

## Talking to Your Boss About Your Pump: West Virginia

*This fact sheet focuses on West Virginia law. Laws will differ in other states. This document is for purposes of information only. The impact of laws changes based on the facts involved. For legal advice, talk to an attorney.*

Returning to work after having a child can be a big transition, especially if you are breastfeeding. As a nursing parent, you'll need break time and space for pumping breast milk at work, and possibly other changes or accommodations that will allow you to stay healthy and continue breastfeeding your baby while doing your job. This guide will help you make a plan to take care of your breastfeeding needs at work. It explains your legal protections and gives you practical tips for how to talk to your boss about breastfeeding accommodations.

### PLANNING FOR YOUR BREASTFEEDING-RELATED NEEDS AT WORK:

- If you will be away from your baby during the workday, you'll need regular breast milk pumping breaks. Most nursing parents need 2-3 breaks during an 8-hour workday, depending on their baby's feeding schedule and their bodies' needs. Expressing breast milk typically takes 15-20 minutes per session, but sometimes longer, especially if taking less frequent breaks. This does *not include* time required to travel to and from the lactation space, set up the pump, disassemble and clean up, and store the milk. The length of time needed to pump depends on many factors, including your milk supply, your baby's feeding schedule, the type of pump you use, and how fast your body lets down milk.
- You will also need clean, private space where you can pump. Breast milk is food, so this space should not be a bathroom or in another dirty or unsanitary space. Ideally this space:
  - Has a locking door and window coverings
  - Has a chair for you to sit in and a flat, clean surface, such as a table or desk, where you can place your pump and bottles of milk
  - Has an electrical outlet for an electric pump
  - Is close to clean running water to clean your pump parts

**Understanding Your Legal Protections:** Under a West Virginia law<sup>1</sup> that applies to employers with 12 or more employees, you have a right to a reasonable accommodation for needs related to pregnancy, childbirth, and related medical conditions, which should include **reasonable break time and space** for expressing breast milk. Your employer is not required to provide any accommodation that would be an undue hardship because it would cause the employer significant difficulty or expense. Your health care provider may need to write a letter explaining what accommodations you need.

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<sup>1</sup> W.V. Code §5-11B-2.

Additionally, under the federal Break Time for Nursing Mothers Law, if you are eligible for overtime pay under federal law (meaning you're a non-exempt employee<sup>2</sup>), you are entitled to (1) **reasonable break time** to express milk as needed during the workday, and (2) a **non-bathroom space** to express milk where coworkers or other people will not intrude, until your baby is one year old. Employers are exempt from the Break Time law if they both (1) have fewer than 50 employees and (2) can prove that providing breaks or space would cause their business significant difficulty or expense. If you are not covered by the Break Time law, you may be entitled to accommodation under other laws, as discussed below.

- Some nursing mothers may need other lactation accommodations, depending on their individual needs and workplace. These may include:
  - If you travel for work: arrangements for time and space to express milk while away from your normal workspace, including longer layovers in airports or utilizing airports with lactation spaces, when possible. (You can download apps like [Moms Pump Here](#) to find pumping locations.)
  - If you have a medical complication related to breastfeeding, such as mastitis: time off from work for treatment and recovery, or some other reasonable accommodation that addresses your impairment.
  - If you are not able to express enough milk using a breast pump: permission to have a caregiver bring the baby to your workplace for feedings.
  - If your work involves exposure to smoke, heavy metals, radiation, or other toxins that could affect your breast milk<sup>3</sup>: accommodations your doctor may recommend to reduce your exposure, such as use of protective gear (gloves, protective clothing, or respirators), job restructuring, or temporary reassignment to a different position that is available.
  - If you cannot perform your normal duties safely while breastfeeding, like for example a police officer whose restrictive and heavy bulletproof vest would decrease her milk supply and put her at risk of infection: a temporary transfer to an alternative (light duty) assignment or job restructuring.

**Understanding Your Legal Protections:** Under a West Virginia law<sup>4</sup> that applies to employers with 12 or more employees, **you have a right to a reasonable accommodation** for needs related to pregnancy, childbirth, and related medical conditions, which should include accommodations needed for lactation. Your employer is not required to provide any accommodation that would be an undue hardship because it would cause the employer

<sup>2</sup> For more information on whether you are exempt or non-exempt from the federal overtime law, the Fair Labor Standards Act, visit the Department of Labor's [website at http://webapps.dol.gov/elaws/whd/flsa/screen75.asp](http://webapps.dol.gov/elaws/whd/flsa/screen75.asp).

