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WORKPLACE BREASTFEEDING LAWS IN CALIFORNIA

What California law guarantees nursing employees at work: lactation breaks, a private space to pump, reasonable accommodations, leave, and protection from discrimination.

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He writes these guides to put the state's labor laws into plain English, in neutral terms, with a citation for every claim.

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Breastfeeding provides important health benefits for mothers and their children,[1] and it is recommended by both the World Health Organization and UNICEF.[2] So how should a new mother handle breastfeeding once she returns to work?

California law gives nursing employees several overlapping protections. Employers must provide reasonable break time and a private space, other than a bathroom, to express breast milk;[3] they may not discriminate against or harass an employee because she is breastfeeding;[4] and many mothers also have rights to pregnancy-related accommodations and leave.[5]

This article, written by an employment attorney, explains those laws and how to enforce them.

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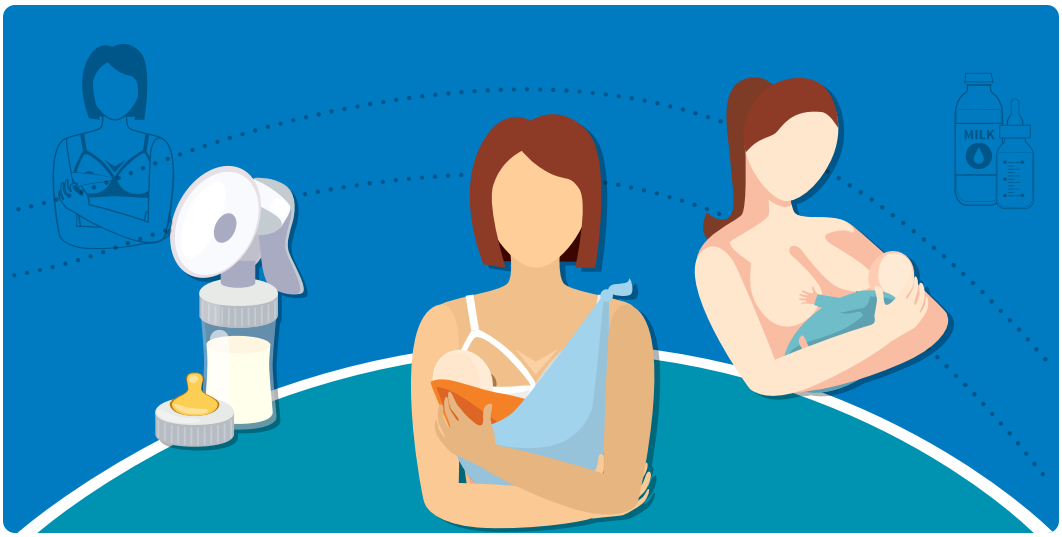
CH. 01

Lactation Breaks at Work (to Pump)



A *lactation break* is a period of time during the workday for nursing mothers to express breast milk (in other words, a break to pump). Both state and federal law require California employers to provide lactation breaks.[6] The federal right was expanded in 2022 to cover nearly all employees, including many salaried and exempt workers, for up to one year after a child's birth; California's protections are generally broader.[7]

The right to a lactation break does not apply if providing it would seriously disrupt the employer's operations.[8] This exception is hard to meet, however, and employers should be cautious before relying on it.

1.1 Duration of Lactation Breaks

The length of the lactation break must be a *reasonable amount of time* to express breast milk.[9] This somewhat vague standard usually means that there are no strict time limits.

The U.S. Department of Labor has observed that expressing breast milk itself typically takes about 15 to 20 minutes, but a reasonable break will usually be longer because

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the employee will likely need time to prepare beforehand.[10]

The appropriate length of the break will depend on a variety of factors. Those include:

- The frequency and number of breaks the nursing mother might need;
- The time it takes to walk to and from the lactation space and the wait, if any, to use the space;
- The time it takes the employee to retrieve her pump and other supplies from another location;
- The time it takes the employee to unpack and set up her own pump, or if a pump is provided for her;
- The efficiency of the pump used to express milk (employees using different pumps may require more or less time);
- The time it takes the employee to wash her hands before pumping and to clean the pump attachments when she is done expressing milk; and
- The time it takes for the employee to store her milk either in a refrigerator or personal cooler.[11]

1.2 When to Take Lactation Breaks

If the employee is entitled to take rest or meal breaks, she should try to take the lactation break at the same time.[12]

