



NEW MEXICO
**LAW OFFICES OF THE
PUBLIC DEFENDER**

**Chief Public Defender
Bennett J. Baur**

TITLE: 400 HUMAN RESOURCES ADMINISTRATION

CHAPTER: 108 EMPLOYMENT PRACTICES

PART: 6 LACTATION BREAKS SCHEDULE

EFFECTIVE DATE: June 17, 2025

PURPOSE: The LOPD recognizes the health benefits of breastfeeding and supports the accommodation of nursing employees who choose to utilize their own breast pump to express milk.

APPLICABILITY: All LOPD employees, Applicants (hereinafter referred to qualified person)

AUTHORITY: NMSA 1978, Section 28-20-2 (Amended 2007); Section 31-15-7 NMSA 1978

CROSS-REFERENCES: Human Rights Act, §28-1-7; Fair Labor Standards Act (FLSA), Section 7(r); PUMP Act; PWFA; PWAA; LOPD PWA Policy; LOPD 10.12.7 NMAC Absence and Leave

RELATED FORMS: LOPD Lactation Room and Schedule Request Form; LOPD Paid Parental Leave Request Form; Request for PWFA Accommodation Form; FMLA DOL Forms

1. DEFINITIONS

- A. **Chief Public Defender** – pursuant to the Public Defender Act, the administrative head of the Department. The Chief is responsible for the operations of the Department. It is the Chief's duty to manage all operations of the Department.
- B. **Review Panel** – a three (3) person panel to review any case forwarded by Human Resources or cases that fall outside the parameters outlined in this policy. This panel will consist of the following members:
1. General Counsel for LOPD or designee
 2. HR Director or designee
 3. ASD Deputy Chief or designee

- C. **LOPD HR** – Human Resources Division.
- D. **Qualified Person** – a nursing employee who is breastfeeding/chestfeeding their infant for one year or less after the child’s birth.
- E. **Parent** – includes a biological, adoptive, step, or foster parent of a child with an anticipated placement of six months or more, or other individual standing *in loco parentis* to a newborn or newly adopted child/children.
- F. **Child or Infant** – a person who is less than 18 years old.
- G. **Son or Daughter** – a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under age 18 years old.
- H. **Lactation Room** – a sanitary, lockable, private room or other space where an employee can express milk.
- I. **Lactation Break** - a period of time during a workday when a nursing employee can express milk for their infants at their workplace.
- J. **Lactation Room Coordinator (LRC)** – A LOPD employee designated to assist with setting up, maintenance, and overall management of a lactation space within an LOPD office location.

2. ELIGIBILITY

- A. A qualified person nursing beyond 12 months should work with their supervisor for approval to use the designated lactation room beyond 1 year.
- B. Eligible qualified persons must receive approval from their supervisor prior to altering their break schedule.
- C. For up to one year after the child’s birth (or longer with supervisor approval), any qualified person may use the designated lactation room for this purpose.

3. POLICY

- A. The LOPD’s established breaks provide employees with one paid 15-minute break in the morning, an unpaid lunch period, and one paid 15-minute break in the afternoon.

- B. A qualified person is allowed to use their own breast pump to express milk during the workday using their regular break and meal periods as defined above in Section 3A. Since the frequency and duration of lactation breaks will likely vary throughout the nursing period, a nursing employee shall be allowed a reasonable and flexible break schedule for lactation. The time allowed for milk expression breaks each workday will not exceed the combined total amount of time for regular employee breaks and meal periods.
- C. In the event an qualified person expects their lactation breaks to exceed their approved break and meal periods, the qualified person may request a lactation break schedule that includes the use of their accrued vacation or sick leave. An qualified person who does not have sufficient vacation or sick leave accruals must request and obtain approval to use Leave Without Pay Authorized.
- D. If the qualified person uses their available vacation leave balance, sick leave balance, or approved Leave Without Pay Authorized, the qualified person is responsible for coding this time in their SHARE timesheet.
- E. If an qualified person does not need to be completely relieved from their job duties to pump breast milk at work, they may not need to schedule breaks and must be paid. Supervisors and qualified persons should discuss their plan and expectations in advance.
- F. Under no circumstances will the qualified person accrue comp-time, or overtime or paid overtime pay to complete their work due to the break time identified in Section 3A required to express milk.
- G. In order to prepare a work schedule and coverage for a qualified person who provides uninterrupted agency services, the qualified person must provide to their supervisor at the beginning of each pay period a proposed schedule for expressing milk with a breast pump.
- H. An qualified person can also nurse their infant at their assigned office location. The qualified person shall maintain all provisions within sections A-G listed above and any other LOPD policy as it relates to visitors, safety, client services, and their agreed weekly schedules as provided to their manager/supervisor in section G.

