

**RESOLUTION TO ADOPT PLUMAS COUNTY LACTATION
ACCOMMODATION POLICY BASED ON SENATE BILL 142 (SB 42)**

WHEREAS, California state law mandates workplace lactation spaces for all employees. Plumas County ("County") recognizes that breast milk is the optimal food for growth and development of infants, and seeks to promote a breastfeeding-friendly work environment that supports the legal right and necessity of employees who choose to express milk in the workplace; and

WHEREAS, In accordance with Senate Bill 142 ("SB 142") amending Labor Code sections 1030, 1031, and 1033 and adding Labor Code section 1034, the County has developed and implemented this written Lactation Accommodation Policy to provide breaks, and safe private locations, to reasonably accommodate all employees who desire to express breast milk at work; and

WHEREAS, This Lactation Accommodation Policy will be provided to every newly hired employee, and to any employee who requests or inquires about pregnancy or parental leave; and

WHEREAS,; The County will provide a reasonable amount of break time to accommodate an employee's need to express breast milk or accommodate any medical condition related to breast-feeding and

NOW, THEREFORE BE IT RESOLVED by the Plumas County Board of Supervisors that the attached:


Plumas County Lactation Accommodation Policy is hereby approved and adopted.

The foregoing Resolution was duly passed and adopted by the Board of Supervisors of the County of Plumas, State of California, at a regular meeting of said Board on the 7th day of July, 2020 by the following vote:

AYES: Supervisors: SIMPSON, THRALL, ENGEL, GOSS

NOES: Supervisors: NONE

ABSENT: Supervisors: NONE


Chair, Board of Supervisors


Clerk, Board of Supervisors

Approved as to form:


R. Craig Settlemyre
Plumas County Counsel

SB 142- LACTATION ACCOMMODATION BACKGROUND & COMPLIANCE INSTRUCTIONS

I. BACKGROUND

Effective January 1, 2020, California state law mandates workplace lactation spaces for all employees. In compliance with Senate Bill 142 (SB 142), employers are required to provide breaks, and safe private locations, to reasonably accommodate all employees who want to express breast milk at work. SB 142 further requires employers to develop and implement a written lactation accommodation policy in the employee manual (or set of policies distributed to employees), that includes the following:

- Statement of employee's right to request lactation accommodation;
- Instructions on how the employee may request an accommodation from the County;
- The employer's responsibility and protocol for responding to the request;
- The employee's right to file a complaint with the Labor Commissioner for any violation of the law.

SB 142 increases penalties for noncompliance, prohibits discrimination and retaliation against employees who exercise or attempt to exercise their right to lactation accommodation.

Employers must provide a copy of the written policy to new employees and when an employee makes an inquiry about or requests pregnancy and/or parental leave.

II. DESIGNATED LACTATION SPACE

Under SB 142, California employers must provide a "reasonable" amount of break time for employees to express breast milk and provide the use of a private space, other than a bathroom, in "close proximity" to the employee's work area. The employee's normal work area can be used if it allows the employee to express milk in private.

In addition, the room must comply with the following requirements:

- Be safe, clean and free from hazardous materials, as defined in Labor Code Section 6382.
- Provide a surface to place a breast pump and personal items.
- Provide a place to sit.
- Have access to electricity or alternative devices, including, but not limited to, extension cords or charging stations needed to operate an electric or battery-powered breast pump.

Employers must also provide access to a sink with running water and a refrigerator suitable for storing milk. If a refrigerator is not feasible, the employer may provide another cooling device, such as a cooler.

Caveat: “Reasonable” break time is undefined and there is no standard for enforcement. To avoid conflict and guide scheduling and work-productivity expectations, it is suggested that the employer discuss the request with the employee promptly upon receipt of the written request. Although individual biology and needs vary, 20-30 minutes for a lactation accommodation is consistent with U.S. Breastfeeding Committee guidelines.