But if that isn't possible, or if the employee needs additional break time to express milk, the employer must still allow lactation breaks at other times.[13]

1.3 Location of the Lactation Break

Employers must provide nursing employees with the use of a room or other location, other than a bathroom, to express breast milk in private.[14] This is a firm requirement, not merely a matter of "reasonable efforts": since 2020, California law directs that the employer *shall provide* a compliant space.[15]

The lactation space must be close to the employee's work area, shielded from view, and free from intrusion while she is expressing milk.[16] It must also be safe, clean, and free of hazardous materials; contain a surface for a breast pump and personal

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items; contain a place to sit; and provide access to electricity (or an alternative, such as an extension cord or charging station) to run a breast pump.[17]

The employer must also provide access to a sink with running water and a refrigerator suitable for storing milk, or another cooling device such as a cooler, close to the employee's workspace.[18] If the employee's normal work area is private and otherwise meets these requirements, the employer may designate that area as the place to express milk.[19]

1.4 Pay During Lactation Breaks

If the employee takes lactation breaks at times other than her normal rest or meal breaks, the employer is *not* required to pay her for the lactation break.[20]

If the lactation break occurs at the same time as a paid break the employee would otherwise take, the break must be paid.

1.5 Requesting a Lactation Break

A nursing mother who wants to express breast milk at work should notify her employer of the need to do so. It is usually a good idea to put the request in writing, using respectful but concise language.

California employers must also maintain a written lactation-accommodation policy that explains how to request a lactation break, the employer's duty to respond, and the employee's right to file a complaint with the Labor Commissioner.[21] If the employer cannot provide compliant break time or space, it must respond to the employee's request in writing.[22]

Employers are legally prohibited from retaliating against an employee for requesting or taking a lactation break.[23] An employee cannot be punished, fired, or treated unfairly for exercising the right to a lactation break.

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CH. 02

Direct Breastfeeding in Public and at Work

In California, a mother has a right to breastfeed her child in any location, public or private.[24] To exercise this right, the mother and child must be:

- Authorized to be in the location where they wish to breastfeed, and
- Somewhere other than the private home or residence of another person.[25]

This law strongly suggests that, if an employer allows children in the workplace or provides on-site daycare, the employer must permit an employee to use her lactation breaks to breastfeed rather than pump.[26]

Importantly, however, employers do *not* have a legal obligation to permit parents to bring their children to work. Nor do California employers have an obligation to provide daycare facilities for working parents. So the right to directly breastfeed a child at work is limited in application.

It should also be noted that California courts have not directly addressed the overlap between the right to breastfeed in public and the right to take lactation breaks. So,

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although the law seems to indicate that direct breastfeeding is a right for mothers who have their children at work, it isn’t entirely clear.

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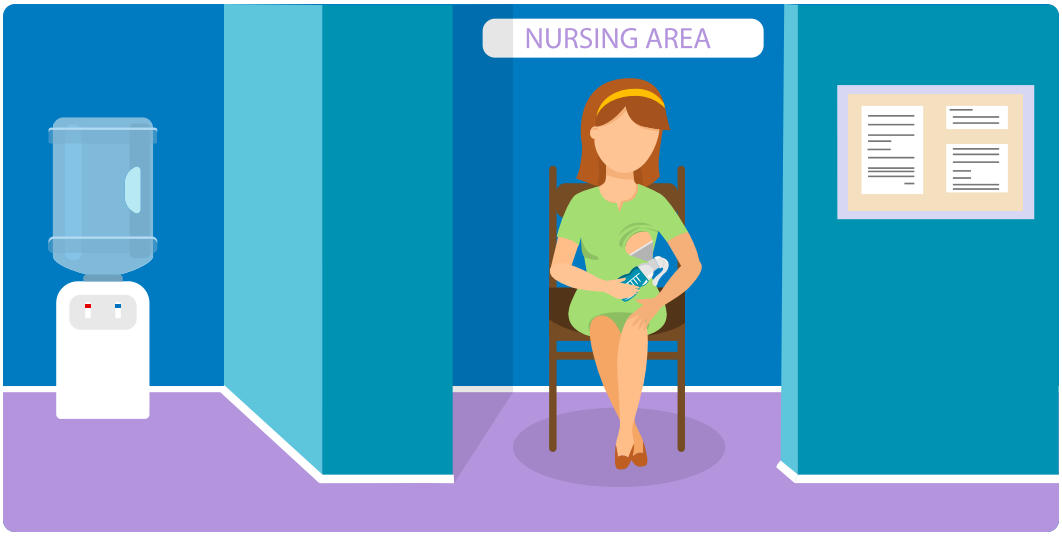
CH. 03

The Right to Breastfeeding Accommodations



As explained above, employers must provide nursing employees with the use of a private space, other than a bathroom, to express breast milk.[27] But California law also requires many employers to take additional steps to accommodate breastfeeding.

