

Pregnancy Disability Leave is important to allow students to recover from childbirth, establish their milk supply, and bond with their baby. Many students would be surprised to learn that they are legally entitled to leave for medical reasons related to pregnancy and childbirth.

The California Education Code<sup>44</sup> provides some of the most comprehensive and clear student breastfeeding protections in the nation. California students must be provided with a suitable space for expressing milk, storage for their breast pump or milk storage, and break time for expressing milk.

The California Education Code asserts that all pupils have the right to participate fully in the education process, free from discrimination and harassment. It further demands school districts to provide reasonable accommodations for lactating students on a school campus to express breast milk, breastfeed, or address other needs that are related to breastfeeding.<sup>45</sup>

**Title IX** is part of the Education Amendments of 1972,<sup>46</sup> which are amendments to the Civil Rights Act of 1964.<sup>3</sup> Title IX states that any education program or activity that accepts federal funding cannot discriminate against a person based on their sex.<sup>47</sup> Title IX applies to colleges, universities, elementary and secondary schools as well as any other educational program that receives federal funding. Federal Regulations on Title IX<sup>48</sup> make clear that sex discrimination includes discrimination based on parental status, pregnancy, false pregnancy, abortion, miscarriage, childbirth, recovery and related conditions, such as lactation<sup>49</sup> and breastfeeding. This includes ensuring pregnant and breastfeeding students have equal educational opportunities.

Under the federal regulations on Title IX<sup>48</sup> schools must:

- Allow a student to take leave for as long as medically necessary (medical necessity is determined by the student's physician). The student may be asked to bring in a doctor's note.
- Ensure that a student's educational opportunities aren't diminished due to breastfeeding. To do so would be sex discrimination.

Under this law, **K-12** schools must specifically:

- Provide access to a private, secure room with a power source for breastfeeding or to express milk; and a place for storage (refrigerator or cooler bags)
- Allow lactating students to bring a breast pump to school and store expressed milk;
- Provide reasonable break time or time away from the classroom for lactation without incurring academic penalty and allowing the student to make up work; and,
- Process student complaints about lactation accommodations through the Uniform Complaint Process (UCP).

In addition, California law protects the right for a person to breastfeed their child in any place where they are authorized to be present.

If a lactating student believes that their rights under Title IX are being violated, the student can contact the Title IX Coordinator at their educational program. By law, the Title IX Coordinator's contact information is required to easily accessible on the school's website. If the student is unable to find the Title IX Coordinator at their school, they can contact the Human Resources Department or the Center for WorkLife Law at [www.thepregnantscholar.org](http://www.thepregnantscholar.org). The student can also file a complaint with the Department of Education. Instructions can be found here: [www2.ed.gov/about/offices/list/ocr/docs/howto.html](http://www2.ed.gov/about/offices/list/ocr/docs/howto.html)

### Students with children

are especially unlikely to complete a certificate or degree within six years of enrollment, with only

**33%**

attaining a degree or certificate in that time.<sup>115</sup>

# Breastfeeding in the Education System

## Federal laws

requiring school districts to accommodate and not discriminate against lactating employees and students.

### Federal Statutes

### Code of Federal Regulations

#### Title IX

##### 20 U.S.C. § 1681

Prohibits sex discrimination in educational institutions that receive federal funds.

Requires that pregnant students and those recovering from child-birth-related conditions be provided with the same accommodations and support services available to other students with similar temporary medical needs.

##### 34 C.F.R. § 106.40(b)(1)

Prohibits discrimination against students based on parental status, pregnancy, childbirth, recovery from childbirth and related conditions.

##### Guidance Document

Department of Education Office for Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students under Title IX of the Education Amendments of 1972* (2013)

Explains students' legal right to lactation accommodations under Title IX. Encourages schools to designate a private room for young mothers to breastfeed, express breast milk, or address other needs related to breastfeeding during the school day.

#### Fair Labor Standards Act/Affordable Care Act

##### 29 U.S.C. § 207(r)

Requires employers to provide lactating mothers with breaks and a private location (other than a restroom) to express breast milk.

#### Title VII/Pregnancy Discrimination Act

##### 42 U.S.C. § 2000e-2, 42 U.S.C. § 2000e(k)

Prohibits sex discrimination in employment. Sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. Requires women affected by pregnancy, childbirth, or related medical conditions be treated the same for all employment-related purposes, as other persons with temporary medical conditions.

##### 29 C.F.R. § 1604.10

Requires women affected by pregnancy, childbirth, or related medical conditions be treated the same for all employment-related purposes, as other persons with temporary medical conditions.

##### Guidance Document

Equal Employment Opportunity Commission, *Enforcement Guidance: Pregnancy Discrimination and Related Issues* (2015)

Explains that Title VII prohibits discrimination based on lactation and breastfeeding. Lactating mothers must get the same type of accommodations given to employees with other similar temporary medical needs.

# Breastfeeding in the Education System

## California laws

requiring school districts to accommodate and not discriminate against lactating employees and students.

