

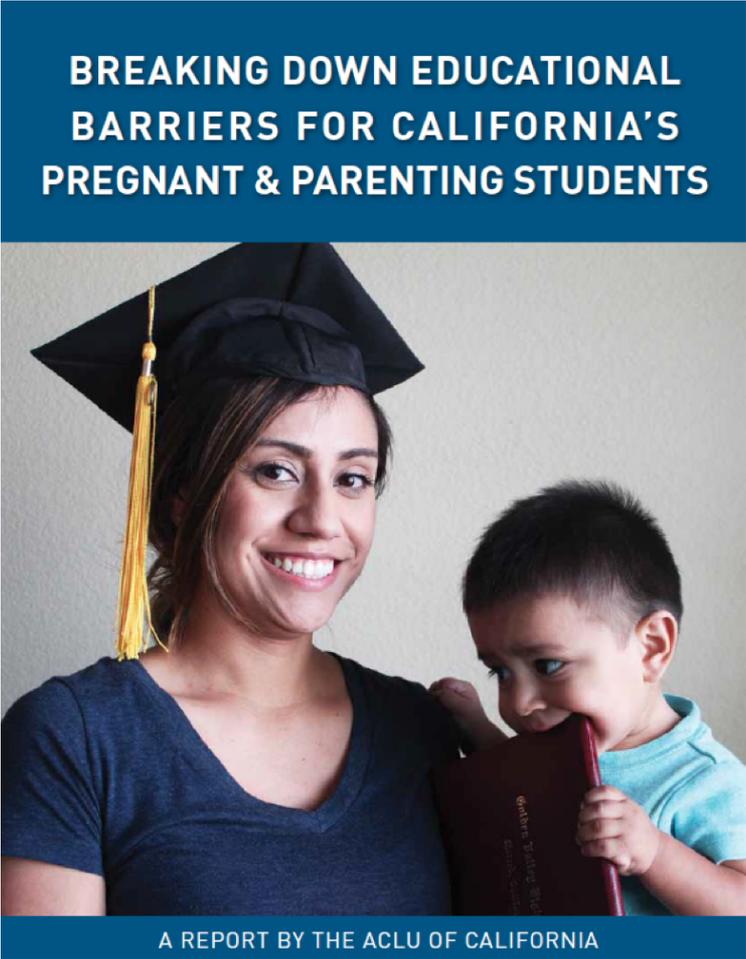
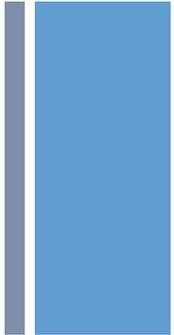
*The Rights of Pregnant and Parenting Students and Employees*

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Pregnant & Parenting Students



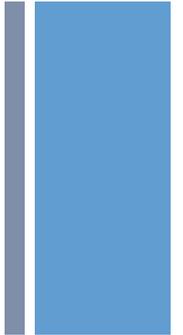
# Problems Pregnant and Parenting Teens Experience



- Stigmatizing behavior in the classroom.
- Prevented from taking the courses necessary to apply to many four year colleges.
- Restricted from school activities.
- Denied a secure and private place to breastfeed or pump milk.
- Pushed out of their regular schools and into continuation schools.

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# Consequences of Unlawful Pregnancy/Parental Status Discrimination



- High drop-out rate
- Low probability of earning a college degree
- Decreased opportunity to be hired for higher paying jobs
- High probability of welfare dependence
- Perpetual cycle of poverty

# + Title IX and California Law

- Title IX regulations prohibit discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.
- Schools cannot exclude pregnant students from participating in any educational program, including sports, honor societies, or extracurricular activities.
- Schools *can* have special instructional programs or classes for pregnant students but they must be voluntary and they must be comparable to those offered to other students

Sources: 34 C.F.R. § 106.40; U.S. Department of Education, Office for Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972* (2013)

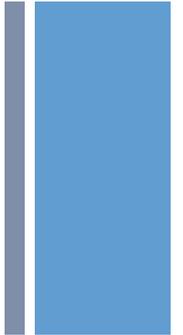
# + Title IX and California Law

- Schools must provide reasonable accommodations to pregnant students.
- Any special services provided to students who have temporary medical conditions must also be provided to pregnant students.
- A school can require a pregnant student to submit medical certification only if it also requires the same of all students under a doctor's care.
- Schools must be very careful about confidentiality of pregnancy information: protected under Constitution, HIPPA, & CA laws.

