period. Existing law requires an employer to pay the employee one additional hour of pay, at the employee's regular rate of compensation, for each rest period not provided.* Existing law requires employers to provide a reasonable amount of break time to employees desiring to express milk for the employee's infant child. Existing law also requires an employer to make reasonable efforts to provide the employee with the use of a room, or other location, other than a bathroom, in close proximity to the employee's work area, for the employee to express milk in private. Existing law exempts an employer from the break time requirement if the employer's operations would be seriously disrupted by providing that time to employees desiring to express milk. Existing law subjects employers who violate these provisions to a civil penalty of \$100 per violation and authorizes the Labor Commissioner to issue citations for those violations.

This bill would instead require an employer to provide a lactation room or location that includes prescribed 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, as specified. The bill would deem denial of reasonable break time or adequate space to express milk a failure to provide a rest period in accordance with state law. The bill would prohibit an employer from discharging, or in any other manner discriminating or retaliating against, an employee for exercising or attempting to exercise rights under these provisions and would establish remedies that include filing a complaint with the Labor Commissioner. The bill would authorize 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, as specified.

~~(3) Existing law prohibits an employer, who is required by law to give an employee a rest period during a workday, from requiring the employee to work during the rest period. Existing law requires an employer to pay the employee one additional hour of pay, at the~~

~~employee's regular rate of compensation, for each rest period not provided.~~

~~This bill would require an employer to provide a lactation room or location that includes prescribed 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, as specified. The~~

The bill would require an employer to develop and implement a policy regarding lactation accommodation and make it available to employees, as specified. The bill would also require an employer to maintain records of requests for lactation accommodation for 3 years and to give the Labor Commission access to those records.

The bill would require the Division of Labor Standards Enforcement to create a model lactation accommodation request form and to make it available for download from its internet website by employees and employers. The bill would authorize the division to establish a model lactation accommodation policy and lactation accommodation best practices to provide guidance to employers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18941.12 is added to the Health and
- 2 Safety Code, to read:
- 3 18941.12. (a) The commission, commencing with the next
- 4 triennial edition of the California Building Standards Code (Title
- 5 24 of the California Code of Regulations) adopted after January
- 6 1, 2019, shall develop and propose for adoption mandatory building
- 7 standards for the installation of lactation space for employees.
- 8 (b) In developing building standards under this section, the
- 9 commission shall use the Lactation in the Workplace Ordinance
- 10 (Article 33I (commencing with Section 3300I.1) of the San
- 11 Francisco Police Code, Ordinance No. 131-17), effective January
- 12 1, 2018, as the starting point, and amend those standards as
- 13 necessary.
- 14 SEC. 2. Section 1030 of the Labor Code is amended to read:
- 15 1030. Every employer, including the state and any political
- 16 subdivision, shall provide a reasonable amount of break time to
- 17 accommodate an employee desiring to express breast milk for the
- 18 employee's infant child each time the employee has need to express

1 milk. The break time shall, if possible, run concurrently with any
2 break time already provided to the employee. Break time for an
3 employee that does not run concurrently with the rest time
4 authorized for the employee by the applicable wage order of the
5 Industrial Welfare Commission shall be unpaid.

6 SEC. 3. Section 1031 of the Labor Code is amended to read:

7 1031. (a) An employer shall provide an employee with the
8 use of a room or other location for the employee to express milk
9 in private. The room or location may include the place where the
10 employee normally works if it otherwise meets the requirements
11 of this section.

12 (b) A lactation room or location shall not be a bathroom and
13 shall be in close proximity to the employee's work area, shielded
14 from view, and free from intrusion while the employee is lactating.

15 (c) A lactation room or location shall comply with all of the
16 following requirements:

17 (1) Be safe, clean, and free of hazardous materials, as defined
18 in Section 6382.

19 (2) Contain a surface to place a breast pump and personal items.

20 (3) Contain a place to sit.

21 (4) Have access to electricity or alternative devices, including,
22 but not limited to, extension cords or charging stations, needed to
23 operate an electric or battery-powered breast pump.

24 (d) The employer shall provide access to a sink with running
25 water and a refrigerator suitable for storing milk in close proximity
26 to the employee's workspace. If a refrigerator cannot be provided,
27 an employer may provide another cooling device suitable for
28 storing milk, such as an employer-provided cooler.

29 (e) Where a multipurpose room is used for lactation, among
30 other uses, the use of the room for lactation shall take precedence
31 over the other uses, but only for the time it is in use for lactation
32 purposes.

33 (f) (1) An employer in a multitenant building or multiemployer
34 worksite may comply with this section by providing a space shared
35 among multiple employers within the building or worksite if the
36 employer cannot provide a lactation location within the employer's
37 own workspace.

38 (2) Employers or general contractors coordinating a
39 multiemployer worksite shall either provide lactation
40 accommodations or provide a safe and secure location for a

1 subcontractor employer to provide lactation accommodations on
2 the worksite, within two business days, upon written request of
3 any subcontractor employer with an employee that requests an
4 accommodation.