Employers in California must provide reasonable accommodations for an employee with a condition related to pregnancy or childbirth.[28] A *reasonable accommodation* is an adjustment to the employee's work environment that enables her to perform the essential functions of the job.[29]

For these purposes, lactation is a condition related to pregnancy or childbirth.[30] As a result, employers must accommodate an employee's lactation-related needs.

A reasonable accommodation for a lactating employee will often include transferring her to a less strenuous or hazardous position.[31]

To exercise this right, the employee must request the accommodation with the advice of her health care provider.[32] It is usually a good idea to put the request in writing and to save a copy.

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Employers may not retaliate against an employee for requesting an accommodation for a pregnancy-related condition.[33] This is true even if the requested accommodation is ultimately denied. In other words, an employee cannot be punished, fired, or treated unfairly for seeking an accommodation.

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CH. 04

Breastfeeding Discrimination and Harassment at Work

In California, it is unlawful for an employer with five or more employees to discriminate against an employee because of sex.[34]

For these purposes, *sex* is defined to include breastfeeding or medical conditions related to breastfeeding.[35] As a result, employers of five or more employees may not discriminate against an employee for reasons related to breastfeeding.[36]

Employers are likewise prohibited from harassing an employee for reasons related to breastfeeding.[37] The protections against workplace harassment are broader than those against discrimination: they apply regardless of the employer's size,[38] and they cover women who aren't technically employees.[39]

The result of these laws is that a woman may not be treated unfairly because she wishes to breastfeed, take lactation breaks, or pump, whether at home or at work.[40]

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CH. 05

Using Leave Time for Breastfeeding

Many working mothers have a right to certain periods of unpaid leave time as a matter of law. In the context of pregnancy and breastfeeding, the two main types of leave are:

- Up to 12 weeks of leave to bond with the child,[41] and
- Up to four months of pregnancy disability leave.[42]

An employee's right to these types of leave will depend on a variety of factors, including how long they have worked for their employer, how many employees the employer has, and how many hours the employee has worked in the past year.[43]

If an employee has a right to both types of leave, they can be applied cumulatively.[44] This means that an employee might be entitled to nearly seven months of total leave during or after a pregnancy.[45]

Although these leaves are unpaid by the employer, an employee may qualify for partial wage replacement through the state Employment Development Department (EDD). State Disability Insurance can replace a portion of wages while an employee is disabled by pregnancy or childbirth, and Paid Family Leave can do the same for up to eight weeks of bonding leave.[46] Both currently pay roughly 70 to 90 percent of

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wages, depending on income, up to a maximum that adjusts each year. These programs provide income only; the job protection comes from the leave laws described above.

Importantly, the two types of leave serve very different purposes. If an employee is entitled to leave to bond with a child, they have a right to take that leave regardless of whether they are breastfeeding.[47]

In contrast, pregnancy disability leave is available only to women who have been *disabled by pregnancy or childbirth* in some way.[48] In general, lactation is not a disabling condition for these purposes.[49]

So an employee cannot usually use pregnancy disability leave to breastfeed. If, however, the employee has medical complications related to lactation, they may have a right to use pregnancy disability leave for purposes related to breastfeeding.[50]

It is also possible that, if an employee is disabled by a condition related to breastfeeding or lactation, their employer will be required to provide time off *in addition to* the four months of pregnancy disability leave to accommodate the disability.[51]

These rights are explained further in our article: Maternity Leave Law in California.