Sources: 34 C.F.R. § 106.40; U.S. Department of Education, Office for Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972* (2013)



# Title IX and California Law

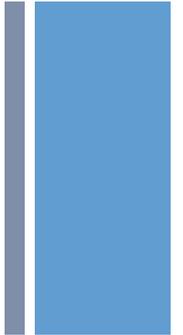


- CA law provides pregnant & parenting teens these same protections:
  - **California Sex Equity in Education Act:** Can't apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.
  - **Unruh Civil Rights Act:** Business establishments, which includes schools, can't discriminate based on sex. "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

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Lactation Accommodations

## + Stories



I had to pump at all hours of the night and early in the morning before school so that I could have enough milk for my baby and so that I wouldn't have to pump at school.

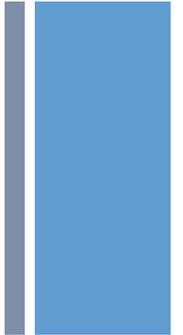
But even when I was at school, I still had to pump every two hours or often try to deal with the pain. Sometimes, the pain was so unbearable that I had no other choice but to walk into the public restroom and go into the stall to pump.

I eventually stopped producing the same amount of milk. My inability to feed or pump milk while at school ended up affecting my child's access to my milk at home.





# Lactation Accommodation Law



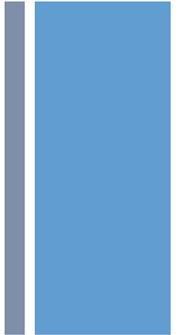
## **Title IX & CA Law:**

- If a school provides reasonable accommodations to students with temporary medical conditions, must do the same for breastfeeding students.
- Accommodations must be made for breastfeeding employees, who are also protected from any retaliation for taking breaks to breastfeed and pump.
- Treating lactating student, employee, or parent/guardian differently or denying reasonable accommodations is sex discrimination.

For more information about discrimination and accommodations laws for pregnant students and employees in schools, see: <https://www.aclusocal.org/wp-content/uploads/2015/10/BFLA-School-District-Laws.pdf>.



# Lactation Accommodation Law



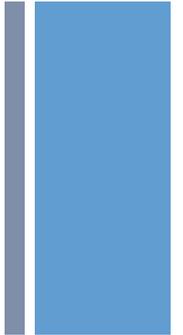
## **TITLE IX Coordinator**

Schools must also:

- Designate at least one person to be their Title IX Coordinator
- Notify students how to contact their Title IX Coordinator
- Adopt and publish grievance procedures to be followed if a Title IX issue arises.



# Lactation Accommodation Law

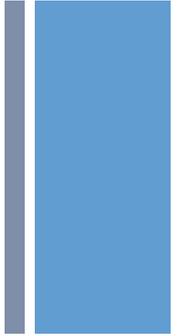


- AB 302: Effective **January 1, 2016**
- All public or charter schools with *at least one student* who is lactating must:
  - Provide a **private, secure room**—other than a restroom—to deal with any needs associated with breastfeeding or expressing milk
  - Allow lactating students to bring **any equipment** used to express breast milk to school, including a breast pump
  - Provide **access to a power source** for that equipment
  - Provide a **place to safely store** expressed milk

Sources: 29 U.S.C. § 207(r); Cal. Educ. Code § 222; Cal. Labor Code §§ 1030-31; ACLU of Cal., BreastfeedLA & Cal. Women’s Law Center, *ABC’s of Breastfeeding in Los Angeles County School Districts* (2015)



