



## Guide to the Rights of Breastfeeding Employees in Indiana

**Purpose:** This guide was developed to provide an overview of the laws that protect the rights of breastfeeding employees in Indiana to express breast milk during the workday. The factors that are addressed and the level of protection provided vary widely from one law to another. The chart below details the Indiana and federal laws that impact breastfeeding employees, and the protections those laws provide for each listed component. Components that are not addressed by the law are shaded in gray.

**How to Use This Guide:** To identify your rights as a breastfeeding employee or obligations as an employer, you must first determine which of the laws apply to you. Then compare each part of the applicable laws. If an employee is covered by more than one law, and those laws address the same component, the employee is entitled to the strongest protection available. If an employer does not provide the required accommodations, a complaint can be filed with the regulatory agency. The agency responsible for enforcement of each law and information on how to file a complaint is included in the chart.

The template was developed to address every component considered in existing state and federal workplace lactation accommodation laws. Some components may not apply to your state.

**Where to Go for Help:** Many breastfeeding coalitions provide support for employees and employers. See the [Indiana Breastfeeding Coalition website](#) or visit the U.S. Breastfeeding Committee [Coalitions Directory](#) for a list of all breastfeeding coalitions.

**Important Note:** The information provided in this guide is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. Check with a lawyer or the regulatory agency if you believe your rights have been violated.

### Indiana Laws:

#### **IC 22-2-14-1** "Employer"

Sec. 1. As used in this chapter, "employer" means a person or entity that employs twenty-five (25) or more employees.

#### **IC 22-2-14-2** Employer provide private location where employees can express milk; employer provide cold storage for expressed milk; employer not liable

Sec. 2. (a) To the extent reasonably possible, an employer shall provide a private location, other than a toilet stall, where an employee can express the employee's breast milk in privacy during any period away from the employee's assigned duties.

(b) To the extent reasonably possible, an employer shall:

- (1) provide a refrigerator or other cold storage space for keeping milk that has been expressed; or
- (2) allow the employee to provide the employee's own portable cold storage device for keeping milk that has been expressed until the end of the employee's work day.

(c) Except in cases of willful misconduct, gross negligence, or bad faith, an employer is not liable for any harm caused by or arising from either of the following that occur on the employer's premises:

- (1) The expressing of an employee's breast milk.
- (2) The storage of expressed milk.

Resources:

- [Indiana General Assembly:](#)
  - [Statutory language:](#) full text of IC 22-2-14-2

#### **IC 5-10-6-2** Paid breaks for expressing breast milk

Sec. 2. (a) The state and political subdivisions of the state shall provide reasonable paid break time each day to an employee who needs to express breast milk for the employee's infant child. The break time must, if possible, run concurrently with any break time already provided to the employee. The state and political subdivisions are not required to provide break time under this section if providing break time would unduly disrupt the operations of the state or political subdivisions.

(b) The state and political subdivisions of the state shall make reasonable efforts to provide a room or other location, other than a toilet stall, in close proximity to the work area, where an employee described in subsection (a) can express the employee's breast milk in privacy. The state and political subdivisions shall make reasonable efforts to provide a refrigerator or other cold storage space for keeping milk that has been expressed. The state or a political subdivision is not liable if the state or political subdivision makes a reasonable effort to comply with this subsection.

Resources:

- [Indiana General Assembly:](#)
  - [Statutory language:](#) full text of IC 5-10-6-2

## Federal Laws:

### **Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision:**

(r)(1) An employer shall provide—

A. a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

B. 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.

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, 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.

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

Resources:

- [United States Department of Labor Wage and Hour Division](#) (WHD):
  - [Statutory language:](#) full text of the "Break Time for Nursing Mothers" law.
  - [Fact Sheet #73:](#) includes information on general requirements, time and location of breaks, and coverage and compensation requirements under the "Break Time for Nursing Mothers" law.
  - [FAQs:](#) answers many questions about the law.