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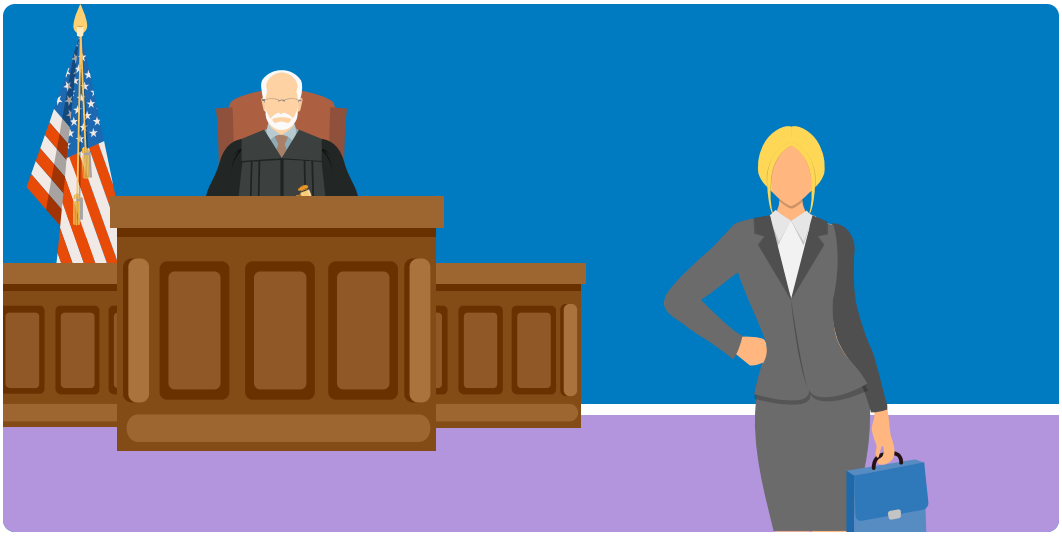
CH. 06

Consequences of Legal Violations



If an employer denies a nursing employee reasonable break time or adequate space to express milk, the denial is treated as a failure to provide a rest period. That entitles the employee to one additional hour of pay at her regular rate of compensation for each workday the break or space is denied.[52] The Labor Commissioner may also issue a citation and impose a civil penalty of $100 for each day the employee is denied break time or space.[53] In some cases, an employee may also recover civil penalties for the underlying violation, and keep a share, under the Private Attorneys General Act.[54]

Similarly, if the employer discriminates against a breastfeeding employee, it can be held liable for substantial damages. Those damages might include:

- **Compensatory Damages.** Money to compensate the mother for any harm she suffered. Examples include lost wages, unpaid wages, and medical expenses.[55]
- **Punitive Damages.** Money to punish the employer for its wrongful actions. These are especially likely if the employer retaliated against the employee for enforcing her breastfeeding-related rights.[56]

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- **Legal Expenses.** Money to pay the employee's litigation-related costs, including attorney fees, court fees, and expert witness fees.[57]

Clearly, a violation of California's laws that protect nursing mothers can be costly. It is usually best for employers to play it safe and accommodate nursing mothers to the greatest extent possible.

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CH. 07

How to Handle a Violation of Breastfeeding Rights

An employee whose breastfeeding rights have been violated has several options. Depending on the type of right that was violated, those options usually include:

- Resolve the dispute informally with the employer,
- File a complaint with the appropriate administrative agency, or
- File a civil lawsuit.

Which agency to turn to depends on the type of violation. A denied lactation break or an inadequate space to pump is a wage-and-hour matter for the California Labor Commissioner, so an employee can file a wage claim with that office.[58] Discrimination or harassment because of breastfeeding is instead a matter for the California Civil Rights Department (formerly the Department of Fair Employment and Housing), where an employee generally must file a complaint and obtain a right-to-sue notice before filing a lawsuit.[59]

The best course will depend on a number of factors specific to the employee's situation, including the type of right that was violated and the extent of the employee's suffering.

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Importantly, employers are generally prohibited from retaliating against employees who exercise or seek to enforce their rights.[60] As such, employees cannot be punished, fired, or treated unfairly for reporting violations of their breastfeeding rights.

It is often a good idea to have an employment attorney assist with pursuing these options. An attorney can evaluate the type of claim, recommend the best course of action, and negotiate the matter on the employee's behalf.

The deadlines to act differ by claim, and they can be unforgiving. For a discrimination or harassment claim, an employee generally has three years to file a complaint with the Civil Rights Department and, after receiving a right-to-sue notice, one year to file a lawsuit.[61] A claim for a denied lactation break or space, which is treated as unpaid wages, generally must be brought within three years.[62] Because the applicable deadline depends on the claim, it is usually a good idea to act quickly.