Caveat: “Close proximity” is undefined and may be affected by a number of factors including the architecture of the workspace, stage of breastfeeding, mobility of the employee, etc. For example, an official designated “lactation room” at the opposite end of the building on another floor may not be as convenient to the employee’s comfort and work-productivity as the ability to use a private office or conference room just a few steps down the hall. Communication and flexibility among employers and employees are essential in ensuring compliance.

A. Temporary Location

While there is no requirement that an employer provide a permanent location designated solely for lactation accommodation by its employees, if a temporary location is utilized because of operational, financial or space limitations, it is subject to the following requirements:

- The temporary location must be private and free from intrusion while an employee expresses milk;
- The temporary location must be used only for lactation purposes while an employee expresses milk; and
- The temporary location must otherwise meet the requirements of state law concerning lactation accommodation.

B. Multipurpose Room or Multi-Tenant Building/Worksite

If the designated lactation room has additional uses, such as an employee break room, the employer’s office, or any other purpose, the room must remain completely private for the time it is in use for lactation purposes. Furthermore, if a multi-purpose room is used for lactation, the use of the room for lactation shall take precedence over other uses for the time it is in use for lactation purposes.

Any employer in a multi-tenant building or multi-employer worksite may comply with providing a shared space among multiple employees within the building if unable to provide a compliant location within the employer’s own workspace.

C. Undue Hardship Exemption

For employers with less than 50 employees, the law includes an undue hardship exemption regarding the location provided for lactation accommodation. This is determined by looking at the difficulty and/or expense of compliance for a specific employer, in comparison to the size, financial resources, and the nature or structure of the employer’s business. An employer who can

demonstrate to the Department of Fair Employment and Housing that it is an undue hardship (*i.e.*, not merely an inconvenience to employer or staff) to find a location other than a bathroom *due to the size, nature, or structure of the business) must instead make reasonable efforts to find a private and close location other than a toilet stall).

As with any accommodation, employers are highly encouraged to comply and/or make reasonable efforts to comply with all aspects of the law.

III. USE OF MEAL AND REST BREAKS

Employees who wish to express breast milk can be required to use the paid rest break time already provided by law. If the employee needs a reasonable amount of additional time for expressing milk beyond the normal paid rest break, the time *must* be provided, but may be unpaid. Employees can also choose to use lunch break time to express breast milk, but this does not relieve employers of their responsibility to provide reasonable additional time, along with rest breaks.

The Labor Commissioner may issue a citation for violations of this law/provision, subjecting the employer to a civil penalty of one hundred dollars (\$100) for each violation, in addition to any fines or penalties for missed rest breaks.

IV. LENGTH OF ACCOMODATION; RECORDKEEPING REQUIREMENTS

California law has no time limitation. All employers must reasonably accommodate nursing mothers if they request the accommodation, even if it is beyond one (1) year.

A special form is not required; however, there must be a written memo to the employee noting the parameters of the agreement regarding lactation breaks and spaces, along with follow-up memos outlining any future discussions of needs, is adequate, so long as it is filed and retained according to the employer's record retention policy.

All written request and denial records must be maintained for three (3) years from the date of written request. If for some reason the employer is unable to provide a break time or location that complies with the policy, the employer must provide a written response to the employee.

Employers should consult legal counsel prior to claiming an undue hardship or denying an employee's request for lactation accommodation.

V. COMPLIANCE

Penalties for noncompliance with the new law are similar to those imposed for missed meal and rest breaks. The Labor Commission may issue a citation to the employer, subjecting them to a fine of one hundred dollars (\$100) per day, for each day an employee is denied reasonable break time or adequate space to express milk, *in addition* to any fines or penalties for missed meal or rest breaks.

