



How to Support Pregnant and Breastfeeding Students and Staff... Policy, Practice, and Protocols: Is Your District Prepared?

Presented for the Association of Chief Human Resources Officers and Equal Employment Officers

Dr. Cindy Vyskocil
Vice Chancellor, Human Resources
South Orange County Community College District

Rex Randall Erickson
Erickson Law Firm A.P.C.
800.864.8111 | www.EricksonLaw.com

How to Support Pregnant and Breastfeeding Students and Staff... Policy, Practice, and Protocols: Is Your District Prepared?

Presented for the Association of Chief Human Resources Officers and Equal Employment Officers

Dr. Cindy Vyskocil
Vice Chancellor, Human Resources
South Orange County Community College District

Rex Randall Erickson
Erickson Law Firm A.P.C.
800.864.8111 | www.EricksonLaw.com

Disclaimer

The following information is designed to be a general guide and should NOT be considered legal advice. For questions about specific situations, please consult an attorney.

Disclaimer

The following information does not necessarily represent the views of the South Orange County Community College District or its Board of Trustees.

Seminar Overview

- I. Importance of Pregnancy and Breastfeeding Accommodation
- II. Legal Obligations
 - a. District Employees
 - b. Students
- III. Accommodation and Policy Considerations
 - a. District Employees
 - b. Students
- IV. Practical Policies and Best Practices

Importance of Pregnancy and Breastfeeding Accommodation

Importance of Pregnancy Accommodation

- The EEOC received 5,797 pregnancy discrimination charges in 2011. (U.S. Equal Opportunity Commission, *Pregnancy Discrimination Charges EEOC & FEPA's Combined*.)
- According to a 2016 report, the EEOC and state agencies continued to receive more than 6,000 pregnancy discrimination charges per year from 2011-2015. (National Partnership for Women and Families, *By the Numbers: Women Continue to Face Pregnancy Discrimination in the Workplace* (2016).)
- More than 4% of pregnancy discrimination charges from 2011-2015 were filed by Education industry employees.

Importance of Pregnancy Accommodation

- According to a study at the University of Massachusetts, Amherst, each child reduces a woman's hourly wages by 4%. (Natalie Kitroeff and Jessica Silver-Greenberg, *Pregnancy Discrimination is Rampant Inside America's Biggest Companies*, NY TIMES (June 15, 2018).)
- Based on a 2011-12 analysis, the U.S. Department of Education found that students with children are less likely to complete a degree.¹
- Students having and raising children are disproportionately women and students of color.

1. Institute for Women's Policy Research, *Fact Sheet: 4.8 Million College Students are Raising Children* (2014), analysis of data of the U.S. Department of Education, National Center for Educational Statistics.

Importance of Pregnancy Accommodation

- According to the U.S. Department of Education, pregnancy is the most common family-related reason identified by female students for dropping out of high school.²
- Earning a high school diploma increases earning potential and reduces the likelihood of needing benefits such as TANF.

2. U.S. Department of Education, Office of Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students* (2013).

Importance of Pregnancy Accommodation

- Several types of leave may be available to provide pregnant women and new mothers time away from their employment, including FMLA Leave, CFRA Leave, Pregnancy Disability Leave, Paid Parental Leave, and Kin Care or bonding leave under the Education Code.
- While providing adequate leave may help alleviate the burden on pregnant and parenting employees, this presentation focuses on programs and policies to support pregnant and breastfeeding employees in the workplace and students on campus.

Importance of Breastfeeding: Infant and Maternal Health

- According to studies compiled by the Centers for Disease Control and Prevention ("CDC"),³ breastfeeding has many health benefits for infants.
- The CDC has also confirmed that breastfeeding is associated with health benefits for the mother.

³ Centers for Disease Control and Prevention, *Strategies to Prevent Obesity and Other Chronic Diseases: The CDC Guide to Strategies to Support Breastfeeding Mothers and Babies* (2013), citing a 2007 Report by the Agency for Healthcare Research and Quality.

Importance of Breastfeeding: Infant and Maternal Health

- The U.S. Surgeon General's 2011 Call to Action to Support Breastfeeding⁴ also noted additional infant benefits from breastfeeding.
- The Surgeon General noted the nutritional benefit to infants, as affirmed by several associations of health professionals, and the psychological benefits of breastfeeding for mothers.

4. U.S. Department of Health and Human Services, *The Surgeon General's Call to Action to Support Breastfeeding* (Washington, D.C. 2011).

Importance of Breastfeeding: Economic Impact on Employers

- The U.S. Department of Health and Human Services ("DHHS") cites to research indicating that breastfeeding reduces employer healthcare costs.⁵
- Healthier breastfed babies reduce the likelihood that a parent will miss work to care for an ill child.
- Women who receive breastfeeding support at work are more likely to return from maternity leave and return to work earlier.

5. U.S. Department of Health and Human Services Office on Women's Health, *The Business Case for Breastfeeding Support* (2015).

Importance of Breastfeeding: Employee and Student Retention and Success

- The DHHS cites a study showing that employers with lactation support programs have higher employee retention rates for working mothers.
- Employees provided lactation support programs in the workplace report better job satisfaction and higher productivity.
- Students with children are less likely to complete a degree.
- Undergraduate students with children accrue more student debt than students without children.

Importance of Breastfeeding: Support Policies

- The CDC has specifically identified a goal of increasing breastfeeding initiation and duration through policies designed to increase support for breastfeeding women as a strategy for preventing obesity and chronic diseases.
- The U.S. Surgeon General has also indicated the importance of breastfeeding policies in reducing racial and ethnic disparities in breastfeeding rates.
- The Surgeon General noted multiple workplace barriers that reduced breastfeeding duration.