**Title VII of the Civil Rights Act:** The Pregnancy Discrimination Act, passed in 1978, amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, and related medical conditions. In 2013, the United States Court of Appeals for the Fifth Circuit held that firing a woman because she is lactating or expressing milk is unlawful sex discrimination under Title VII of the Civil Rights Act.

Title VII states:

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

Resources:

- [U.S. Equal Employment Opportunity Commission:](#)

- [The Pregnancy Discrimination Act of 1978](#): statutory language of amendment to Title VII of the Civil Rights Act.
- [Pregnancy Discrimination](#): webpage detailing prohibited treatment of employees impacted by pregnancy, childbirth, or related medical conditions.
- [Enforcement Guidance: Pregnancy Discrimination and Related Issues](#): guidance regarding the Pregnancy Discrimination Act and the Americans with Disabilities Act as they apply to pregnant workers. The Enforcement Guidance states that there are various circumstances in which discrimination against a female employee who is lactating or breastfeeding can implicate Title VII. Because lactation is a pregnancy-related medical condition, less favorable treatment of a lactating employee may raise an inference of unlawful discrimination. An employee must have the same freedom to address lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions.

	<b>State: <a href="#">Indiana Law IC 22-2-14-2</a></b>	<b>State: <a href="#">Indiana Law IC 5-10-6-2</a></b>	<b>Federal: <a href="#">Break Time for Nursing Mothers Law</a></b>	<b>Federal: <a href="#">Title VII of the Civil Rights Act</a></b>
<b>Eligible Employees</b>	Employees of businesses or entities with 25 or more employees.	Nursing mothers who are public employees.	Nursing mothers who are <a href="#">employees covered by the Fair Labor Standards Act (FLSA)</a> and not exempt from FLSA overtime pay requirements. Important note: if an employer is not covered by the FLSA, its employees may still be covered if the employee's own duties meet certain interstate commerce requirements.	Title VII protects employees of private and state and local government employers with 15 or more employees, labor organizations, employment agencies, and apprenticeship and training programs. Title VII also applies to employees in the federal sector.
<b>Are Employers Required to Have a Policy on Breastfeeding Employees?</b>				No policy is required under Title VII. However, if an employer allows employees to take breaks, change their schedules, or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances. Or, if an employer freely permits employees to use break time for personal reasons, it would violate Title VII to deny break time for expressing breast milk.
<b>Frequency of Milk Expression Breaks</b>	Any period away from the employee's assigned duties.	Reasonable. The break time must, if possible, run	As frequently as needed by the nursing mother. The frequency of breaks	

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		concurrently with any break time already provided to the employee.	needed to express breast milk will likely vary.	
<b>Length of Time for Milk Expression Breaks</b>	Any period away from the employee's assigned duties.	Reasonable.	Reasonable. The duration of each break will likely vary.	
<b>Duration of Milk Expression Breaks</b>	No limit.	1 year after the child's birth.	1 year after the child's birth.	
<b>Space Requirements</b>	Private location, other than a toilet stall, where an employee can express the employee's breast milk in privacy.	A room or other location, other than a toilet stall, in close proximity to the work area, where an employee can express breast milk in privacy.	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. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mothers' use, it must be available when needed in order to meet the statutory requirement. Of course, employers may choose to create permanent, dedicated space if they determine that is the best way to meet their obligations under the law.	
<b>Pay Requirement</b>	If a nursing employee is already entitled to paid break time, she may use that time for expressing breast milk. Otherwise, the time will be unpaid.	Paid.	<a href="#">Unpaid</a> , unless concurrent with <a href="#">paid breaks</a> . If a nursing employee is not completely relieved from duty during a break to express breast milk, the time must be compensated as work time.	
<b>Are Employers Required to Notify Employees of Their Rights?</b>				Employers are required to post the <a href="#">"EEO is the Law" English poster</a> . <i>Note: This notice does not specifically address the rights of breastfeeding employees.</i>
<b>Requirements for Employees</b>				
<b>Exemption</b>	Employers must provide these accommodations to the extent reasonably possible.	The state and political subdivisions are not required to provide break time under	All <a href="#">employers covered by the FLSA</a> , regardless of the size of their business, are required to comply with this provision.	

