

# The Rights of Pregnant and Parenting Students and Employees in CA Schools



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# Why are Lactation Accommodations Important?

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- ❖ Studies have shown that when babies are breastfed they are healthier and their parents are less likely to miss work.
- ❖ The reduced healthcare costs for breastfed infants and their mothers translate into lower medical insurance claims for their employers.
- ❖ Research shows that workers who receive support to express milk at work are:
  - ❖ more likely to return from maternity leave and not to further extend their leave
  - ❖ have improved morale and better satisfaction; and,
  - ❖ are more productive and loyal to their employer.

# Why are Lactation Accommodations Important?

- When giving birth in the hospital, over 90% of families in Los Angeles County report intending to breastfeed their children, yet by 2 months, only 38% are exclusively breastfeeding. Lack of accommodations is a major factor in stopping.
- Of Los Angeles County women who experienced breastfeeding discrimination, 27.7% of lactating individuals stated they experienced breastfeeding discrimination in a school setting and 51.4% experienced breastfeeding discrimination at work

# EMPLOYEES

# Laws Impacting Breastfeeding at Work

## **California:**

Civil Code, Section 43.3: Breastfeeding in Public

Labor Code 1030: Reasonable accommodations for lactation in workplace

Labor Code 1171.5: Labor laws enforced regardless of immigration status

*DFEH vs. Acostas Tacos*: “Breastfeeding is an act intrinsic to being female”

AB 2386: Under FEHA, Breastfeeding employed mothers are a protected class.

FEHA, Preg Regs: Lactation is officially defined as “other related medical condition”

## **Federal:**

Title VII

Title IX

Fair Labor Standards Act “Break Time for Nursing Mothers”



## FEHA, California's Civil Rights Law:

Prohibits Harassment and Discrimination on Basis of

- Age (40 and over)
- Ancestry
- Color
- Religious Creed (including religious dress and grooming practices)
- Denial of Family and Medical Care Leave
- Disability (mental and physical) including HIV and AIDS
- Marital Status
- Medical Condition (cancer and genetic characteristics)
- Genetic Information
- National Origin (including language use restrictions)
- Race
- **Sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding)**
- Gender, Gender Identity, and Gender Expression
- Sexual Orientation



# Pregnancy/Lactation Accommodations: Reasonable Accommodations

Fair Employment and Housing Act (FEHA) - Government Code § 12945:

Unlawful to engage in specified discriminatory practices in employment accommodations on the basis of sex (**including breastfeeding or medical conditions related to breastfeeding**).

Employers are required to provide **reasonable accommodations** for employees with a condition related to pregnancy or childbirth, including lactation.

A “reasonable accommodation” is an adjustment to an employee’s work environment that enable the employee to perform the essential functions of the job. Common ones include:

- Transferring to a less hazardous or strenuous position
- Change in hours
- Uniform modifications

# State Law Requirement for Lactation Break Time

## Labor Code Sections 1030-1033

- Employers are required to provide “reasonable” break time to employees who need to express milk
- Break times should be as close to regularly scheduled paid breaks as possible
  - Any additional break time needed must be provided but is unpaid
- Exception: Employer is not required to provide break time if it would “seriously disrupt” the operations of the employer. (Note: challenging to meet this test)



# State Law Requirement for Lactation Break Time

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## Labor Code Sections 1030-1033

### Duration of Lactation Breaks

- The length must be a reasonable amount of time to express milk, PLUS
- Additional variables to consider:
  - Time to reach the lactation space
  - Time to prepare
  - Time to store milk
  - Time to clean up/pack up

*Remember:* Quality and availability of lactation space directly impacts time!

# CA Requirement for Lactation Space

Must make reasonable efforts to provide a private space that is not a bathroom (if regular work space isn't suitable)

The space should be:

- Shielded from view and free from intrusion by other employees
- Close proximity to employee's work area
- Not a bathroom stall

# What are the challenges for breastfeeding employees?



# Comparison: California v. Federal Law

	California Law	Federal Law
<b>Preemption</b>	When state and federal law differ, the law with greater protection prevails.	
<b>Who</b>	Applies to ALL employers and employees. Employer of any size is exempted from providing break time under this section if doing so would seriously disrupt the employer's operations.	Applies to non-exempt employees. Employers with less than 50 employees may be exempt if compliance would create 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.
<b>How long</b>	Reasonable amount of break time (no upper age limit).	Reasonable amount of break time up to 1 year after infant's birth.
<b>Breaks</b>	May use paid rest and/or meal break times. Additional unpaid breaks may be taken if not used concurrently with paid breaks.	
<b>Space</b>	An employer must make <u>reasonable</u> efforts to provide a room or other location in close proximity to the work area for the employee to express milk in private. Space cannot be a toilet stall.	Employer <u>shall</u> provide a place shielded from view and free from intrusion from co-workers and the public for the employee to express breastmilk. Space cannot be a bathroom.
<b>Penalty</b>	Civil penalty of \$100 per violation.	Civil sanction, \$1,100 per willful violation.

