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Memo

To Board of Education
From Joanna Powell, Staff Attorney
Board Meeting Date 5/13/2020
Subject Board Policy 4033 – Lactation Accommodations

Action Requested and Recommendation Adoption of Board Policy 4033, Lactation Accommodations

Background and Discussion Although the lactation accommodations available to District employees are currently contained in the District’s employee handbook, the District does not have a formal Board Policy that sets forth these accommodations. The proposed Board Policy 4033 is based on the CSBA model, and complies with the requirements in SB 142, a new law that took effect on January 1, 2020. In accordance with SB 142, the proposed Board Policy 4033 describes the necessary features of lactation rooms, as well as the process for filing a complaint alleging violations.

Fiscal Impact None

Attachments Proposed Board Policy 4033

OAKLAND UNIFIED SCHOOL DISTRICT

Board Policy

Personnel

BP 4030

Lactation Accommodations

The Governing Board recognizes the immediate and long-term health benefits of breastfeeding and desires to provide a supportive environment for any district employee to express milk for an infant child upon returning to work following the birth of the child. The Board prohibits discrimination, harassment, and/or retaliation against any district employee for seeking an accommodation to express breast milk for an infant child while at work.

(cf. 4030 - Nondiscrimination in Employment)

An employee shall notify the employee's supervisor or other appropriate personnel in advance of the intent to request an accommodation. The supervisor shall respond to the request and shall work with the employee to make arrangements. If needed, the supervisor shall address scheduling in order to ensure that the employee's essential job duties are covered during the break time.

Lactation accommodations shall be granted unless limited circumstances exist as specified in law. (Labor Code 1031, 1032; 29 USC 207)

Before a determination is made to deny lactation accommodations to an employee, the employee's supervisor shall consult with the Superintendent or designee. When lactation accommodations are denied, the Superintendent or designee shall document the options that were considered and the reasons for denying the accommodations.

The Superintendent or designee shall provide a written response to any employee who was denied the accommodation(s). (Labor Code 1034)

The district shall include this policy in its employee handbook or in any set of policies that the district makes available to employees. In addition, the Superintendent or designee shall distribute the policy to new employees upon hire and when an employee makes an inquiry about or requests parental leave. (Labor Code 1034)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Break Time and Location Requirements

The district shall provide a reasonable amount of break time to accommodate an employee each time the employee has a need to express breast milk for an infant child. (Labor Code 1030)

To the extent possible, any break time granted for lactation accommodation shall run concurrently with the break time already provided to the employee. Any additional break time used by a non-exempt employee for this purpose shall be unpaid. (Labor Code 1030; 29 USC 207)

The employee shall be provided the use of a private room or location, other than a bathroom, which may be the employee's work area or another location that is in close proximity to the employee's work area. The room or location provided shall meet the following requirements: (Labor Code 1031; 29 USC 207)

1. Is shielded from view and free from intrusion while the employee is expressing milk
2. Is safe, clean, and free of hazardous materials, as defined in Labor Code 6382
3. Contains a place to sit and a surface to place a breast pump and personal items
4. Has access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump
5. Has access to a sink with running water and a refrigerator or, if a refrigerator cannot be provided, another cooling device suitable for storing milk in close proximity to the employee's workspace

If a multipurpose room is used for lactation, among other uses, the use of the room for lactation shall take precedence over other uses for the time it is in use for lactation purposes. (Labor Code 1031)

Dispute Resolution

An employee may file a complaint with the Labor Commissioner at the California Department of Industrial Relations for any alleged violation of Labor Code 1030-1034. (Labor Code 1034)

(cf. 4144/4244/4344 - Complaints)

Legal Reference:

EDUCATION CODE

200-262.4 Educational equity; prohibition of discrimination on the basis of sex

CIVIL CODE

43.3 Right of mothers to breastfeed in any public or private location

GOVERNMENT CODE

12926 Definition of sex; breastfeeding
12940 Unlawful discriminatory employment practices
12945 Unlawful discrimination based on pregnancy, childbirth, or related medical conditions
LABOR CODE
1030-1034 Lactation accommodation
6382 Procedure for listing hazardous substances
CODE OF REGULATIONS, TITLE 2
11035-11051 Unlawful sex discrimination; pregnancy and related medical conditions
UNITED STATES CODE, TITLE 29
207 Fair Labor Standards Act; lactation accommodation

Management Resources:

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS
Rest Periods/Lactation Accommodation, Frequently Asked Questions
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH PUBLICATIONS
Lactation Accommodation for Employers
CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLICATIONS
Lactation Support Program Toolkit
FEDERAL REGISTER
Reasonable Break Time for Nursing Mothers, December 21, 2010, Vol. 75, No. 244, pages 80073-80079
OFFICE OF THE SURGEON GENERAL PUBLICATIONS
The Surgeon General's Call to Action to Support Breastfeeding, 2011
HEALTH RESOURCES AND SERVICES ADMINISTRATION PUBLICATIONS
The Business Case for Breastfeeding: Steps for Creating a Breastfeeding Friendly Worksite, Toolkit, 2008
U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, PUBLICATIONS
Frequently Asked Questions- Break Time for Nursing Mothers
Fact Sheet #73: Break Time for Nursing Mothers under the FLSA, rev. April 2018
WEB SITES
California Department of Industrial Relations, Division of Labor and Standards Enforcement: <http://www.dir.ca.gov/dlse> California Department of Public Health: <http://www.cdph.ca.gov>
California Women, Infants and Children Program: <http://www.wicworks.ca.gov>
Centers for Disease Control and Prevention: <http://www.cdc.gov>
Health Resources and Services Administration: <http://www.hrsa.gov>
Office of the Surgeon General: <http://www.surgeongeneral.gov>
U.S. Department of Labor, Wage and Hour Division, Break Time for Nursing Mothers: <http://www.dol.gov/whd/nursingmothers>

5/13/2020 if approved



5/14/2020

Jody London
President, Board of Education



5/14/2020

Kyla Johnson Trammell
Secretary, Board of Education