PLUMAS COUNTY LACTATION ACCOMMODATION POLICY

I. POLICY

Effective January 1, 2020, California state law mandates workplace lactation spaces for all employees. Plumas County ("County") recognizes that breast milk is the optimal food for growth and development of infants, and seeks to promote a breastfeeding-friendly work environment that supports the legal right and necessity of employees who choose to express milk in the workplace. In accordance with Senate Bill 142 ("SB 142"), the County has developed and implemented this written Lactation Accommodation Policy to provide breaks, and safe private locations, to reasonably accommodate all employees who desire to express breast milk at work.

II. NOTICE

A copy of this policy will be provided to every newly hired employee, and to any employee who requests or inquires about pregnancy or parental leave. The written request form is attached below and should be completed by the employee and submitted to their supervisor at least five (5) business days prior to the start date of the requested accommodation. The County will respond to an employee's written request for lactation accommodation within five (5) business days from receipt of request.

III. USE OF MEAL AND REST BREAKS

The County will provide a reasonable amount of break time to accommodate an employee's need to express breast milk or accommodate any medical condition related to breast-feeding. The break time, if possible, be taken concurrently with other rest and meal break periods already provided.

Nonexempt employees should document any time taken that does not run concurrently with normally scheduled periods, and such time will be unpaid.

IV. LACTATION SPACE

The County will provide breastfeeding employees with space in close proximity to the employee's work area that is shielded from view and free from intrusion from co-workers and the public, to express breastmilk. The room or location may include the place where the employee normally works if it otherwise meets the requirements of the lactation space. Restrooms are prohibited from being utilized for lactation purposes.

The designated lactation space will:

- Be safe, clean and free of toxic or hazardous materials (as defined in Labor Code § 6382);
- Contain a place to sit and a surface to place a breast pump and personal items;
- Have access to electricity; and
- Have access to a sink with running water and a refrigerator in close proximity to the employee work area.

Multi-purpose rooms may be used as lactation space if they satisfy the above requirements; however, use of the space for lactation purposes shall take precedence over other uses for the time it is in use for lactation purposes.

V. RETALIATION RELATED TO BREASTFEEDING OR EXPRESSING MILK IS PROHIBITED

The County expressly prohibits retaliation against lactating employees for exercising their rights granted by the law. Examples of employer-prohibited conduct includes:

- The denial or reasonable break time or adequate space to express milk;
- Discharge of an employee;
- Discrimination or retaliation, in any manner, against an employee who exercises, or attempts to exercise, any right protected under the law.

An employee may report a violation of this chapter to the Labor Commissioner's field enforcement unit <https://www.dir.ca.gov/dlse>.

RIGHT TO RESPOND – Plumas County Personnel Rules

RULE 17 – GRIEVANCE PROCEDURE

17.01 Policy: The County hereby establishes a grievance procedure to deal promptly and equitably with employee grievances that are properly presented. No employee shall be subject to reprisal or disciplinary action for making a grievance in good faith.

17.02 Definition: A grievance is a written objection to a managerial act or omission that allegedly affects adversely or unfairly an employee's wages, hours, or other terms and conditions of employment, and for which the County has provided no other procedure for administrative relief.

The subject matter of a grievance may include:

- (1) Working condition not covered by an MOU (Memorandum of Understanding);
- (2) Interpretation of an MOU;
- (3) Violation of an MOU or these Rules by an officer or employee;
- (4) Work assignments exceeding position classification;
- (5) Denial of merit salary increases;
- (6) Interpretation of County policies affecting wages, hours, and other terms and

conditions of employment;

- (7) Disagreements between employees and supervisors over the implementation of departmental personnel policies.

17.03 Grievance Procedure:

(a) Step One (I): Informal Meeting: Within ten (10) days of the occurrence or the employee's knowledge of the occurrence which gives rise to the grievance, the employee may request an informal meeting with their immediate supervisor. The immediate supervisor shall meet with the employee within five (5) days to discuss the grievance in an effort to clarify the issue(s) and work towards agreement. The supervisor shall verbally present a decision within five (5) days of the informal meeting.