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		this section if providing break time would unduly disrupt the operations of the state or political subdivisions. The state or a political subdivision is not liable to provide a private space for breastfeeding employees if reasonable efforts have been made to comply.	However, employers with fewer than 50 employees are not subject to the FLSA break time requirement if the employer can demonstrate that compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, or structure of the employer's business.	
<b>Milk Storage</b>	The employer shall provide a refrigerator or other cold storage space for keeping milk that has been expressed or allow the employee to provide a portable cold storage device. Except in cases of willful misconduct, gross negligence, or bad faith, an employer is not liable for any harm caused by or arising from the storage of expressed milk.	The state and political subdivisions shall make reasonable efforts to provide a refrigerator or other cold storage space for keeping milk that has been expressed.		
<b>Does Unpaid Break Time Impact Full Time Status and/or Eligibility for Health Insurance?</b>				
<b>Is Unpaid Break Time Expressly Separated from Paid Leave or Paid Time Off?</b>				
<b>Are Employers Required to Consider Providing Additional Accommodations for Breastfeeding Employees?</b>				
<b>Discrimination/ Retaliation</b>			It is a violation for any person to <a href="#">discharge or in any other manner discriminate against</a> an	Firing a woman or taking other adverse employment action against her because

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			employee who files a complaint or cooperates with the investigation of a complaint.	she is lactating or expressing milk is unlawful sex discrimination. An employer may not discriminate against an employee because of her breastfeeding schedule. Women breastfeeding and lactating must be able to take breaks as other employees who take breaks for other medical or personal reasons. Employers are prohibited from firing, demoting, harassing or otherwise retaliating against an employee because she has complained of discrimination or participated in an employment discrimination proceeding.
<b>Protection from Harassment</b>				Employers are required to provide a <a href="#">work environment free of harassment</a> based on pregnancy, childbirth, or related medical conditions, including breastfeeding.
<b>Agency Responsible for Enforcement</b>		The <a href="#">Indiana State Personnel Department</a> is responsible for enforcement of 5-10-6-2 for state employees.	U.S. Department of Labor, <a href="#">Wage and Hour Division</a> .	<a href="#">U.S. Equal Employment Opportunity Commission</a> .
<b>How to File a Complaint</b>		<b>State Employees:</b> See <a href="#">How to File a Civil Service Complaint</a> . Employees in the state civil service, except those appointed by the governor, may file a complaint concerning the application of a law,	File a complaint by calling the WHD toll-free at 1-800-487-9243 or visiting <a href="http://www.dol.gov/whd">www.dol.gov/whd</a> . You will then be directed to your nearest WHD office for assistance.	You may file a charge of employment discrimination at the EEOC office closest to where you live, or at any one of the <a href="#">EEOC's 53 field offices</a> . You may call 1-800-669-4000 or <a href="#">visit the EEOC website</a> for more information on filing

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		<p>rule, or policy to that employee. The complaint must identify the law, rule, or policy allegedly violated, the facts supporting the allegation, and the remedy the employee is requesting. You may obtain a complaint form from your agency's human resource office or the State Personnel Department's Employee Relations Division, or you may download the <a href="#">Civil Service Complaint Form</a>. If you have questions about the complaint procedure, timelines, or standards of review, please contact an Employee Relations Specialist in the State Personnel Department at 1-855-SPD-INHR (1-855-773-4647) and choose the Employee Relations prompt. Civil Service Complaints must be filed within 30 days of the action.</p> <p><b>Local Public Employees:</b> see your local grievance policy.</p>		<p>a charge and filing deadlines. Important Note: <a href="#">Federal sector employees have a different complaint process.</a></p>
<b>Is the Agency Required to Monitor and Compile Enforcement Reports?</b>				Yes.
<b>Sanctions for Non-Compliance</b>			An employee whose rights are denied can file a complaint with the Wage and Hour Division, which can go to court to obtain an order requiring	<a href="#">Remedies may include</a> reinstatement, compensatory damages, punitive damages, back pay