# Lactation Accommodation Law

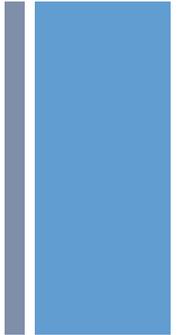


- ✓ Provide students with **reasonable time or time away** from the classroom to accommodate their lactation schedule
- ✓ Ensure students **do not incur an academic penalty** for any such breaks they may require
- ✓ Ensure students have the **ability to make up** any work missed during these breaks

Sources: 29 U.S.C. § 207(r); Cal. Educ. Code § 222; Cal. Labor Code §§ 1030-31; ACLU of Cal., BreastfeedLA & Cal. Women's Law Center, *ABC's of Breastfeeding in Los Angeles County School Districts* (2015)



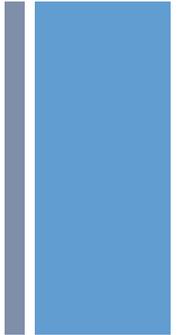
# Lactation Accommodation Process



- Title IX and CA Uniform Complaint Procedures available
- Accept and investigate complaints of noncompliance under the **Uniform Complaint Procedure**, which requires schools to investigate complaints and issue a decision within 60 school days
- Decisions may be appealed to CDE, which must issue a final, written decision within 60 days of filing

Sources: Cal. Educ. Code § 222; BreastfeedLA & Cal. Women's Law Center, *ABC's of Breastfeeding in Los Angeles County School Districts* (2015)

# + Public Breastfeeding



- People have a right to breastfeed in public and in government buildings.
- CWLC and BFLA have received many complaints from parents told they cannot breastfeed on school grounds during school events and teacher conferences.

Sources: Cal. Civil Code § 43.3.



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

*ACLU of SoCal, BreastfeedLA and  
California Women's Law Center*

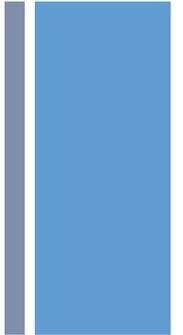
<http://breastfeedla.org/schooldistricts/>

**A B C's of Breastfeeding**

in Los Angeles County School Districts



# ABC's of Breastfeeding: Method

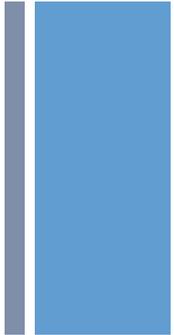


All 81 LA County School Districts and over 100 LA universities and colleges were evaluated on the same five criteria:

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?

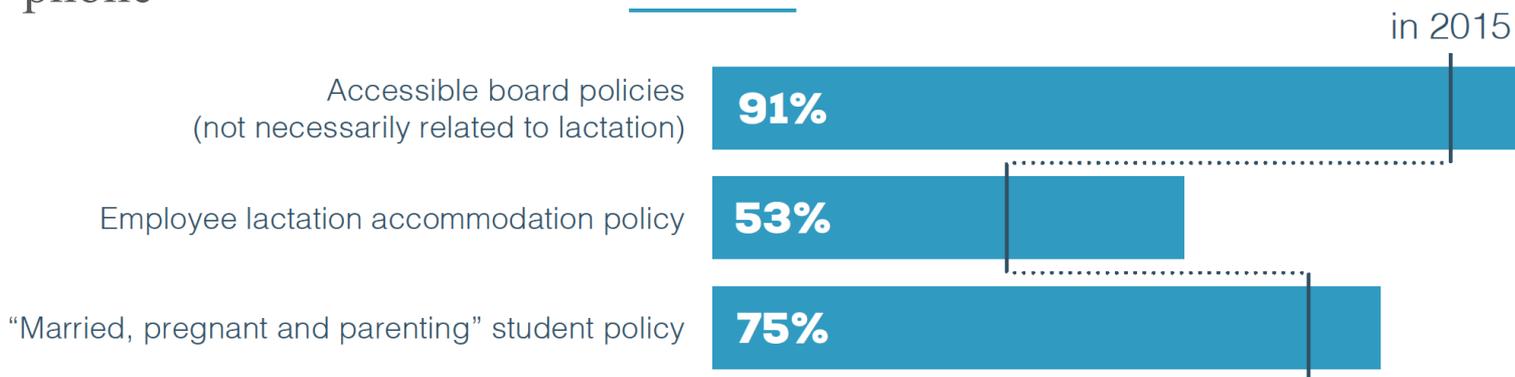


# ABC's of Breastfeeding: Findings



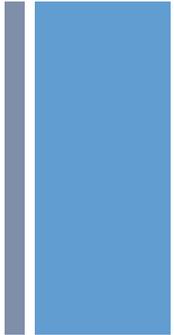
## Report Card Results for LA County School Districts: 2016 Improvements