Legal Obligations Regarding Employees and Students

Legal Obligations Regarding Employees and Students

- School and Community College Districts are required under state and federal law to provide employees and students accommodations related to pregnancy and breastfeeding.
- A 2017 BreastfeedLA and California Women's Law Center study of higher education institutions in LA County found the majority of schools did not have lactation policies for students or employees.
- Many schools also lacked policies for parenting students and failed to identify a Title IX Coordinator on the school's website.

Legal Obligations: Employees

- Title VII of the Civil Rights Act prohibits an employer from taking an adverse employment action because of the employee's sex. (42 U.S.C. § 2000e-2.)
- Prohibited sex discrimination includes discrimination based on pregnancy, child birth, or related medical conditions. (42 U.S.C. § 2000e(k).)
- Section 7(r) of the Fair Labor Standards Act requires a covered employer to provide employees reasonable lactation accommodations, unless it employs fewer than 50 people and doing so would cause undue hardship.

Legal Obligations: Employees

- Federal courts in other jurisdictions have held that lactation is a related medical condition of pregnancy. (EEOC v. Houston Funding II, Ltd. (2013) 717 F.3d 425.)
- Although the California federal courts have not considered the question under federal law, one has found lactation to be a medical condition of pregnancy under California law. (Gonzales v. Marriot International, Inc. (2015) 142 F. Supp. 3d 961.)
- California law prohibits discriminatory employment practices based on sex, and requires reasonable accommodation for employees with conditions related to pregnancy, including lactation. (Gov. Code §§ 12940-45; 2 C.C.R. § 11035(d).)

Legal Obligations: Employees

- All employers are required to provide a reasonable amount of break time to accommodate an employee's desire to express breast milk for an infant child. (Cal. Labor Code § 1030.)
- Employers must make reasonable efforts to provide an employee private space, other than a bathroom stall, near the work area to express milk. (Lab. Code § 1031.)
- Lactation breaks need not be provided if they would seriously disrupt employer operations. (Lab. Code § 1032.)

Legal Obligations: Students

- Title IX of the Education Amendments of 1972 prohibits any school receiving federal funds from discriminating on the basis of sex. (20 U.S.C. § 1681.)
- Federal regulations specify that a school "shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity." (34 C.F.R. § 106.40.)

Legal Obligations: Students

- A school receiving federal funds is required to treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery in the same manner and under the same policies as any other temporary disability. (34 C.F.R. § 106.40.)
- If a student with a pregnancy related condition does not qualify under the existing leave policy, a school is required to treat the condition as justification for leave if deemed medically necessary by a physician and reinstate the student following leave. (34 C.F.R. § 106.40.)
- For Title IX purposes, lactation is a medical condition related to pregnancy. (29 C.F.R. § 38.8.)

Legal Obligations: Students

- In California, public schools are required to provide a lactating pupil on campus reasonable accommodations for breastfeeding.
- The student must not suffer academic penalty for using lactation accommodations during the school day. (Cal. Educ. Code § 222.)
- Pregnant and parenting graduate students are also protected against discrimination and must be granted leave and excused absences. (Cal. Educ. Code § 66281.7.)

Pregnant and Lactating Employee and Student Accommodations and Policy Considerations

Accommodation and Policy Considerations: Employees

- According to National Immunization Study data for 2007, while more than half of mothers initiated breastfeeding, less than half were breastfeeding at 6 months, and few at 1 year.
- Further, less than half of babies breastfed exclusively for the first 3 months, and very few for 6 months.

Accommodation and Policy Considerations: Employees

- The U.S. Surgeon General Call to Action cited a Society for Human Resources Management survey indicating only 25% of companies had lactation programs or accommodated breastfeeding. (2009)
- In 2011, the U.S. Surgeon General also cited returning to work as a significant barrier to breastfeeding.

Accommodation and Policy Considerations: Students

- High dropout rate for student parents, with pregnancy as the most common reason female students dropout of school.
- In addition to meeting its legal requirements regarding pregnancy and breastfeeding accommodation, a District may offer practical accommodations to assist pregnant or breastfeeding students and potentially reduce the student's dropout risk.

Practical Policies and Best Practices

Best Practices: Pregnant and Parenting Policies

- Recommended Policy Components:
 - Leave excused when medically necessary;
 - Modification of duties or assignments;
 - Breaks or schedule flexibility;
 - Deadline extensions or optional alternative courses;
 - No exclusion from any school program or extracurricular activity;
 - Reinstatement to prior status upon return;
 - No academic penalty for student leave;
 - Identify Title IX Coordinator and adopt grievance procedures; and
 - Adoption and publication of written policy.

Best Practices: Breastfeeding Accommodation Policies

- Recommended Policy Components:
 - Permission to bring any necessary equipment on campus;
 - Reasonable lactation breaks at regular intervals without penalty;
 - Private, secure space to express breast milk;
 - Access to space to safely store breast milk;
 - Access to sink for cleaning equipment;
 - System to coordinate use of private lactation space(s); and
 - Adoption and publication of written policy with a complaint process.

Best Practices: Effective Policy Implementation

- Adopt supportive written policies and publish or communicate the policies;
- Clearly identify staff members responsible for implementing and coordinating compliance with policies;
- Train all employees regarding policies;
- Protect students against discrimination or harassment;
- Identify private space or privacy solutions to accommodate breast milk expression; and
- Protect the confidential medical information of students.



Any questions?

Thank You

Dr. Cindy Vyskocil
Vice Chancellor, Human Resources
South Orange County Community College District

Rex Randall Erickson
Erickson Law Firm A.P.C.

800.864.8111 | www.EricksonLaw.com