

KNOW YOUR RIGHTS: NE BREASTFEEDING MOTHERS

Fall 2019

For almost 50 years, the ACLU Women's Rights Project has been working to secure gender equality and to ensure that all women and girls are able to lead lives of dignity, free from violence and discrimination. The ACLU of Nebraska has long been a leader on gender equity issues. A few recent examples of our work on women's rights include helping to successfully lead the way for stronger equal pay laws, stronger protections for pregnant and breastfeeding workers, strong policies to support pregnant and parenting students in all public schools, ensuring access to free menstrual products for incarcerated women and girls, advocating for breastfeeding rights in higher education, and successfully settling cases of breastfeeding discrimination in public spaces and the workplace.

You have the right to breastfeed in public and private spaces.

Q: Is there any location where I'm not allowed to breastfeed my child?

A: Generally, no. In Nebraska, a mother “may breastfeed her child in ANY public or private location where the mother is otherwise authorized to be.”¹ Additionally, Nebraska now explicitly exempts breastfeeding in public from public indecency laws such that no one can be prosecuted for breastfeeding in public.² To report breastfeeding discrimination in public accommodations (for example: restaurants, stores, parks, schools etc.) visit:

Nebraska: www.neoc.ne.gov

Omaha: <https://humanrights.cityofomaha.org/civil-rights/filing-a-charge>

Lincoln: lincoln.ne.gov/city/attorn/human/complaint.htm

You have the right to breastfeeding accommodations at work.

Q: Does Nebraska law protect my ability to pump breastmilk at work?

A: Yes. The Nebraska Fair Employment Practices Act and the Nebraska Pregnant Workers Fairness Act covers businesses with 15 or more employees.³ Under these laws, employers are required to treat pregnancy, childbirth and related medical conditions, including breastfeeding, like physical limitations stemming from a disability.⁴

The business is required to provide reasonable accommodations unless it would impose an undue hardship on the employer.⁵

Q: What kind of “reasonable accommodations” are required for breastfeeding mothers under Nebraska law?

A: Some examples of reasonable accommodations may include letting you take longer or more frequent breaks and ensuring you have appropriate facilities for pumping and storing breastmilk.⁶ These types of accommodations are required if the employer cannot demonstrate that accommodating your lactation needs would require “significant difficulty or expense” such that it is an “undue hardship” on the employer.⁷

Q: Are there federal laws that require my employer to allow me to pump breastmilk at work?

A: Yes. There are federal laws that may protect your right to pump at work: The Pregnancy Discrimination Act (PDA) of Title VII of the Civil Rights Act, prohibits discrimination or harassment based on pregnancy including related medical conditions such as breastfeeding. The law requires that women affected by pregnancy, childbirth, or related medical conditions be treated the same as other employees for all employment-related purposes. This law applies to businesses with 15 or more employees—including all federal, state, and local government employers, employment agencies and labor organizations.⁸

The Reasonable Break Time for Nursing Mothers law requires that covered employers allow eligible employees to pump breastmilk at work for one year after a child's birth. Employers must give you reasonable break time to pump and a private location, other than a bathroom, to express milk.⁹ The Break Time for Nursing Mothers law also protects workers from retaliation (like mandatory reassignment or firing) for asserting their rights or filing a complaint about these issues.¹⁰

This law applies to employers who are involved in interstate commerce and whose gross revenue is at least \$500,000/year.¹¹ Employers with fewer than 50 employees may seek exemption from the break-time requirement if compliance with the provision would impose an undue hardship.¹² Only non-exempt (hourly) employees are covered under the Nursing Mothers provision¹³, and workers in certain professions such as teachers, railway workers, and airline employees, are not covered. To find out if you are covered under the Fair Labor Standards Act visit: www.dol.gov/whd/regs/compliance/whdfs14.pdf

To file a complaint about your rights under this FLSA provision, contact the U.S. Department of Labor at:
www.dol.gov/whd/howtofilecomplaint.htm

To file a workplace breastfeeding discrimination complaint under state/federal law, contact the Nebraska Equal Opportunity Commission:
www.neoc.ne.gov

For tips on how to talk to your boss about accommodations or to learn about industry-specific ways to find or create lactation spaces at your job, visit: www.pregnantatwork.org/pregnant-women-pregnancy/breastfeeding-employees

Q: Are there any local laws in Nebraska that provide additional protections on the job?

