

Worksite Lactation Accommodation: California vs. Federal Lactation Law

	California Law*	Federal Law**
Preemption		Does not preempt state law that provides greater protections
Who	Applies to ALL employers and employees Employer can claim undue hardship	Applies to non-exempt employees Employers with < 50 employees may be exempt if compliance would create undue hardship +
How Long	Reasonable amount of break time (no upper age limit)	Reasonable break time for up to 1 year after infant's birth
Breaks	May use break times Additional unpaid breaks may be taken if not used concurrently with paid breaks. Breaks are "net" breaks. Can't calculate time used to get to designated space	May use break times Additional unpaid breaks may be taken if not used concurrently with paid breaks
Space	Provide a room or other location in close proximity to the work area (cannot be a toilet stall)	Provide a place shielded from view and free from intrusion from co-workers and the public (cannot be a bathroom)
Penalty	Civil penalty of \$100 per violation	Civil sanction, \$1,100 per violation for willful violations***

*California Labor Code §1030-33

**FLSA § 7(r) (as amended by the Affordable Care Act)

+ See DOL RFI, the bar for undue hardship exemption is difficult to meet.

***Davis & Dhillon, Health Care Reform and Nursing Mothers, *Public Health Law Network*, 2011