### California Statutes

### California Code of Regulations

#### California Education Code/California Sex Equity in Education Act

##### Cal. Ed. Code § 201

Schools have an affirmative obligation to combat sexism, other forms of bias, and to provide equal educational opportunity to all students.

##### Cal. Ed. Code § 220

Prohibits schools that receive support from the state from discriminating based on sex, and provides that all persons in public schools, regardless of their gender, gender identity, or gender expression have equal rights and opportunities in their educational institution.

##### Cal. Ed. Code § 222 (new, added by AB 302)

Schools shall provide reasonable accommodations to a lactating pupil on a school campus to express breast milk, breast-feed an infant child, or address other needs related to breastfeeding. Reasonable accommodations include, but are not limited to, (1) giving lactating students access to a private, secure room with a power source to deal with any needs associated with breastfeeding or expressing milk, (2) allowing lactating students to bring a breast pump to school and store expressed milk, (3) giving lactating students reasonable break time or time away from the classroom to accommodate their lactation schedule without incurring an academic penalty and with the ability to make up any work missed, and (4) processing student complaints about lactation accommodations through the Uniform Complaint Process (UCP).

##### 5 Cal. Code Regs. § 4950

Prohibits schools from discriminating based on a student's pregnancy, childbirth, or recovery therefrom. Prohibits schools from applying any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

#### Unruh Civil Rights Act

##### Cal. Civil Code § § 51(b), (e)(5)

Prohibits sex discrimination in public accommodations, which includes schools. Defines sex to include pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

#### California Labor Code

##### Cal. Labor Code § 1030

Requires every employer to provide lactating mothers with reasonable break time to express breast milk.

##### Cal. Labor Code § 1031

Requires every employer to provide lactating mothers with a private location (other than a toilet stall), near the employee's work area, in order to express breast milk.

# Breastfeeding in the Education System

## California laws

requiring school districts to accommodate and not discriminate against lactating employees and students.

### California Statutes

### California Code of Regulations

#### California Government Code

##### Cal. Gov. Code § 12940, Cal. Gov. Code § 12926(r)

Prohibits employers from engaging in sex discrimination. Sex is defined to include breastfeeding or medical conditions related to breastfeeding.

##### Cal. Gov. Code § 12945

Requires employers to provide reasonable accommodations for an employee who has a condition related to pregnancy, childbirth, or a related medical condition.

##### Cal. Gov. Code § 11135

Prohibits discrimination on the basis of sex in any program or activity conducted, operated, administered or funded by the state.

##### 2 Cal. Code Regs. §§ 7291.2(d), (u)

Makes clear that the pregnancy-related accommodations that employers must provide include lactation accommodations.

#### Breastfeeding Rights

##### Cal. Civil Code § 43.3

Provides that women have the right to breastfeed in any public or private location where they are otherwise allowed to be present.

**4.8 million college students are raising children.**

**Women make up 71% of all student parents.**



**Women of color are the most likely students to be raising children while pursuing a postsecondary degree.**

Nearly half of all black women in college have dependent children (47%).

115

## Breastfeeding in the Education System

### Student Rights

The California Equity in Education Act<sup>51</sup> specifically guarantees leave for graduate student parents. This law allows for graduate students to take leave for longer than what is medically necessary, and return without penalty.

Under this law institutions must provide their graduate students with:

- One academic year of leave for childbirth (one month for parents who haven't given birth);
- At least 12 additional months to prepare for and take preliminary and qualifying exams (one month for parents who haven't given birth);
- At least 12 months towards normative time to degree\* (one month for parents who haven't given birth); and,
- If a longer term is medically necessary, extensions will be granted (per Title IX, which protects medically necessary leave).

For more information, visit [www.thepregnantscholar.org/leave-and-absences](http://www.thepregnantscholar.org/leave-and-absences)

**Note:** While the law does not state any specifications for lactation space, the Department of Education Office of Civil Rights suggests administrators “designate a private room for young mothers to breastfeed, pump milk, or address other needs related to breastfeeding during the school day.”<sup>52</sup>

For more information, see: [www.thepregnantscholar.org/know-your-rights-breastfeeding](http://www.thepregnantscholar.org/know-your-rights-breastfeeding)

\*Normative time to degree is the number of quarters established for students to complete requirements of their program. Each program may have a different normative time to completion. What these accommodations mean is that a student who is a parent has extra time to complete their degree without penalty.





### Extracurricular Activities and Athletics

Title IX protects students from discrimination on the basis of pregnancy and related conditions (like lactation/breastfeeding) both outside and inside the classroom. Under this law:

- A student's participation in a university/college sanctioned club, student group, academic society, etc. cannot be limited because of breastfeeding.
- Pregnant and breastfeeding athletes must be treated as well as any other athlete with a temporary disability.
- The student and their doctor have the final say as to whether the student can compete while pregnant/breastfeeding, not the coach, athletic director, or anyone else.
- The student may only be asked to provide a medical clearance to play if players with other medical conditions are asked to do so as well.
- Scholarships cannot be terminated or altered during the award term based on pregnancy.
- If the school renews athletic awards to injured players who are actively rehabilitating or athletes who stay involved with the team after a career-ending injury, the same must be done in the case of pregnancy. A decision not to renew must be provided in writing by July 1, including the reason for not renewing and the process to appeal.
- If other students who take time off due to an injury/medical condition can apply for a waiver to extend their overall athletic eligibility, athletes who miss time due to pregnancy and related conditions must also be allowed to apply for an extension. The NCAA has allowed these extensions.