- 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**

Student policy includes lactation accommodations

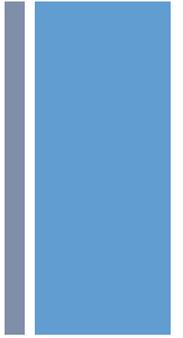


Title IX Coordinator  
identified on the website or by phone





# ABC's of Breastfeeding: Findings

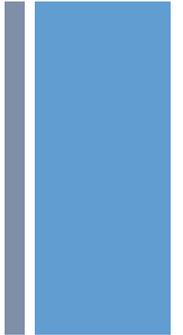


## Report Card Results from 2016-2017 for LA Universities and Colleges:

- 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

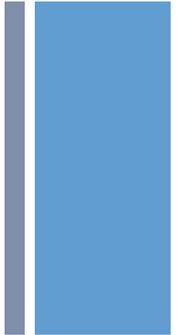


## Opportunities for Improvement: LA Universities and Colleges

- 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.**



# ABC's of Breastfeeding: Four Recommendations



There are **four** simple steps that will aid the effective implementation of lactation accommodations:

1. Adopt Policy
2. Train Staff and Communicate Policy
3. Identify Staff
4. Provide Space and Time to Pump

# + Step 1: Adopt Policies

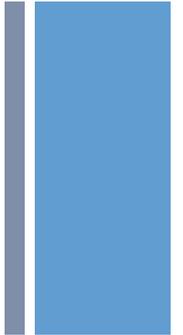
Adopt affirmative policies that support breastfeeding women and their specific lactation accommodation needs



- Make sure to have **two** lactation accommodations policies: one for employees and one for students
- If you don't have a policy, adopt one right away; if you do have one, review it for compliance and best practices
- CSBA has a new model lactation accommodations policy for students (5146).
- New model lactation accommodations policy for employees  
<http://breastfeedla.org>
- Contact BreastfeedLA, ACLU SoCal or CWLC for FREE assistance



## Step 2: Train Staff and Communicate Policies



Give staff appropriate training to implement, evaluate, and monitor compliance. Inform employees, parents, and students of their rights under these policies

- Convey non-discrimination and lactation accommodations policies through **multiple channels to both students (and their parents!) and staff**
- Provide policies to all new hires, people who take leave
- **Post** information in employee/student handbook, website/Intranet, break rooms, office, the more the better
- Provide **trainings** to school administrators

## + Step 3: Identify Staff

Identify staff who will be responsible for implementing these policies and handling complaints:

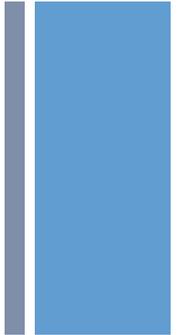
- **Designate** at least **one employee** as the Title IX Coordinator right away
- **Share** the Title IX Coordinator's name and contact information in an easily searchable location on website and with the rest of the office staff
- **Designate** at least one **HR employee** for handling lactation accommodations for employees right away
- Consider creating a **dedicated webpage** with all relevant contact information, links to policies and a commitment to implement Title IX



## Step 4: Provide Space and Time to Pump

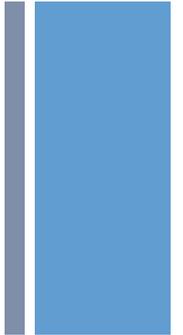
Identify appropriate space and allow time for staff and students to pump, without any penalty

- Dedicate a permanent space for milk expression
- The space must be private, clean and secure and **MUST NOT** be a bathroom
- Provide time to express milk without penalty to employees and students
- Provide students and employees information on how to access pumps through WIC or health insurance plans





