

CLIENT NEWS BRIEF

Bathrooms Are No Longer Acceptable Lactation Accommodations

Beginning January 1, 2019, employers will have to make reasonable efforts to provide employees with the use of a room or location, other than a bathroom, as a lactation accommodation.

Existing law already requires employers to make reasonable efforts to provide employees the use of a room or location, other than a single toilet stall, in close proximity to the employee's work area for the purpose of expressing milk in private. Under these requirements, employers could provide space in a bathroom as an accommodation. Assembly Bill (AB) 1976, which was signed into law by Governor Jerry Brown on September 30, 2018, amends existing Labor Code requirements to expressly state that employers will now have to designate space other than a restroom facility for this purpose. Employees may still use the room or location where they normally work, such as a private office.

AB 1976 creates exceptions to the above requirements in limited circumstances. Relevant to districts and public agencies, an employer who can demonstrate the requirements impose an undue hardship relative to the size, nature, or structure of the employer's business, may remain legally compliant by providing a room or location, other than a single toilet stall, to an employee wishing to express milk in private.

While AB 1976 narrows employers' ability to create legally compliant *permanent* lactation accommodations, it also further amends Labor Code section 1031 to allow employers to create *temporary* lactation locations, so long as the following conditions are met:

- The employer is unable to provide a permanent lactation location because of operational, financial, or space limitations.
- The temporary lactation location is private and free from intrusion while an employee expresses milk.
- The temporary lactation location is used only for lactation purposes while the employee expresses milk.
- The temporary lactation location otherwise meets the requirements for state law concerning lactation accommodation.

Because the provisions of AB 1976 take effect January 1, 2019, and violations are subject to a civil penalty, public agencies should take steps now to amend their board policies and administrative practices, and update employee handbooks regarding provisions interpreting Labor Code sections 1030 and 1031 to ensure they are compliant.

If you would like to discuss what might constitute an acceptable permanent or temporary lactation accommodation location, the process to be considered for an exception, or any other matters related to employee accommodations, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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