5 (g) An agricultural employer, as defined in Section 1140.4, shall
6 be deemed to be in compliance with this section if the agricultural
7 employer provides an employee wanting to express milk with a
8 private, enclosed, and shaded space, including, but not limited to,
9 an air-conditioned cab of a truck or tractor.

10 (h) An employer may comply with ~~the requirements of this~~
11 ~~section by designating a lactation location that is temporary, due~~
12 ~~to operational, financial, or space limitations. These temporary~~
13 ~~spaces shall be identified by signage, free from intrusion while an~~
14 ~~employee is expressing milk, and shall remain lactation spaces for~~
15 ~~the time they are used for lactation purposes. The temporary~~
16 ~~lactation location shall otherwise meet the requirements of state~~
17 ~~law concerning lactation accommodation.~~ *not be a bathroom and*
18 *shall be in close proximity to the employee's work area, shielded*
19 *from view, free from intrusion while the employee is lactating, and*
20 *otherwise compliant with this section.*

21 (i) An employer that employs fewer than 50 employees may be
22 exempt from the requirements of this section if it can demonstrate
23 that a requirement of this section would impose an undue hardship
24 by causing the employer significant difficulty or expense when
25 considered in relation to the size, financial resources, nature, or
26 structure of the employer's business.

27 SEC. 4. Section 1033 of the Labor Code is amended to read:

28 1033. (a) The denial of reasonable break time or adequate
29 space to express milk in accordance with this chapter shall be
30 deemed a failure to comply for purposes of Section 226.7. An
31 aggrieved employee may file a complaint under this subdivision
32 with the Labor Commissioner pursuant to Section 98.

33 (b) An employer shall not discharge, or in any other manner
34 discriminate or retaliate against, an employee for exercising or
35 attempting to exercise any right protected under this chapter. This
36 subdivision is not intended to limit or expand an employee's rights
37 pursuant to Section 98.6. An aggrieved employee may file a
38 complaint under this subdivision with the Labor Commissioner
39 pursuant to Section 98.7.

(c) An employee may report a violation of this chapter to the Labor Commissioner's field enforcement unit. If, upon inspection or investigation, the Labor Commissioner determines that a violation of this chapter has occurred, the Labor Commissioner may issue a citation and may impose a civil penalty in the amount of one hundred dollars (\$100) for each day that an employee is denied reasonable break time or adequate space to express milk in violation of this chapter. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for violations of this chapter shall be the same as those set forth in Section 1197.1.

(d) Notwithstanding any other provision of this code, violations of this chapter shall not be misdemeanors under this code.

SEC. 5. Section 1034 is added to the Labor Code, to read:

1034. (a) An employer shall develop and implement a policy regarding lactation accommodation that includes the following:

(1) A statement about an employee's right to request lactation accommodation.

(2) The process by which the employee makes the request described in paragraph (1).

(3) An employer's obligation to respond to the request described in paragraph (1) as outlined in subdivision (d).

(4) A statement about an employee's right to file a complaint with the Labor Commissioner for any violation of a right under this chapter.

(b) The employer shall include the policy described in subdivision (a) in an employee handbook or set of policies that the employer makes available to employees.

(c) The employer shall distribute the policy described in subdivision (a) to new employees upon hiring and when an employee makes an inquiry about or requests parental leave.

(d) If an employer cannot provide break time or a location that complies with the policy described in subdivision (a), the employer shall provide a written response to the employee.

(e) An employer shall maintain a record of requests for three years from the date of request and shall allow the Labor Commissioner to access these records pursuant to Section 1174. An employer shall make these records available to an employee in the same manner as described in subdivisions (b) and (c) of Section 226. If an employer does not maintain adequate records

1 pursuant to this section, or does not allow the Labor Commissioner
2 reasonable access to such records, it shall be presumed that the
3 employer has violated this chapter, absent clear and convincing
4 evidence otherwise.

5 SEC. 6. Section 1035 is added to the Labor Code, to read:

6 1035. (a) The Division of Labor Standards Enforcement shall
7 create a model lactation accommodation request form and shall
8 make it available for download by employees and employers from
9 its internet website.

10 (b) The Division of Labor Standards Enforcement may establish
11 a model lactation accommodation policy and lactation
12 accommodation best practices that provide guidance to employers,
13 and a list of optional but recommended amenities that may include
14 the following:

15 (1) A permanent lactation location that is suitable for the
16 preparation and storage of food.

17 (2) A door that can be locked from the inside.

18 (3) At least one electrical outlet.

19 (4) A washable, comfortable chair.

20 (5) Adequate lighting.

21 (6) The ability to partition the room.

22 (7) A refrigerator that the employer permits employees to use
23 for storage of breast milk.

24 (8) A sink with hot and cold running water.

25 (9) A hospital-grade breast pump.

26 (10) A full-length mirror.

27 (11) A microwave.

28 (12) A locker to place personal belongings.

29 (13) A permanent sign outside designating the room for lactation
30 accommodation.

31 (c) Noncompliance with the best practices outlined in this
32 section shall not be deemed a violation of this chapter.