

## Lactation Rights at Work: Are Pumping Breaks Paid or Unpaid?

For questions about your legal rights or to get help related to lactation and work, contact the Center for WorkLife Law's free legal helpline at [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org) or 415-703-8276.

Almost all U.S. employers are required to give nursing employees break time and a private, functional, non-bathroom space for pumping milk under a law called the [PUMP Act](#).

**The PUMP Act does not require employers to provide paid lactation breaks for all workers. However, there are eight situations when an employee must be paid for the time they spend pumping.** Keep reading to learn more.

**Your employer cannot require you to make up the time or work you missed during your legally-required pumping break, whether your break is paid or unpaid. Your employer may offer you the choice to make up missed work time, but it is up to you.** Spending extra time away from a nursing infant to make up for missed work is extremely difficult for many families. The U.S. Department of Labor has said that employers are required to adjust assignments, quotas, and productivity metrics to account for time an employee spends on a pumping break. Failing to make these adjustments or requiring you to make up missed work hours could be illegal.<sup>1</sup>

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**Lactation breaks can be unpaid, but you may have a right to receive compensation for the time you spend pumping milk if:**

### 1. You are doing work during your pumping break.

The U.S. Department of Labor made clear that an employee who is working during their pumping break should not be taken off the clock, even if the work they are doing is different or less than what they would normally be doing. For example, if you are still answering phones or sending emails while you pump, you should be paid for the time you spend working.<sup>2</sup> It is your choice alone whether you work while pumping—you have a right under the [PUMP Act](#) to take a break from work to pump milk. But if you do choose to work, you must be paid for it.

<sup>1</sup> <https://www.dol.gov/sites/dolgov/files/WHd/fab/2023-2.pdf>; See also <https://www.dol.gov/sites/dolgov/files/WHd/flsa/PUMP-retail-restaurant-faq.pdf>. A different federal law, called the Pregnant Workers Fairness Act, may also give you a right to have your quotas or other productivity metrics adjusted. To learn more, visit <https://pregnantatwork.org/pregnant-workers-fairness-act/>.

<sup>2</sup> <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers#:~:text=Compensation%20for%20Break%20Time%20to%20Pump%20Breast%20Milk&text=Further%2C%20when%20employers%20provide%20paid,are%20compensated%20for%20break%20time.>

The U.S. Department of Labor gives the following example:

Peyton is a third-grade teacher. Under the FLSA, Peyton is entitled to time to pump breast milk in a private space. Peyton chooses to grade papers and complete student records while pumping breast milk. Peyton must be compensated for the time spent pumping and doing this work at the same time.<sup>3</sup>

If Peyton's employer did not pay her for the time she spent grading papers, that could be unlawful retaliation under the PUMP Act and illegal discrimination under other laws.

Employers that fail to pay employees who work while pumping may also violate minimum wage, overtime, and related wage and hour laws. The U.S. Department of Labor gives this example:

Julia is on a pump break when she receives a call on her work cell phone from a coworker who provides her with instructions regarding a work project. After she finishes the work call, Julia completes her pump break. Because Julia was not relieved from duty, the time she spent on the call must be counted as hours worked [under the Fair Labor Standards Act].<sup>4</sup>

## 2. You are pumping during a break that is normally paid.

If your employer provides paid breaks, and you choose to pump milk during those breaks, you must be paid as normal for that break time.<sup>5</sup>

The U.S. Department of Labor provides an example:

Madison works on a farm. Madison's employer provides all employees with two paid 15-minute rest breaks each day. Madison chooses to use both of the paid 15-minute breaks to pump breast milk for her 6-month-old infant. If Madison needs additional breaks to pump, the additional break time does not have to be compensated as long as Madison does not perform any work during the breaks.<sup>6</sup>

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<sup>3</sup> <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers#:~:text=Compensation%20for%20Break%20Time%20to%20Pump%20Breast%20Milk&text=Further%2C%20when%20employers%20provide%20paid,are%20compensated%20for%20break%20time.>

<sup>4</sup> <https://www.dol.gov/sites/dolgov/files/WHd/fab/2023-2.pdf>

<sup>5</sup> <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers#:~:text=Compensation%20for%20Break%20Time%20to%20Pump%20Breast%20Milk&text=Further%2C%20when%20employers%20provide%20paid,are%20compensated%20for%20break%20time.>

<sup>6</sup> <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers#:~:text=Compensation%20for%20Break%20Time%20to%20Pump%20Breast%20Milk&text=Further%2C%20when%20employers%20provide%20paid,are%20compensated%20for%20break%20time.>

**3. You are “exempt” from receiving overtime because you are paid on a salary basis.**

Employers are not allowed to reduce the salaries of certain “overtime-exempt” employees for time spent on pumping breaks. Some employees do not receive overtime compensation because they perform particular job duties and are paid a salary of a certain level that does not change based on the number of hours they work. Employees can often learn whether they are overtime “exempt” by looking at their hiring paperwork or their pay stub. As a general rule, if you are a salaried worker and do not earn overtime pay, you probably cannot have your pay reduced for pumping—but there are exceptions. For example, under federal law, the rule does not apply to teachers, lawyers, and doctors who are paid a salary (although the rule *does* apply to them in some states). If you receive a fixed salary and have questions about whether the rule applies to you, please contact our free legal helpline.

