



Workplace Breastfeeding Support Model Policy

Rationale

This Breastfeeding Support Policy was developed to provide employers with recommendations and guidance on ways to support employees who are breastfeeding.

Section 4207 of the Patient Protection and Affordable Care Act revised the Fair Labor Standards Act (FLSA) by requiring employers to provide:

- "1) A reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has the need to express the milk; and
- 2) A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

Note: The federal law only covers employees who are not exempt from section 7 of the FLSA. In addition, employers with fewer than 50 employees are not subject to compliance *if* the provision would impose an undue hardship. Undue hardship would be determined by the US Department of Labor by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business.

This legislation has significant impact on worksite accommodations for women who breastfeed. According to the US Department of Labor, mothers with children under 1 year old had a workforce participation rate of over 55% in 2017. The American Academy of Pediatrics recommends babies be breastfed for at least the first 12 months of life. According to the Centers for Disease Control and Prevention, in 2015 83% of mothers in the United States initiate breastfeeding, and only 35% of babies are still breastfed at twelve months of age. [Click here](#) to view the CDC Breastfeeding Report Card to see how South Dakota compares.

There are many reasons why individuals who breastfeed are unable to breastfeed for as long as they desire, and returning to work is a primary factor.

Workplace barriers to continued breastfeeding include:

- Lack of privacy and time constraints
- Fear of being perceived as less productive

However employers can support breastfeeding employees by:

- Creating a culture of workplace support
- Providing adequate space and time to express breastmilk
- Demonstrating support from supervisors and colleagues
- Providing workplace education about breastfeeding at work

Benefits

Supportive breastfeeding policies and practices in the workplace not only benefit the employee but also provide a number of benefits to the baby and the employer.

For Employers

- *Productivity* – When employers provide breastfeeding support, breastfeeding employees tend to have fewer absences and tardiness because their infants are more resistant to sickness.
- *Organizational Loyalty* – Breastfeeding employees often feel increased loyalty to their employer because it demonstrates that their workplace supports the employee, their family, and their health.
- *Recruitment and Retention* – Employer support for breastfeeding serves as a recruitment tool. Employees that offer lactation support programs often have higher retention rates for female employees.
- *Job satisfaction* – Having effective lactation support programs demonstrates care for employees and their health. Businesses that display support for their employees facilitate greater workplace satisfaction.

For Mothers

- *Productivity* – Lactation support programs in the workplace often demonstrate higher productivity. This increase in productivity is frequently attributed to a lessened emotional and psychological burden associated with being away from the baby, as well as higher energy and greater optimism.
- *Fewer Distractions* – Individuals who can express breast milk in the workplace are better able to concentrate during the workday. A breast infection and/or a drop in ability to produce milk can result if a mother is unable to express breast milk each time she feels the need to do so.
- *Absenteeism* – Individuals who use lactation support programs and facilities exhibit lower absenteeism.
- *Health* – Breastfeeding can lower rates of diabetes as well as breast, uterine, and ovarian cancer. Breastfeeding also lessens osteoporosis, benefits child spacing, promotes emotional health, and reduces the risk of postpartum depression in new mothers.

For Babies

- *Immunity* – Breastfeeding passes on antibodies to babies, which help protect their immune systems from disease. Breastfed babies tend to have fewer and less severe instances of certain short-term illnesses, including bacterial meningitis, diarrhea, ear infections, respiratory infections, and urinary tract infections. Breastfeeding protects against future illness and disease.
- *Obesity* – Babies who are breastfed have a reduced risk of both childhood and adult obesity.
- *SIDS* – Exclusive or partial breastfeeding is correlated with a decreased risk of sudden infant death syndrome (SIDS).

Model Policy Guidelines

Effective Date: _____ **Review Date:** _____

[Business Name] ensures the following policy and practices will be upheld to ensure a supportive workplace breastfeeding environment that complies with state and federal laws and demonstrates a culture of breastfeeding support and the role it plays in overall health and worksite wellness.

Breastfeeding Employees, Volunteers, Trainees, and Interns (herein referred to as employees):

[Business Name] will:

1. Recognize the responsibility a mother has to both her job and her child when she returns to work, acknowledging there are many health benefits associated with breastfeeding and that healthy employees and families benefit our business.
2. Support mothers who breastfeed at work and commit to helping employees continue breastfeeding when they return.
3. Provide flexible schedules and a reasonable amount of time for direct breastfeeding or expressing breast milk for 1 year after the child's birth, acknowledging the frequency and duration of time necessary may vary depending on the needs of the employee.
 - a. For time above and beyond normal lunch and breaks, employees can work with their supervisor to work an adjusted schedule or use leave.
 - b. Employers are not required to compensate for breaks taken to express breast milk. However, if an individual chooses to use an established compensated break time to express breast milk, they must be compensated as they normally would.
 - c. Time to travel to or from a provided location that is not in close proximity to the workspace is considered work time and does not require the employee to either make up the time or use leave.
 - d. The same accommodations and flexibility are available to employees when traveling.
4. Provide employees with a private space (NOT a bathroom) that is shielded from view and free from intrusion of others to directly breastfeed or express breast milk. While the space does not need to be exclusively dedicated to this purpose, a temporary space that meets best practices listed below is appropriate. All efforts will be made to ensure the space provided will be in close proximity to the employee's workspace.
 - a. Each space will provide, at a minimum, access to electricity (outlets), a comfortable chair, sink and refrigerator for breast milk storage in the room or nearby (a community refrigerator will suffice for breast milk storage as breastmilk is not hazardous bodily fluid and it is not a contamination danger), reasonable method for scheduling use (i.e. paper sign-up sheet, dry-erase board, or an online calendar schedule as time allotted for scheduling is usually in 30 minute increments), and privacy signage.