(b) Step Two (II): Written Grievance: If not satisfied with the immediate supervisor's oral response, the employee may file a written grievance (Step II) within ten (10) days with the next higher authority, or with the department head if the department head is the immediate supervisor.

A written grievance shall include a description of the following:

- (1) Circumstances giving rise to the grievance;
- (2) The adverse effect on, or unfairness to the employee;
- (3) The relief sought;
- (4) The results of the informal meeting.

A grievance may be amended in writing at any time without prejudice. A grievance may be withdrawn at any time and may be refiled without prejudice.

The authority with whom the grievance is filed shall confer with the employee and others involved, and shall respond in writing within ten (10) days explaining his or her decision and proposed action.

(c) Step Three (III): Filing with Department Head: This provision shall apply when the authority with whom the grievance is filed is not the department head. If not satisfied with the response in Step II, the employee may file the grievance in writing within ten (10) days with the department head. A copy of the Step II response shall be included with a copy of the grievance.

The department head shall respond within ten (10) days explaining his or her decision and proposed action. 17.04 Right to Appeal: If the grievance is denied, the employee shall be notified of the right to an appeal pursuant to Rule 18.

17.05 Time Limits: Grievances shall proceed within the prescribed time limits unless there is an extension of time by mutual consent between the employee and the County. If the employee exceeds any time limit, the grievance shall be deemed resolved upon the basis of the prior managerial response. If the County exceeds any time limit, the grievance shall be automatically referred to the next step in the procedure.

17.06 Resolution: Resolution of a grievance at any step of the procedure shall be final and binding on the County and the employee.

17.07 Employee Representative: The employee shall have the right to consult with and be assisted by a representative, union or otherwise, during all steps of the grievance procedure., starting at Step II. Any expenses incurred by the employee in the retention of representation shall be at the expense of the employee.

You may provide a written and/or verbal response to this Notice. Your written response must be received by your department head within five (5) working days of your return to work.

If you wish to provide a verbal response, you must advise your department head of that fact by contacting your department head at their office number no later than the close of business within the five days of your return to work. Your department head will set up a conference for you to present any response to this Notice after you return to work.

This conference is not designed to be a formal evidentiary hearing, but you may be represented by legal counsel or another individual of your choice.

Your failure to provide a written response or to request a conference will constitute a **waiver** of your right to provide a response. Accordingly, the department head's decision to either sustain, modify, or reject this action will be based upon a review of this Notice.

The department head shall provide you with written notice of his/her determination within 5 work days of the response conference.

NOTE: In addition to the County's Grievance Procedure, you can refer to your bargaining units Memoranda of Understanding (MOU) for additional information on filing grievances. Each MOU is posted on the Human Resources website.

VI. RECORDKEEPING

For a period of three (3) years from the date of written request, the County will maintain a record of the written requests for Lactation Accommodation that includes the name of the employee, the date of request, and a description of how the request was resolved. Human Resources will maintain these records.

All written denials by the County must also be maintained for a period of three (3) years from the date of the written request.

This Plumas County Lactation Accommodation Policy has been updated in accordance with Senate Bill 142 ("SB 142") and approved by Plumas County Board of Supervisors

I acknowledge receipt of the Lactation Accommodation Policy:

Name

Date

Human Resources Staff

Date

**PLUMAS COUNTY
REQUEST FOR LACTATION ACCOMODATION FORM**

Date of Request: _____

Name of Employee: _____

Department/Address of Worksite: _____

Contact Phone: _____

Start Date for Requested Accommodation: _____

Requested Number of Breaks per Day: _____

Proposed Lactation Break Schedule- Dates and Times:

You may update your schedule as needed but inform your supervisor of a revised lactation schedule.

Employee Signature: _____ Date: _____

****Please return this form to your supervisor or Human Resources at least five (5) business days before the start of request for Lactation Accommodation. ****

Received by: _____ Date: _____

Approved by: _____ Date: _____

***Submit a copy of this form to Human Resources Department prior to employees return to work date.