



# City of Albuquerque

## MAYOR / CAO OFFICE

Richard J. Berry, Mayor

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**ADMINISTRATIVE INSTRUCTION NO:** 7-53 (2016)

**TITLE:** Break Time for Lactation

**PRIMARY DEPARTMENT:** Human Resources Department

The City of Albuquerque recognizes the health benefits of breastfeeding and supports accommodation of mothers who choose to utilize their own breast pump to express breast milk upon returning to work after maternity leave of absence.

This Administrative Instruction is in compliance with the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act (PPACA), which took effect on March 23, 2010 (P.L. 111-148). PPACA also amended Section 7(r) of the Fair Labor Standards Act (FLSA) which regulates break time for nursing mothers.

This Administrative Instruction also aligns with New Mexico state law [NMSA 1978, Section 28-20-2 (Amended 2007)] which requires employers to provide flexible break time and a clean, private space, not a bathroom, in order to foster the ability of a nursing mother who is an employee to use a breast pump in the workplace.

### Policy

#### A. Flexible Scheduling

1. A nursing employee is allowed to use a breast pump to express milk during the work day using her regular break and meal periods. Since the frequency and duration of lactation breaks will likely vary throughout the nursing period, a nursing employee shall be allowed a reasonable flexible break schedule for lactation with her own breast pump. The time allowed for milk expression breaks each work day will not exceed the combined total amount of time for regular employee break and meal periods. For time above and beyond the combined total amount of time for break and meal periods, the employee may request a lactation break schedule that includes the use of available vacation or sick leave accruals. An employee who does not have sufficient vacation or sick leave accruals must request the use of Personal Leave Without Pay.

2. Under no circumstances will the employee be paid overtime pay to complete their work due to the time required to express milk.

3. In order to prepare a work schedule and coverage for a nursing employee who provides uninterrupted city services, the employee must provide to her supervisor at the beginning of each pay week a proposed schedule for expressing milk with a breast pump.

4. All flexible lactation break schedule requests are subject to approval by the

department based on reasonableness of the request. Supervisors will consult with the employee to identify a flexible break schedule that considers parameters of the employee's job description and the service being provided.

#### B. Designated Lactation Space

1. Each department will provide a sanitary, lockable, private room or other space where an employee can express milk with her own breast pump in privacy, shielded from view, and free from intrusion from coworkers and the public. This room or space may be used by other on-duty city employees when the room is not being used to express milk.

2. Where possible, the room will be located near a sink with running water for washing hands and rinsing out breast pump parts, and have an electrical outlet. Where possible, the room or space will be in close proximity to the employees' work area. The room may not be a toilet stall or bathroom. If employees prefer, they may express milk in their own private office or other comfortable locations agreed upon in consultation with the employee's supervisor.

3. It is the employee's responsibility to keep the location clean after each use and remove any personal items.

4. Nursing employees who do not work in an office setting but provide uninterrupted city services may be required to use a room or space established by this Administrative Instruction at a city facility that is not operated by the department in which the employee works. The employee would be required to use this room or space in order to minimize travel time to and from the employee's work location to the room or space.

5. Some departments may elect to provide transportation for the employee from the field to the building in which the lactation space is located.

6. Twice a year, in January and in July, the Human Resources department will distribute a list of each city facility that has or may have a private room or space for expressing milk. This list will provide the following information: Name of facility or complex, street address, days and hours of operation, location of the room or space, parking information, any restrictions for the use of the room or space, contact name, phone number, and email address. Department representatives may use the list to identify facilities that meet the needs of their department. Each department is responsible for making lactation space arrangements.

#### C. Storing Breast Milk

1. Nursing employees will provide their own containers and storage unit such as small ice chest or thermos from home if these accommodations are not in place.

2. If breast milk is stored in a common refrigerator, the expressed milk container must be placed in a clean, closed container, which has the mother's name and date on it. It is the employee's responsibility to remove expressed milk at the end of each day.

#### D. Employee's Responsibility

1. Employees need to inform their supervisor as early as possible of their intention to continue breast pumping following maternity leave of absence. At least two (2) weeks' advance notice should be given. This provides the department time for all necessary arrangements to be made.



2. At the beginning of each pay week, provide the supervisor a proposed break schedule for expressing milk with a breast pump.

E. Supervisor's Responsibility

1. Upon receiving an employee's advance notification of her intention to express milk during the work day, the department must take necessary steps to ensure schedule and room arrangements are made prior to an employee's return to work.

2. Retaliation is prohibited against an employee who files a complaint, institutes a proceeding, or testifies in a lactation break time investigation (Section 15(a)(3) of the FLSA).

F. Human Resources Department Responsibility

1. Provide list identified in section B-6 of this Administrative Instruction.

2. As part of the procedure for applying for maternity leave under the Family and Medical Leave Act, mothers shall be provided this Administrative Instruction.

G. Maximum Time Frame for Schedule Adaptation

1. The flexible lactation break schedule and space accommodations for employees will expire one year from the date of birth of the child.

2. If the employee discontinues breast pumping before the child's first birthday, the employee is obligated to inform her supervisor of the date she will discontinue breast pumping. Failure to inform the supervisor upon discontinuing breast pumping and continuing to utilize the space accommodations or schedule adaptation would be considered a policy violation subject to appropriate disciplinary action.

H. Scope

This Administrative Instruction applies to all current employees, classified and unclassified, including but not limited to interns, volunteers and seasonal employees.

**REFERENCES:**

Patient Protection and Affordable Care Act (PPACA)

Section 7(r) of the Fair Labor Standards Act (FLSA)

NMSA 1978, Section 28-20-2 (Amended 2007)

Section 15(a)(3) of the FLSA



**Robert J. Perry**  
**Chief Administrative Officer**

5/31/17

**Effective Date**