- b. Additional accommodations will be guided by the [Checklist of Best Practices to Consider for Optimal Breastfeeding Accommodations](#).
 - c. Janitorial staff will clean as part of a routine cleaning regimen.
 - d. If the agency opens the space to visitors, clients, or the public, employee needs are the priority.
 - e. Employees are not required to use the private space if they do not prefer it. Employees may choose to express breastmilk in an alternate location, free from view, such as their own office or work space.
 - f. Individuals who directly breastfeed shall not dispose of diapers or other odorous materials in the space provided for breastfeeding or expressing milk. Individuals will ensure materials are stored properly in an area not used by other staff and taken home or disposed of each day.
5. Provide information about breastfeeding support and accommodation in break spaces where other mandated notices are displayed, in staff communications and on agency websites, and to new staff or volunteers during new employee training and orientation.
 6. Provide annual employee education that will explain why breastfeeding mothers need support from their employer and co-workers and promote the location(s) of lactation room(s).
 7. Require use of the [Breastfeeding Accommodation Form](#). The form must be provided to all employees planning to take maternity leave with the expectation that it be returned 30 days prior to the expected maternity leave start date, if practical. This ensures the employee's supervisor(s) and employer are prepared to provide appropriate accommodations when the employee returns to work.
 8. Treat conduct that reasonably interferes with an employee's work performance, that creates an intimidating, hostile, or offensive work environment, or that inhibits an employee's ability to breastfeed or express milk in accordance with this policy, as harassment. (i.e. disapproving comments or criticism of employees who use time for lactation; jokes, comments, or ridicule that may result in embarrassment for employees whether lactating or not; tampering with or theft of lactation equipment or stored pumped milk; altering or scheduling over break times or planned break times intended for lactation purposes.)

Breastfeeding Customers:

[Business Name] will:

1. Comply with South Dakota codified law 25-5-35 to support all employees, customers, and visitors.
 - a. SD codified law 25-5-35 states, "Breastfeeding permitted in certain locations. A mother may breastfeed her child in any location, public or private, where the mother and child are otherwise authorized to be present as long as the mother is in compliance with all other state and municipal laws. However, no municipality may outright ban breastfeeding in public places."

Compliance

Use the above recommendations as a guide for your business. Employers must ensure compliance with all federal and state laws at a minimum. Implementing a policy that will fit your business and benefit your employees is the overall goal, and policy compliance should be considered for this purpose. Your worksite wellness committee may be the perfect group to ensure this policy will remain a priority.

Final Statement

By implementing this model policy in its entirety or choosing to tailor this policy to your business' needs, you are taking a great first step in creating a healthy environment for the breastfeeding employees at your worksite!

Definition of Terms

- **Breastfeeding:** The method of feeding a baby with milk directly from the breast; suckling or nursing; giving baby milk from the breast.
- **Expressing Breast Milk:** The process by which an individual expels milk from the breast. Breast milk can be stored and fed to the baby at a later point in time. Milk may be expelled manually using the hands or with a pump especially designed for expressing breast milk.
- **Private Space:** A space that individuals can use to breastfeed or express milk. The space must be shielded from view and free from intrusion of others. There should be a place to sit and a flat space other than the floor to place the breast pump and other supplies. The space should provide access to electricity for use of the breast pump.

Resources/References

- 1) American Academy of Pediatrics Breastfeeding Recommendation <https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/aap-reaffirms-breastfeeding-guidelines.aspx>
- 2) Centers for Disease Control and Prevention
<https://www.cdc.gov/breastfeeding/data/reportcard.htm>
- 3) Drago, R., Hayes, J., & Youngmin, Y. (2010). *Better health for mothers and children: Breastfeeding accommodations under the Affordable Care Act*. Washington, DC: Institute for Women's Policy Research.
- 4) Eat Smart North Carolina: Businesses leading the way in support of breastfeeding
<https://www.nutritionnc.com/breastfeeding/docs/ESMMBreastfeedingGuideLowLink.pdf>
- 5) Murtagh, L, & Moulton, A.D. (2011). *Working mothers, breast feeding, and the law*. American Journal of Public Health, 101(2), 217-223.
- 6) Ortiz, J, McGilligan K, & Kelly P. (2004). *Duration of breast milk expression among working mothers enrolled in an employer-sponsored lactation program*. Pediatric Nursing, 30(2):111-119.
- 7) Ryan, A. S., Wenjun, Z., & Acosta, A. (2002). *Breastfeeding continues to increase into the new millennium*. Pediatrics, 110, 1103-1109.
- 8) Slavit, W.I. (Ed.). (2009). *Investing in workplace breastfeeding programs and policies: An employer's toolkit*. Washington, DC: National Business Group on Health
- 9) South Dakota Department of Health, WIC Program
www.sdwic.org/breastfeeding/breastfeeding-information/
- 10) United States Department of Labor, Bureau of Labor Statistics
<https://www.bls.gov/news.release/famee.t06.htm>
- 11) United States Department of Labor, Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision. https://www.dol.gov/whd/nursingmothers/Sec7rFLSA_btnm.htm
- 12) United States Office of Personnel Management, Guide for Establishing a Federal Nursing Mother's Program. <https://www.opm.gov/policy-data-oversight/worklife/reference-materials/nursing-mother-guide.pdf>
- 13) Vennemann, M.M., Bajanowski, T., et al. (2009). *Does breastfeeding reduce the risk of sudden infant death syndrome?* Pediatrics, 123(3), 406-410.