A: Yes. The Lincoln Municipal Code has protections that apply to employers of any size in the city of Lincoln and all city contractors.¹⁴ To file a discrimination complaint if your employer is in the city of Lincoln visit:
lincoln.ne.gov/city/attorn/human/complaint.htm

The Omaha Municipal Code prohibits discrimination because of sex for employers with six or more employees.¹⁵ To file a discrimination complaint if your employer is in the city of Omaha visit: humanrights.cityofomaha.org/civil-rights/filing-a-charge

You have the right to be excused from jury duty while you are breastfeeding.

Q: I've been called for jury duty, but I am breastfeeding my child. Do I have to serve as a juror?

A: In Nebraska, a nursing mother may be excused from jury service until she is no longer nursing her child. You will need to make a request to the court at the time your juror qualification form is filed with the jury commission. You must include a physician's certificate in support of your request. The jury commissioner will mail you a notification form to be filled out and returned when you are no longer nursing your child.¹⁶

However, if you wish to serve on a jury while you are nursing, you should not be required to be excused from jury service and should be entitled to reasonable time and space accommodations to pump. You should note those accommodations on your juror qualification form.

You have the right to lactation accommodations during the bar exam.

Q: I am about to take the Nebraska Bar Exam and am nursing. Am I entitled to accommodations?

A: Yes. In Nebraska, candidates sitting for the bar exam who are breastfeeding are eligible to seek accommodations. These accommodations may include a private location to pump, permission to bring pumping equipment, and additional break time. Requests are evaluated on a case-by-case basis.

To request breastfeeding accommodations for the Nebraska Bar Exam visit: supremecourt.nebraska.gov/attorneys/admission-practice-law/admission-by-exam

You have the right to pump at your middle school or high school and be provided with accommodations.

Q: I am a Nebraska middle school or high school student who is also a nursing mother. What do I need to know about breastfeeding at school?

A: Pregnant and parenting students face enormous challenges to completing their education. Many young women who become pregnant in high school leave school, which detrimentally impacts their financial, social, and educational future, as well as the future of their children. Schools have an obligation to keep pregnant and parenting students in school.

In Nebraska, school districts are required to adopt written policies to encourage the success of pregnant and parenting students, including providing accommodations for breastfeeding students. Schools must provide students with private, hygienic spaces to express breastmilk during the school day.¹⁷

Notwithstanding any other provision of law, a mother may breastfeed her child in any public or private location where the mother is otherwise authorized to be, including, but not limited to, a public, private, denominational or parochial day school.¹⁸

To report potential violations, contact: the school's principal, superintendent, the Nebraska Department of Education at www.education.ne.gov, and/or the Department of Education's Office for Civil Rights at www2.ed.gov/about/offices/list/ocr/complaintintro.html

You have the right to pump at your college or university and be provided with accommodations.

Q: Do I have breastfeeding rights as an employee, graduate student, or undergraduate student at my college or university?

A: Title IX protects people from discrimination based on sex in education programs or activities that receive federal funding. Sex includes pregnancy and related conditions such as lactation. Title IX applies to both public and private educational institutions that receive federal funds. As such, almost all private colleges and universities must abide by Title IX rules because these schools receive federal funding from numerous sources.

Schools subject to Title IX must find ways to help students who need to breastfeed or pump on campus. Reasonable accommodations include private and sanitary space, as well as adequate breaks to pump.¹⁹ Schools are also required to take steps to ensure freedom from harassment for lactating students. Even if your school does not have a lactation policy that applies directly to students, it is still required to provide you with these accommodations. Several Nebraska colleges and universities have sound model policies for student lactation and the ACLU of Nebraska has encouraged other institutions of higher education to adopt similar policies.