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References

1	See WebMD, Breastfeeding Overview.
2	WHO, Infant and Young Child Feeding Fact Sheet (Aug. 2020); UNICEF, Breastfeeding (Dec. 2025).
3	Labor Code, §§ 1030–1031; 29 U.S.C. § 218d(a).
4	Gov. Code, § 12940, subds. (a), (j).
5	Gov. Code, §§ 12945, 12945.2.
6	Labor Code, § 1030; 29 U.S.C. § 218d(a)(1).
7	The federal PUMP for Nursing Mothers Act (2022) moved these protections from former 29 U.S.C. § 207(r) to Section 218d and extended them to employees who were not previously covered, such as many salaried and exempt workers.
8	Labor Code, § 1032 [“An employer is not required to provide break time under this chapter if to do so would seriously disrupt the operations of the employer.”]. Under federal law, an employer with fewer than 50 employees is likewise not subject to the break time and space requirements where compliance would impose an undue hardship. 29 U.S.C. § 218d(c) [“An employer that employs less than 50 employees shall not be subject to the requirements of this section, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.”].
9	Labor Code, § 1030 [“Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee’s infant child ...”]; 29 U.S.C. § 218d(a)(1) [requiring “a reasonable break time for an employee to express breast milk for such

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employee's nursing child for 1 year after the child's birth each time such employee has need to express the milk"].

10 Reasonable Break Time for Nursing Mothers, 75 Fed.Reg. 80073, 80075 (Dec. 21, 2010).

11 Reasonable Break Time for Nursing Mothers, 75 Fed.Reg. 80073, 80075 (Dec. 21, 2010).

12 Labor Code, § 1030 ["The break time shall, if possible, run concurrently with any break time already provided to the employee."].

13 Labor Code, § 1030.

14 Labor Code, § 1031, subds. (a)–(b) ["An employer shall provide an employee with the use of a room or other location for the employee to express milk in private."; "A lactation room or location shall not be a bathroom and shall be in close proximity to the employee's work area, shielded from view, and free from intrusion while the employee is expressing milk."].

15 Labor Code, § 1031, subd. (a), as amended by Stats. 2019, ch. 720 (SB 142), eff. Jan. 1, 2020. A separate, limited exemption applies to an employer with fewer than 50 employees that can show the requirement would impose an undue hardship. Labor Code, § 1031, subd. (i).

16 Labor Code, § 1031, subd. (b).

17 Labor Code, § 1031, subd. (c).

18 Labor Code, § 1031, subd. (d).

19 Labor Code, § 1031, subd. (a) ["The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section."].

20 Labor Code, § 1030 ["Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid."]; 29 U.S.C. § 218d(b)(1) ["Subject to paragraph (2), an employer shall not be required to compensate an employee receiving reasonable break time under subsection (a)(1) for any time spent during the workday for such purpose unless otherwise required by Federal or State law or municipal ordinance."].

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21 Labor Code, § 1034. The policy must appear in the employee handbook or the employer's set of policies and be distributed to new employees at hiring and to any employee who asks about or requests parental leave.

22 Labor Code, § 1034, subd. (d).

23 Labor Code, § 1033, subd. (b) ["An employer shall not discharge, or in any other manner discriminate or retaliate against, an employee for exercising or attempting to exercise any right protected under this chapter."]; see also Labor Code, § 98.6.

24 Civil Code, § 43.3.

25 Civil Code, § 43.3 ["Notwithstanding any other provision of law, a mother may breastfeed her child in any location, public or private, except the private home or residence of another, where the mother and the child are otherwise authorized to be present."].

26 Compare Labor Code, § 1030, with Civil Code, § 43.3.

27 Labor Code, § 1031, subds. (a)–(b).

28 Gov. Code, § 12945, subd. (a)(3)(A) [prohibiting an employer from "refus[ing] to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if the employee so requests, with the advice of the employee's health care provider."].

29 *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 373.

30 Cal. Code of Regs., tit. 2, § 11035, subd. (d) ["A 'condition related to pregnancy, childbirth, or a related medical condition,' as set forth in Government Code section 12945, means a physical or mental condition intrinsic to pregnancy or childbirth that includes, but is not limited to, lactation."].

31 Cal. Code of Regs., tit. 2, § 11035, subd. (d).

32 Gov. Code, § 12945, subd. (a)(3)(A).

33 Gov. Code, § 12945, subd. (a)(4) [prohibiting an employer from interfering with, restraining, or denying "the exercise of, or the attempt to exercise, any right provided under this section"]; see also Gov. Code, § 12940, subd. (h) [general FEHA prohibition on retaliation].