**4. Your coworkers do not have their pay reduced for taking breaks or working fewer hours, but you’re being treated differently.**

It is illegal for your employer to treat you worse than other employees because you are lactating or to punish you because you are taking pumping breaks. If your boss is applying the rules around work hours and compensation differently to you as compared to your coworkers, it is possible that you are being discriminated against or retaliated against. For example, if your colleagues take breaks to eat, smoke, exercise, run errands, or go to doctors’ appointments without having their pay cut, you should be treated similarly for your lactation breaks. Also, if other people don’t have their work and break time recorded, but you do as a lactating worker, you may be experiencing illegal discrimination. If you think you are being treated unfairly, you can contact our free legal helpline for help.

**5. You have a right to paid rest breaks but aren’t receiving them.**

**In California, Colorado, Illinois (hotel room attendants only), Kentucky, Minnesota, Nevada, Oregon, Vermont, and Washington** states, most employees have a right to take breaks to rest during the workday, but employers often violate these laws. Public employees (people who work for state or local government) may also have a right to paid breaks in other states). If you work in one of these states but are not receiving any paid breaks, you may be able to use the law to request compensation for some of the time you spend pumping. To learn more about paid rest breaks, visit <https://www.dol.gov/agencies/whd/state/rest-periods>.

## 6. You are using your paid time off.

If you have vacation time, sick leave, or other paid time off available, you may be able to use it to be paid for time spent pumping. A law called the Pregnant Workers Fairness Act, which applies to employers with 15 or more employees, may give you a right to use your paid leave for lactation needs, such as pumping during the workday. To learn more about the Pregnant Workers Fairness Act, visit [www.pregnantatwork.org/pregnant-workers-fairness-act/](http://www.pregnantatwork.org/pregnant-workers-fairness-act/).

## 7. You work in Georgia, Illinois, Minnesota, New York, or San Francisco.

The laws in these locations require paid lactation breaks.

### Georgia

Employers must pay employees their regular compensation rate when they pump milk at the worksite during work hours. Employees paid on a salary basis cannot be required to use paid leave during lactation break time and their salary cannot be reduced for their lactation breaks. Employers are not required to pay employees for their break time on days when they work away from the employer worksite. This law covers employers of all sizes, but employers with fewer than 50 employees do not have to provide paid breaks if it would create an undue hardship.<sup>7</sup>

### Illinois

An employer may not reduce an employee's compensation for time used for pumping milk or nursing a baby for up to one year after the child's birth.<sup>8</sup> Employers do not have to pay employees for their lactation breaks if it would create an undue hardship.

### Minnesota

An employer cannot reduce an employee's compensation or require an employee to make up for time taken to pump milk. Employers also cannot reduce an employee's paid leave benefits (sick, vacation, or other paid time off) for time used to pump milk.<sup>9</sup>

### New York

Employers are required to provide employees 30 minutes of paid break time for pumping each time the employee has a reasonable need to express breast milk. Employers must also permit employees to use other existing paid break time for pumping breaks that last longer than 30 minutes. Employees must request pumping breaks in advance (preferably before returning from leave) and in writing (such as by text or email). Employers must respond in writing within five days. Employees have a right to receive paid pumping breaks for up to 3 years following the birth of their child.<sup>10</sup>

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<sup>7</sup> Ga. Code Ann. § 34-1-6 (2020).

<sup>8</sup> 820 Ill. Comp. Stat. 260/10 (2018).

<sup>9</sup> Minn. Stat. Ann. § 181.939 (West 2022). See also <https://www.dli.mn.gov/newparents#milk>

<sup>10</sup> NY Labor Law §206-c.

**San Francisco**

For most employees who work in the city, your employer is not allowed to reduce your pay for the time you spend traveling between your workstation and the employer's designated pumping space, as well as to and from the refrigerator for storing your milk.<sup>11</sup> You do not have a right to be paid for the time you spend actually pumping the milk, unless one of the other situations above applies to you.

**8. You work as an employee of the state of Indiana or Oklahoma**

Under **Indiana** state law,<sup>12</sup> if your employer is the state or one of its political subdivisions, you have a right to reasonable paid break time to pump milk for your infant child. If you work for a private (or non-state) employer, you do not have a right to receive paid breaks, unless one of the other situations above applies to you. Under **Oklahoma** state law, if you are a state agency employee, you have a right to paid lactation breaks to pump.<sup>13</sup> If you work for a private (or non-state) employer, you do not have a right to receive paid breaks, unless one of the other situations above applies to you.

**Need more info?**

To learn more about your legal protections beyond pay for breaks and for practical tips on talking to your boss about pumping, check out our resources at <https://pregnantatwork.org/pregnant-women-pregnancy/breastfeeding-employees/>.

**Need help?**

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<sup>11</sup> City and County of San Francisco, Office of Labor Standards Enforcement, Rules Implementing the Lactation in the Workplace Ordinance, Rule 1.2, available at <https://sfgov.org/olse/sites/default/files/Final%20Lactation%20in%20the%20Workplace%20Rules%20-%20July%2025%202018.pdf>.

<sup>12</sup> Ind. Code § 5-10-6-2 (2008).

<sup>13</sup> Okla. Stat. Ann. tit. 40, § 435 (West 2020).