- Failing to provide a lactation break carries a penalty fine for *each violation* (**Labor Code § 1033**)
- Discrimination consequences:
  - Compensatory damages, money for lost wages, unpaid wages, medical costs
  - Punitive damages
  - Legal expenses
  - Bad publicity!

## **Employees may resolve the dispute by:**

- Using internal Title IX, HR or union grievance policy
- File a complaint with an administrative agency
- File a civil lawsuit



**STUDENTS**

# Pregnant and Parenting Students

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BREAKING DOWN EDUCATIONAL  
BARRIERS FOR CALIFORNIA'S  
PREGNANT & PARENTING STUDENTS



A REPORT BY THE ACLU OF CALIFORNIA

Problems they encounter:

- Stigmatizing behavior
- Prevented from taking the courses necessary or desired
- Forced to withdraw or prevented from successfully finishing courses
- Restricted from activities
- Denied a secure and private place to breastfeed or pump milk



**4.8 million college students  
are raising children.<sup>11</sup>**

**Women make up 71%  
of all student parents.<sup>11</sup>**

**Women of color**

are the most likely students to be raising children while pursuing a postsecondary degree.<sup>11</sup>

Nearly half of all black women in college have dependent children (47%).<sup>11</sup>



## Students with children

are especially unlikely to complete a certificate or degree within six years of enrollment, with only

**33%**

attaining a degree or certificate in that time.<sup>11</sup>

Sex



Pregnancy



Pregnancy, False Pregnancy,  
Termination, Childbirth, Lactation,  
Recovery and related conditions

Key anti-discrimination laws:

- Title IX
- CA Sex Equity in Education Act
- CA Unruh Civil Rights Act

## **Title IX & CA Law:**

- ADA/504 Accommodations cover pregnancy-related impairments
- Any special services/accommodations provided to students with “temporary conditions” must be provided to students with pregnancy-related conditions

## Bottom line:

Treating pregnant or lactating students differently or denying reasonable accommodations is sex discrimination.

# Common Accommodations for Pregnant/Parenting Students

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- Delayed deadlines
- Bathroom breaks
- Breaks for rest or water
- Time to pump breast milk during class or exams
- Parking space
- A larger chair so pregnant student can sit comfortably
- Modification of equipment, test, or training materials, or policies

# Accommodations: Additional Considerations

- Typical accommodations processes may be poorly suited to address pregnancy-related accommodation needs
  - Deadlines
  - Onerous certification requirements
  - Disability Stigma and lack of awareness
  - Gray areas
- Colleges can require a pregnant student to submit medical certification only if it also requires the same of all similarly-situated students under a doctor's care.
- Schools must be very careful about confidentiality of pregnancy information: protected under Constitution, HIPAA, & CA laws.

## **Leave permitted “as long as medically necessary”**

Is determined by a physician and may include:

- ▶ medically-necessary doctor’s appointments
- ▶ leave during pregnancy
- ▶ time off for childbirth and recovery
- ▶ post-birth absences related to pregnancy/childbirth (such as for breastfeeding)

**“...reinstated to the status which she held...”  
following the absence**

Includes:

- ▶ Guaranteed re-admittance to program
- ▶ No penalty or grade deductions
- ▶ Must be allowed to make up assignments
- ▶ Stop-the-clock on time to degree policies
- ▶ Law provides no exceptions

# Student Lactation Time/Space Requirements

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## **Time to express milk:**

- Reasonable amount of break time as frequently as needed for all nursing mothers (frequency and duration of milk expression may vary)
- For students: break time without incurring academic penalty and with the ability to make up any missed work

## **Time/Space Bottom Line:**

- If lactation space adequacy or time issues prevent student from equal access to an education, it is a Title IX problem!





## ABC's of Breastfeeding in Los Angeles County School Districts

*ACLU of SoCal, BreastfeedLA and  
California Womens Law Center*

<http://breastfeedla.org/schooldistricts/>



# ABC's of Breastfeeding: Method



All 81 LA County School Districts and over 100 LA universities and colleges were evaluated on the same five criteria:

1. Are the school board policies available online?
2. Does the school district have an employee lactation accommodations policy?
3. Does the school district have a pregnant and parenting student policy?
4. Does the school district student policy include lactation accommodations?
5. Can the Title IX Coordinator be easily identified?