<sup>3</sup> More information about accommodations for breastfeeding workers exposed to potentially hazardous materials is available at: <https://www.cdc.gov/niosh/topics/repro/breastfeeding.html>.

<sup>4</sup> W.V. Code §5-11B-2.

significant difficulty or expense. Your health care provider may need to write a letter explaining what accommodations you need.

Additionally, under a federal law called the Pregnancy Discrimination Act, which applies when your employer has 15 or more employees, **you should be given the same ability to address breastfeeding-related needs as is given to employees under other circumstances.** For example, if other employees are allowed to modify their schedule to take smoking breaks, you should be allowed to modify your schedule to take breaks for pumping. And if other employees are given alternative assignments to accommodate temporary illnesses, the same accommodations should be provided to you if necessary for lactation-related reasons.

### **WHEN TO TALK TO YOUR BOSS:**

- To ensure you have what you need to express milk on your first day back from leave, it's important to talk to your employer about your intention to express milk at work **before you return to work**, ideally before you go out on leave. However, there are no legal deadlines for notifying your employer.
- Before starting the conversation, it's a good idea to do your homework by reviewing the information in this document and any **policies** your employer has for breastfeeding employees, talking to any coworkers who have breastfed before, and thinking through solutions that you think would work well for your needs.

### **WHAT TO SAY TO YOUR BOSS:**

- Have a conversation with your manager about your breastfeeding-related needs. Your manager is familiar with your work responsibilities, schedule, and working space so can work with you to come up with a plan. If you don't feel comfortable talking with your manager, or think (s)he will give you trouble, you may instead decide to contact your human resources department. A good opportunity to discuss your breastfeeding needs is when you speak with HR about your childbirth leave.
- Tell your employer that you are, or are planning to, breastfeed your baby and will need to take breaks to express milk. Explain that you will also need access to a clean, private space that is not a bathroom. If you need another type of accommodation, explain that as well.
- **Be prepared to educate your employer** about the realities of breastfeeding and expressing milk. Not all managers or human resources professionals will initially understand the needs of breastfeeding employees. You may need to explain that:
  - Regular "pumping" breaks based on the baby's feeding schedule are necessary to avoid severe pain, risk of infection, risk to your milk supply, and other complications. Depending on your baby's age and other factors, you may have to take 2-3 breaks during an 8-hour workday.

- Continuing to breastfeed is very important to you because of all the health benefits for you and your baby. Breastfed babies are less likely to get sick, which means fewer days off of work for you.
- Breast milk is food for infants and so must be prepared and handled in a sanitary space - not a bathroom!
- Expressing breast milk typically takes 15-20 minutes per session, *not including* time required to travel to and from the lactation space, set up the pump, disassemble and clean up, and store the milk.
- Remind your employer that you are a dedicated employee and that you do not think that pumping breaks will affect your work performance.
- Come prepared with suggestions for space that you could use. If you can't think of an existing space that will work, you may have to identify a creative solution. For ideas that may work in your industry, check out:  
<https://www.womenshealth.gov/breastfeeding/employer-solutions/>
- Anticipate potential concerns that your boss may have and come prepared with a plan. For example, if your work will need to be covered by another employee during your pumping breaks, consider talking with coworkers to get their help. Communicate to your boss that you will take no more time than is necessary to pump and are still committed to doing a good job.
- If your boss asks for a note from your health care provider, make sure that the provider's note is as specific as possible about what you need and outlines why the requested accommodations are medically advisable for you (not only for your infant). Here are guidelines on writing effective work accommodation notes that you should share with your healthcare care provider: <https://www.pregnantatwork.org/breastfeeding-workplace-guide-for-healthcare-providers-2/>.
- Listen carefully and take notes after your conversation, especially about anything that sounded strange or wrong to you. Make sure to get all agreements in writing. You can do this by sending an email or a note to your boss describing your understanding of the agreement. Keep a copy for yourself.

**Understanding Your Legal Protections:** Unfair treatment based on breastfeeding (for example, **firing, punishing, or harassing** you because you are breastfeeding or expressing milk at work) is **illegal** under the Pregnancy Discrimination Act, which applies to employers that have 15 or more employees. State laws may provide additional rights (for example, if you work for a small employer).

**Questions? Call our free national legal hotlines:  
Center for WorkLife Law at (415) 703-8276  
A Better Balance at (212) 430-5982**