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34 Gov. Code, §§ 12926, subd. (d) [defining “employer” to include any person regularly employing five or more persons], 12940, subd. (a) [making sex discrimination an unlawful employment practice, unless based upon a bona fide occupational qualification].

35 Gov. Code, § 12926, subd. (r)(1)(C) [“‘Sex’ includes, but is not limited to, the following: … Breastfeeding or medical conditions related to breastfeeding.”].

36 Gov. Code, §§ 12926, subds. (d), (r)(1)(C), 12940, subd. (a).

37 Gov. Code, § 12940, subd. (j)(1) [prohibiting sex-based harassment of an employee, applicant, unpaid intern, volunteer, or a person providing services pursuant to a contract].

38 Gov. Code, § 12940, subd. (j)(4)(A) [“For purposes of this subdivision only, ’employer’ means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.”].

39 Gov. Code, § 12940, subd. (j)(1) [applying to employees, applicants, unpaid interns, volunteers, and persons providing services under a contract].

40 See also Reasonable Break Time for Nursing Mothers, 75 Fed.Reg. 80073, 80078 (Dec. 21, 2010) [“If an employer treats employees who take breaks to express breast milk differently than employees who take breaks for other personal reasons, the nursing employee may have a claim for disparate treatment under Title VII.”].

41 See Gov. Code, § 12945.2.

42 See Gov. Code, § 12945, subd. (a)(1).

43 Gov. Code, §§ 12945, 12945.2.

44 Gov. Code, § 12945.2, subd. (p) [“An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.”].

45 Gov. Code, §§ 12945, 12945.2.

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46 Unemp. Ins. Code, §§ 2655, 3301, as amended by Stats. 2022 (SB 951); EDD, State Disability Insurance and Paid Family Leave.

47 Gov. Code, § 12945.2.

48 Gov. Code, § 12945, subd. (a)(1).

49 Cal. Code of Regs., tit. 2, § 11035, subd. (d) ["Generally lactation without medical complications is not a disabling related medical condition requiring pregnancy disability leave, although it may require transfer to a less strenuous or hazardous position or other reasonable accommodation."].

50 Gov. Code, § 12945; Cal. Code of Regs., tit. 2, § 11035.

51 See *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1339–1341 [holding that an employer's obligation to provide accommodations under the Fair Employment and Housing Act continues even after the employee has exhausted leave under the Pregnancy Disability Leave Law].

52 Labor Code, § 1033, subd. (a) [deeming the denial "a failure to comply for purposes of Section 226.7"]; Lab. Code, § 226.7, subd. (c).

53 Labor Code, § 1033, subd. (c) ["... the Labor Commissioner may issue a citation and may impose a civil penalty in the amount of one hundred dollars ($100) for each day that an employee is denied reasonable break time or adequate space to express milk ...."].

54 Labor Code, §§ 2698–2699.5 (Private Attorneys General Act of 2004). For claims brought on or after June 19, 2024, an aggrieved employee's share of recovered penalties is 35 percent. Lab. Code, § 2699, as amended by Stats. 2024 (AB 2288, SB 92).

55 Gov. Code, § 12965, subd. (d) ["A court may grant as relief in any action filed pursuant to subdivision (a) any relief a court is empowered to grant in a civil action brought pursuant to subdivision (c), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part."].

56 *Peatros v. Bank of America* (2000) 22 Cal.4th 147, 166–167 [FEHA "allows the employee to obtain 'all relief generally available,' specifically 'in noncontractual actions' [citations], including 'unlimited compensatory

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and punitive damages' [citations]."]; see also Labor Code, §§ 98.6, 1102.5, 1197.5, and Gov. Code, § 12940, subd. (h) [prohibiting retaliation].

57 Gov. Code, § 12965, subd. (c)(6) ["In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees ...."]. A prevailing defendant, by contrast, may recover fees and costs only if the court finds the action was frivolous, unreasonable, or groundless. Id.

58 Labor Code, § 1033.

59 Gov. Code, §§ 12960, 12965.

60 Labor Code, §§ 98.6, 1033, subd. (b), 1102.5, 1197.5; Gov. Code, § 12940, subd. (h).

61 Gov. Code, §§ 12960, subd. (e)(5), 12965, subd. (c)(1)(D).

62 Code Civ. Proc., § 338, subd. (a); see Lab. Code, § 226.7.

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