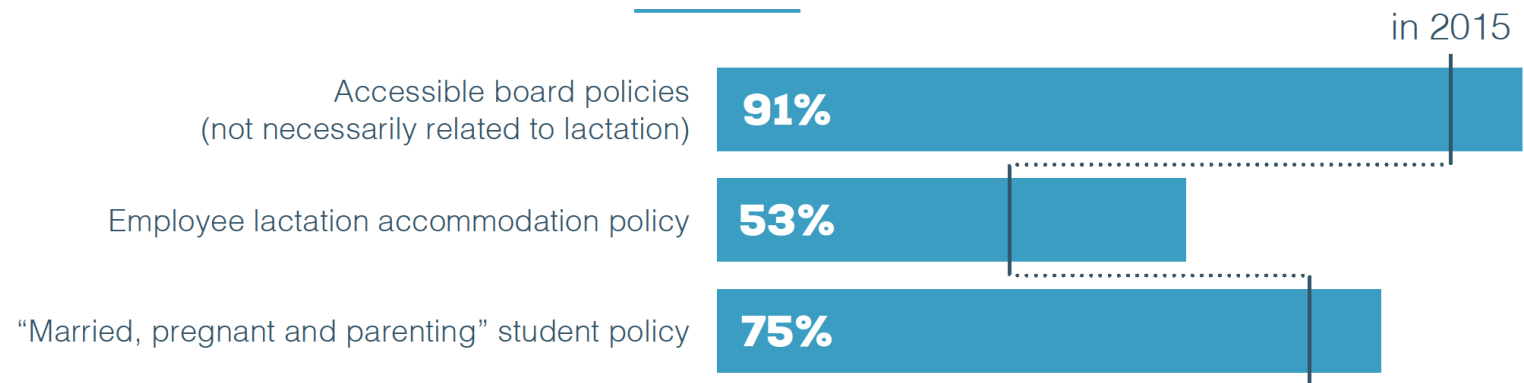


# ABC's of Breastfeeding: Findings



## Report Card Results for LA County School Districts: Improvements

- 48% of school districts **improved** in at least one evaluated area over 2015
- LA County **average grade "C"**
- 8 schools districts received a **"A" grade**
- The majority of school districts have **accessible** board policies (91%)
- 53% have lactation accommodation policies for **employees**
- **75% have a married, pregnant and parenting student policy**
- **51% have a Title IX Coordinator** identified on the website or by phone



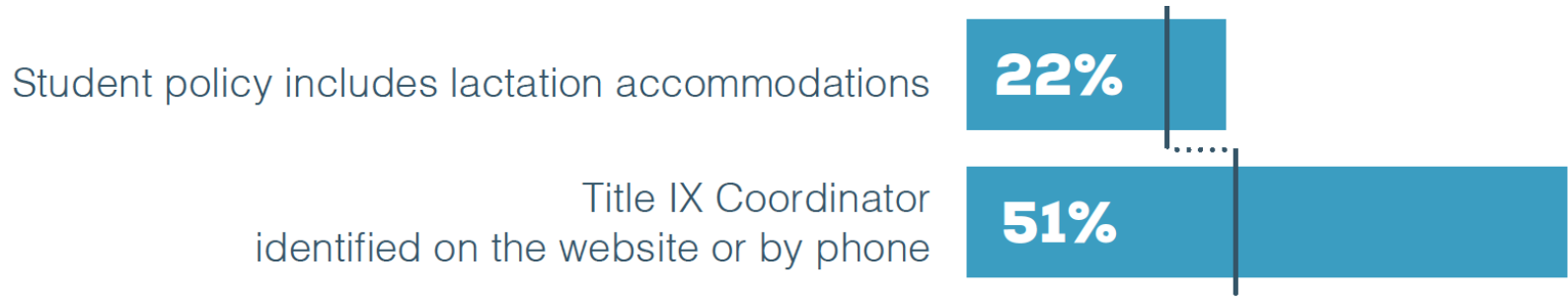


# ABC's of Breastfeeding: Findings



## Opportunities for Improvement: LA County School Districts

- **Only 22%** have lactation accommodation policies for **students**
- **35% of school districts received a failing score of “D” or lower**
- Much more progress to be made to reach the **goal of 100% compliance**





# ABC's of Breastfeeding: Findings



## Report Card Results from 2016-2017 for LA Universities and Colleges:

- Most schools have **accessible policies online (94%)**
- **61%** of LA's universities and colleges have a **Title IX Coordinator** identified on the website or by phone



# ABC's of Breastfeeding: Findings



## Opportunities for Improvement: LA Universities and Colleges

- Only one school earned an A grade.
- A staggering **87%** of the universities and colleges had a **failing grade of D or lower**.
- Most schools did not have an employee lactation accommodation policy (**84%**).
- **93%** of the schools did not have a **pregnant/parenting policy**.
- **98%** of the school's student policies did not **have lactation accommodation policies**.