# Private Time/Space Requirements



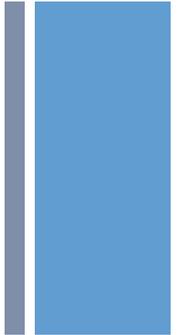
## **Designated space to express milk - Requirements:**

- MUST NOT be a bathroom
- In close proximity to the employee's work area
- Private room that is free from intrusion
- Each time there is a need to express milk

## **Best practices:**

- Electrical outlet
- Chair to sit and surface area to place pump
- Nearby sink with running water (for cleanup)
- Nearby refrigerator for storage
- Clean, quiet and well-lit

# + Private Time/Space Requirements



## **Time to express milk - Requirements:**

- 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

## **Best practices:**

- Provide a teacher's aide if an employee is away from the classroom to express milk

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# Private Time/Space Requirements

Restrooms = Impermissible  
place to express milk

Private space with the essentials  
= Permissible space to express  
milk

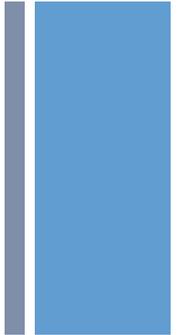


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# Implementation: For Providers & Advocates



- Breastfeeding benefits the workplace and school performance with less absenteeism and improved performance and morale
- When school districts:
  - 1) adopt strong lactation accommodations policies
  - 2) identify a Title IX Coordinator
  - 3) train staff and communicate policy
  - 4) provide access to time, space and breast pumps...  
...they support families to continue breastfeeding for the mutual benefit of parent and child, the community and moreover, our society
- <http://breastfeedla.org/at-work/>



# + Next Steps



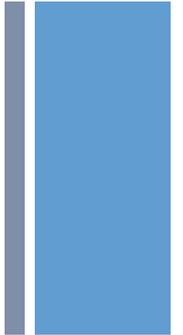
- BreastfeedLA, CWLC and ACLU SoCal and continue to offer technical assistance to schools to improve lactation accommodations and policy.
- Working on a new report to review lactation accommodations and policies at Colleges and Universities in Los Angeles. (To Be Released August 2017)
- Breastfeeding Advocacy 101 Day – August 31<sup>st</sup> at the California Endowment

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Lactating Employees

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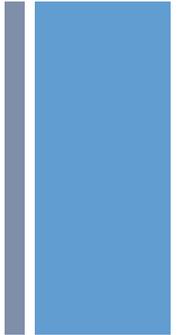
# Federal Laws Protecting Breastfeeding Employees



- Title VII
- Title IX
- Family Medical Leave Act (FMLA) and
- Affordable Care Act (ACA)



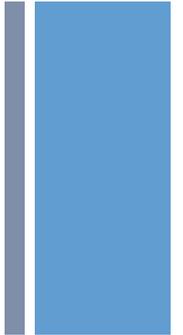
# Federal Law



- **Title VII of the Civil Rights Act of 1964**
- The Pregnancy Discrimination Act of 1978 amended Title VII to include pregnancy, childbirth and related conditions
- Covers employers with 15 or more employees
- Applies to private companies, employment agencies, labor organizations and government employees
- States that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes”



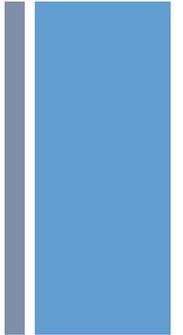
# Federal law



- **Title IX of the Education Amendments of 1972**
- No federally funded educational program or activity can discriminate against a person based on their sex
- Applies to employees at colleges, universities, elementary and secondary schools as well as any other educational institution that receives federal funding
- Guidance issued by OCR confirms that Title IX applies to pregnancy, childbirth and related conditions (such as breastfeeding) because they are related to a person's sex



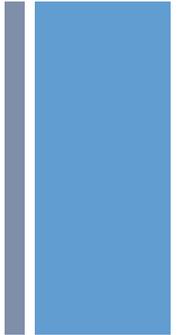
# Federal Law



- **Family Medical Leave Act (FMLA) of 1993**
- Gives employees the ability to take time off from work to care for a family member with job protection
- FMLA is unpaid unless the employee has additional benefits through their job or state laws that provided paid leave
- Qualifying employer, employee must have met certain conditions
- Qualifying conditions
- Entitled to up to 12 unpaid work weeks in a 12 month period
- Can take FMLA all at once or intermittently