University Lactation Policies

University of Nebraska-Lincoln:

www.unl.edu/chancellor/policymemoranda/20090901-Lactation-Policy

University of Nebraska Medical Center:

catalog.unmc.edu/general-information/campus-services/lactation

Central Community College:

www.cccneb.edu/student-life/student-policies-and-procedures/lactation-support-procedure

Chadron State College:

www.csc.edu/documents/publications/csc_student_handbook.pdf

To report potential violations, students should contact their school's Title IX Coordinator or the Department of Education's Office for Civil Rights:
www2.ed.gov/about/offices/list/ocr/complaintintro.html

For more information on college students' breastfeeding rights visit:

The Pregnant Scholar, thepregnantscholar.org

The National Women's Law Center's FAQ:

Breastfeeding Students,

nwlc.org/resources/faq-breastfeeding-students

Breastfeeding Rights For Incarcerated Women

Q: Do women who are incarcerated have the right to breastfeed or pump?

A: While the law on this issue is currently unsettled, if you or someone you know has been denied the right to express breastmilk while incarcerated, contact ACLU-NE. Additionally, The Nebraska Correctional Center for Women in York, NE has a nursery program in which infants born to mothers at the prison who meet certain criteria may stay with their mothers at the facility.²⁰ During the 2019 session, the Nebraska Legislature passed LB 690, a bill that protects pregnant women who are incarcerated. Under the law, absent extraordinary circumstances, pregnant women

and girls in adult or juvenile facilities cannot be shackled or restrained, including during labor and delivery and during postpartum recovery.²¹ This means that when breastfeeding is initiated during the initial postpartum period, women cannot be restrained unless an individual determination is made that such restraint is necessary due to an extraordinary circumstance.

Additional Resources

If you have questions about breastfeeding rights, contact the ACLU of Nebraska at aclunebraska.org/gethelp.

Breastfeeding Discrimination

www.aclu.org/issues/womens-rights/pregnancy-and-parenting-discrimination/breastfeeding-discrimination

Top 10 Reasons the ACLU Fights for Breastfeeding Rights

www.aclu.org/blog/womens-rights/pregnancy-and-parenting-discrimination/top-10-reasons-aclu-fights-breastfeeding

National Conference of State Legislatures - Breastfeeding State Laws

<http://www.ncsl.org/research/health/breastfeeding-state-laws.aspx>

La Leche League of Nebraska

www.llofne.org

MilkWorks

milkworks.org

Nebraska Breastfeeding Coalition

nebreastfeeding.org

Nebraska Safety Council Lactation Support

www.nesafetycouncil.org/index.php/program-resources/lactation-support

United States Breastfeeding Committee

www.usbreastfeeding.org/workplace-guide-ne

Citations

¹ Neb. Rev. Stat. § 20-170.

² L.B. 209 (AM 1875), 106th Leg., 1st Sess. (Neb. 2019).

³ Neb. Rev. Stat. § 48-1102.

⁴ Neb. Rev. Stat. § 48-1107.02.

⁵ *Id.*

⁶ Neb. Rev. Stat. § 48-1102.

⁷ *Id.*

⁸ 42 U.S.C. §§ 2000e et seq.

⁹ 29 U.S.C. § 207(r).

¹⁰ 29 U.S.C. § 215(a)(3).

¹¹ 29 U.S.C. § 203(s).

¹² 9 U.S.C. § 207(r)(3).

¹³ 29 U.S.C. § 207.

¹⁴ Under the code, “[w]omen affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of employee benefits, as other persons not so affected but similar in their ability or inability to work, and nothing in this section shall be interpreted to provide otherwise.” LINCOLN, NEB., MUNICIPAL CODE 11.08.100.

¹⁵ Under the code, “[b]ecause of sex [i]ncludes, but is 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. . . .” OMAHA, NEB. CODE OF ORDINANCES § 13-84.

¹⁶ Neb. Rev. Stat. § 25-1601(4).

¹⁷ Neb. Rev. Stat. § 79-2,151.

¹⁸ Neb. Rev. Stat. § 20-170.

¹⁹ Know Your Rights: Breastfeeding, THE PREGNANT SCHOLAR, <https://thepregnantscholar.org/know-your-rights-breastfeeding/> (last visited Aug. 9, 2018).

²⁰ See Kate Burke, Nursery Program Works at Women’s Center, YORK NEWS TIMES, https://www.yorknewstimes.com/news/nursery-program-works-at-women-s-center/article_cdfcabf3-49f0-5d7d-ba1e-2faf17f0ce62.html (Mar. 25, 2011).

²¹ L.B. 690, 106th Leg., 1st Sess. (Neb. 2019).