# Lactation 101: Lactation Accommodations in Los Angeles Higher Education

*BreastfeedLA and California Women's Law Center*



**Lactation 101**

Lactation Accommodations  
in Los Angeles County  
Higher Education



## **Report Card Results from 2016-2017 for LA Universities and Colleges:**

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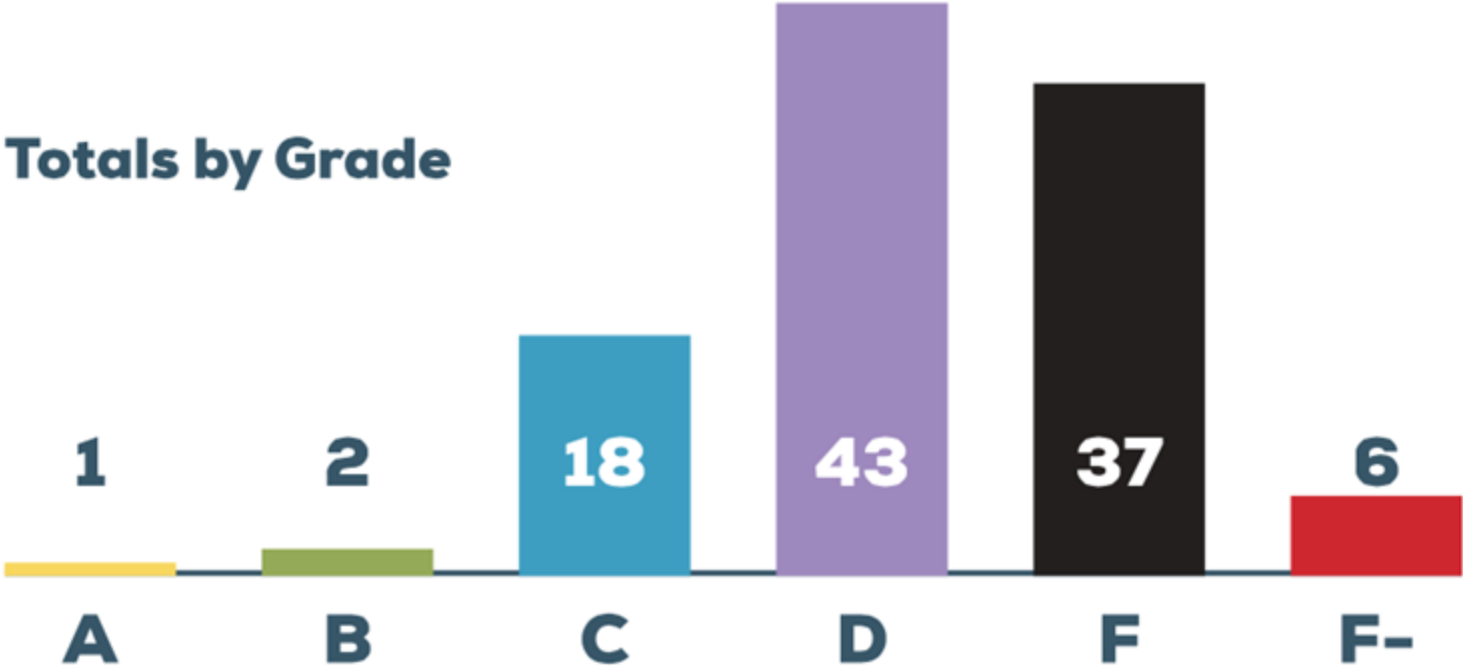
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Totals by Grade



[BreastfeedLA.org](#)

[California Women's Law Center](#)

[ThePregnantScholar.org](#)

[California Breastfeeding Coalition](#)

[US Surgeon General's Call to Action to Support Breastfeeding](#)

[DHHS, OWH, The Business Case for Breastfeeding](#)

[ACLU Southern California](#)

# Questions?

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