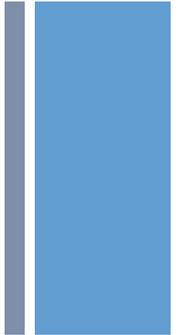
# Federal Law



- **The Breastfeeding Promotion Act – part of the Affordable Care Act (ACA)**
- Requires employers to provide reasonable break time for nursing mothers for up to one year after the child's birth
- Break time is unpaid unless the employee uses a break that is normally a paid break to express milk -- if so, must be paid
- A private space shielded from coworkers and the public that is not a bathroom
- Some circumstances where an employer can refuse to accommodate an employee
- No retaliation



# State Law Related to Lactating Employees



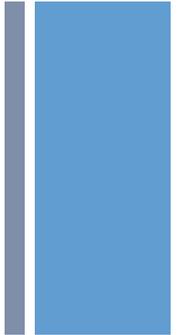
## ■ Labor Code Sections 1030-1033

- All employers are required to provide “reasonable” break time to employees who need to express milk
- Break times should be as close to regularly scheduled breaks as possible
  - Any additional break time needed is unpaid
- Must provide a private space close to the employee’s regular work space that is not a bathroom
  - Employee can use his/her regular workspace if it fits the other requirements of the law
- Exception: Employer is not required to provide break time if it would “seriously disrupt” the operations of the employer



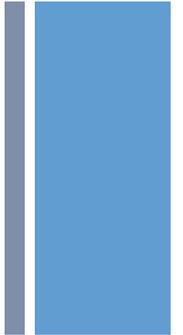
# California State Law

- **California Fair Employment and Housing Act (Gov. Code § 12925 et seq)**
- Applies to employers with 5 or more employees
- Unlawful to engage in specified discriminatory practices in employment accommodations on the basis of sex
- Was amended in 2012 to clarify that “sex” includes breastfeeding or medical conditions related to breastfeeding.
- This means the penalties for discrimination on the basis of sex under the Act now apply to discrimination on the basis of breastfeeding
- Discrimination includes failure to reasonably accommodate based on pregnancy or lactation
- Discrimination also includes harassment based on pregnancy or lactation (and harassment rules apply to ALL employers)





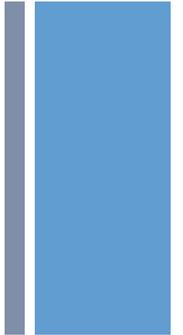
# Using Leave for Breastfeeding – State



- Government Code § 12945
  - Up to 12 weeks of leave to bond
    - Regardless of whether breastfeeding
  - Up to four months of pregnancy disability leave
- An employee's right to leave depends on
  - How long they have worked for employer
  - How many employees the employer has
  - How many hours employee has worked in the last year
- Both types of leave may be taken together if situation warrants
- Pregnancy disability leave is only available to women who have been disabled by pregnancy. Lactation is not a disabling condition

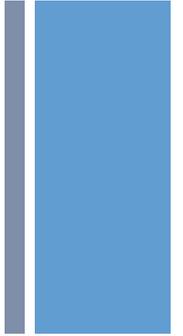


# State Law Penalties for Violations



- Labor Code § 1033
  - Failing to provide a lactation break
    - Each violation has a penalty of \$100
  
- Discrimination
  - Compensatory damages, money for lost wages, unpaid wages, medical costs
  - Punitive damages
  - Legal expenses

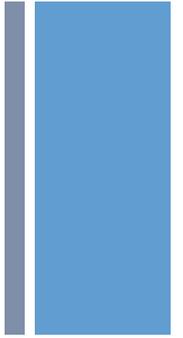
# + How to Handle Violations



- Resolve the dispute with your employer
- File a complaint with an administrative agency
- File a civil lawsuit

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# QUESTIONS?



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