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			the employer to comply. In addition, any employee who is “discharged or in any other manner discriminated against” because, for instance, he or she has filed a complaint or cooperated in an investigation, may file a retaliation complaint with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including, but not limited to, employment, reinstatement, lost wages and an additional equal amount as liquidated damages.	for lost wages where someone has been terminated, and requiring an employer to take certain actions to prevent future discrimination.
<b>Do Employees Have Private Action Rights?</b>	Yes.	Consult an attorney.	Yes.	Yes, but employees are first required to file a charge with the EEOC.
<b>Worksite Designation Program</b>				
<b>Additional Resources</b>	<p>Indiana Breastfeeding Coalition: <a href="#">Frequently Asked Questions</a></p> <p>Indiana Perinatal Network: <a href="#">Breastfeeding</a></p> <p>U.S. Department of Labor Women’s Bureau: <a href="#">Employment Protections For Workers Who Are Pregnant or Nursing</a></p> <p><a href="#">Indiana State Department of Health</a>  - Contact Kathy Detweiler, Breastfeeding/Perinatal Coordinator, at <a href="mailto:kdetweiler@isdh.in.gov">kdetweiler@isdh.in.gov</a> or 317-232-3085 with questions</p> <p>The <a href="#">Indiana State Personnel Department</a> has issued detailed information on requirements and procedures for state workers. Please note that the personnel procedures only apply to state workers, while requirements outlined in IC 5-10-6-2 statutory language apply to both state and local public employees.</p> <p>- <a href="#">Support for Nursing Mothers Responsibilities &amp; Procedures</a>: includes information on length of time for milk expression breaks, space requirements, information on notifying employees, and requirements for employees.</p>		<p>Office on Women’s Health:</p> <ul style="list-style-type: none"> <li>- <a href="#">Supporting Nursing Moms at Work: Employer Solutions</a></li> <li>- <a href="#">Business Case for Breastfeeding</a></li> </ul> <p>U.S. Breastfeeding Committee:</p> <ul style="list-style-type: none"> <li>- <a href="#">Resource and Referral Guide for Breastfeeding Employees and their Employers</a></li> <li>- <a href="#">Online Guide: What You Need to Know About the “Break Time for Nursing Mothers” Law</a></li> </ul> <p>Especially see Online Guide sections:  - <a href="#">How should you store your breast milk?</a></p>	<p>Equal Employment Opportunity Commission:</p> <ul style="list-style-type: none"> <li>- Guidance: <a href="#">Questions and Answers about the EEOC’s Enforcement Guidance on Pregnancy Discrimination and Related Issues</a></li> <li>- Press release: <a href="#">Fifth Circuit Holds Lactation Discrimination is Unlawful Sex Discrimination</a></li> </ul> <p>National Women’s Law Center: <a href="#">Fact Sheet: The Pregnancy Discrimination Act and the Amended Americans with Disabilities Act: Working Together to Protect Pregnant Workers</a></p>



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	<p>- <a href="#">Request for Anticipated Break Schedule and Location to Express Milk for Infant Child</a>: signed form for employee to complete and submit to supervisor to request accommodations.</p>		<p>- <a href="#">What are the space requirements?</a></p> <p>Wage and Hour Division: <a href="#">Family and Medical Leave Act</a></p> <p>Center for WorkLife Law:</p> <p>- <a href="#">Pregnant @ Work</a></p> <p>- <a href="#">Guide for doctors on writing work notes for nursing mothers</a></p>	<p>American Civil Liberties Union: <a href="#">Federal Law and Pregnant, Post-Partum and Breastfeeding Workers</a></p> <p>A Better Balance: <a href="#">Babygate</a></p>

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