### Internships

Colleges and universities cannot exclude pregnant or lactating students from participating in university-affiliated internships, externships, or other off-site programming. If a student is completing an internship under the guidance of their university, the school and the internship site have responsibility for providing appropriate accommodations. Interns who work for university credit should seek assistance of Title IX if problems arise. Interns who are considered employees of their internship site are entitled to all the same protections as any worker. See *Breastfeeding at Work* on page 17 for more information.

### Financial Aid

Merit and need-based scholarships cannot be terminated or altered based on pregnancy or related conditions. Taking off more time than medically necessary may cause a change in student status, scholarships, loans or other financial aid. Students should consult their school's non-medical leave policy for more information.

A student may register as an "independent student" if the child's due date is in the award year (July 1 to June 30) and the student will be providing at least half of the support to the child. When filling out the Free Application for Federal Student Aid (FAFSA) form, the student should count the child toward the household size if the due date is within that award year—even if the child has not been born when the student files. Keep a copy of an ultrasound and other medical records in case FAFSA audits the application.

While they are on the clock, students who are employees of their college/university have the same rights as other workers at the institution. See the section *Breastfeeding and Work* for more information.

For more information:

NCAA Pregnancy Toolkit  
[www.ncaa.org/sites/default/files/PregnancyToolkit.pdf](http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf)

Pregnant Scholar  
[www.thepregnantscholar.org/for-students/extracurriculars-and-athletics/7](http://www.thepregnantscholar.org/for-students/extracurriculars-and-athletics/7)

NWLC FAQs  
[www.nwlc.org/resources/faq-pregnant-and-parenting-college-graduate-students-rights/](http://www.nwlc.org/resources/faq-pregnant-and-parenting-college-graduate-students-rights/)

Pregnant Scholar  
[www.thepregnantscholar.org/financial-aid/](http://www.thepregnantscholar.org/financial-aid/)

### Employees/Teachers/Professors of K-12 Schools and Colleges/Universities

There are specific provisions relating to breastfeeding workers at educational institutions, therefore, employees of educational institutions should review this section in addition to the workplace section, which provides information on laws applicable to all workers. This section includes information specific to those employees, including teachers, administrative staff, student workers, graduate student employees, postdoc employees and others.

See section *Breastfeeding at Work* at page 17.

Teachers, professors, and other educators should look to California state lactation accommodation law in the California Labor Code. The Federal Break Time for Nursing Mothers provisions do not apply to those workers that have teaching as a primary job duty. This is because the law only protects those workers who are eligible for federal overtime protections. See *Breastfeeding at Work* page 17 for more details.

**Title IX:** In addition to the resources that other workers have to assist with problems in the workplace, employees at educational institutions are also protected by Title IX. This law prohibits sex discrimination (including discrimination related to pregnancy and childbirth) in educational settings.

Breastfeeding employees that have difficulty arranging the lactation accommodations they need can contact their institution's Title IX Coordinator in addition to Human Resources, Union representatives, or any of the resources listed at the front of this toolkit.

### Campus Specific Policies

In addition to the above laws, the two major university systems within California also have internal policies relating to breastfeeding workers. Additionally, some of these workers may also have protections for lactation accommodations in their union contracts. Workers should assess both policies to make sure that they are receiving all of the accommodations that they are entitled to.

### California State University System<sup>52</sup>

This policy largely mirrors the Federal Break Time for Nursing Mothers Act. The CSU policy encourages supervisors to accommodate those employees who are not covered by that law, but does not require it. However, the policy is limiting in that it does not support California legislation which is stronger in some aspects such as no upper age limit of the child and covering exempt employees in addition to non-exempt employees.

### University of California System<sup>53</sup>

The University of California Policy on Lactation Accommodation states that "the university will provide a private, locked place for nursing mothers to express milk, including appropriate temperature and ventilation, table, comfortable chair, and electrical outlet. Employees will be given a reasonable amount of break time; the pay and accounting for the time varies based on employment classification."<sup>53</sup>

See the full policy:  
[www.policy.ucop.edu/doc/4000609/PPSM-84](http://www.policy.ucop.edu/doc/4000609/PPSM-84)

For more information about colleges and universities, please see BreastfeedLA's *Breastfeeding 101: Los Angeles County Colleges and Universities* report.<sup>54</sup>

For more information about K-12 schools, please see BreastfeedLA's *ABC's of Breastfeeding Report Card*.<sup>54</sup>