- I. The agency shall approve all flexible lactation break schedule requests based on their reasonableness. Supervisors will consult with the qualified person to identify a flexible break schedule that considers the parameters of the qualified person's job description and the service being provided.
- J. When requested by an individual qualified person, a District Defender, Division Head or their designee, an LOPD office location will provide a sanitary, lockable, private room or other space with an electrical outlet where an qualified person can express milk with their own breast pump in privacy, shielded from view, and free from intrusion from coworkers and the public. When the room is not being used to express milk, other on-duty agency qualified persons may use it.
- K. Where possible, the room will be located near a sink with running water for washing hands and rinsing out breast pump parts. Where possible, the room or space will be in close proximity to the qualified person's work area. The room shall not be a toilet stall or bathroom. If qualified persons prefer, they may express milk in their own private office or other comfortable locations agreed upon in consultation with the qualified person's supervisor.
- L. Qualified persons who periodically report to a criminal justice partner's facility in order to provide uninterrupted agency services, may have access to a designated space. Note: This space is not operated by LOPD. The qualified person may have access to the designated space in order to minimize travel time to and from the qualified person's work location.
- M. Qualified persons will provide their own containers and storage unit.
- N. If breast milk is stored in a common refrigerator, the expressed milk container must be placed in a clean, closed container, which has the qualified person's name and date on it. It is the qualified person's responsibility to remove expressed milk at the end of each day.
- O. The flexible lactation break schedule and space accommodations for qualified persons may expire at one year from the date of birth of the child. An extension will be based on availability and supervisory approval.
- P. If the qualified person discontinues breast pumping before the child's first birthday, the qualified person is obligated to inform their supervisor of the date they 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.

4. PROCEDURES:

Responsibilities and procedures for qualified persons. Qualified persons need to inform their manager/supervisor, Office Manager and LOPD-HR as early as possible of their intention to breastfeed and need for a lactation space.

- a. Notify your supervisor, District Defender, Division Head or HR at least two weeks' before returning to work if you need to utilize a lactation space while at work and during your breaks. This provides the agency sufficient time for all necessary arrangements to be made.
- b. At the beginning of each payperiod, provide your supervisor with a proposed break schedule for expressing milk. This is not required if your schedule will stay the same each week.
- c. It is the qualified person's responsibility to keep the lactating space clean and sanitized (including all shared surfaces/items used) after each use. For example, wiping down surfaces, disposing of any trash, and ensuring the room is left in a tidy condition.
- d. Notify your supervisor and LOPD-HR as soon as possible if you need access to a criminal justice partner's lactation space. If available, one will be reserved for you.
- e. If there are issues with the lactation room, contact your office location's Office Manager, immediate supervisor, or Lactation Room Coordinator immediately to address the issues in a timely manner.

Responsibilities of Managers and Supervisors. Upon receiving an qualified person's advance notification of their intention to express milk during the work day, the department must take necessary steps to ensure schedule and room arrangements are made prior to a qualified person's return to work.

- a. Managers and Supervisors will consult with the qualified person to identify a flexible break schedule that considers the parameters of the qualified person's job description and the client services being provided.
- b. Keep the Office Manager or LRC informed of any modified break schedules established with the qualified person.
- c. Foster a workplace environment free of harassment, discrimination and

- retaliation against qualified persons requesting use of a Lactation Room.
- d. Abstain from making any statements or engaging in any behavior that could be interpreted as sexual harassment, discrimination, or retaliation.
- e. Maintain confidentiality regarding an qualified person's health related conditions.
- f. Retaliation is prohibited against an qualified person who files a complaint, institutes a proceeding, or testifies in a lactation break time investigation (Section 15(a)(3) of the FLSA).

Responsibilities of Human Resources (HR).

- a. Once HR is made aware of an qualified person's pregnancy, or an qualified person notifies of their need for the Lactation Room, qualified persons shall be provided this policy.
- b. HR Lactation Room Team will work with the Office Manager or unit designee to implement a Lactation Room that meets federal and state requirements.
- c. On an as-needed basis, coordinate with the Fiscal Department for purchasing items for a Lactation Room.

Responsibilities of Office Managers or designated supervisor/manager (hereinafter Lactation Room Coordinator [LRC]).

- a. Upon receiving advanced notification of an qualified person's intention to express milk during the work day, the LRC must take necessary steps to ensure schedule and room arrangements are made prior to an qualified person's return to work.
- b. LRCs will be lead on implementing and setting up Lactation Rooms with the HR Lactation Room Team within their assigned office location.
- c. LRCs will maintain schedules for the Lactation Room.
- d. Foster a workplace environment free of harassment, discrimination and retaliation against qualified persons requesting use of a Lactation Room.
- e. Abstain from making any statements or engaging in any behavior that could

be interpreted as sexual harassment, discrimination, or retaliation.

- f. Maintain confidentiality regarding an qualified person's health related conditions.
- g. Retaliation is prohibited against an qualified person who files a complaint, institutes a proceeding, or testifies in a lactation break time investigation (Section 15(a)(3) of the FLSA).

Any requests for exception to this policy shall be made in writing to the Chief Public Defender, your District Defender, or Division Head and LOPD-HR.

LOPD reserves the right to have the Review Panel, a three (3) person panel of members, review any case forwarded by HR that falls outside of the parameters outlined in this policy. The Review Panel will review requests in which the following is unclear; legal documentation, qualified person written request, the duration is not defined, or needs further consideration. The Review Panel may request additional information from the qualified person or deny requests at agency discretion.

Please take the time to carefully review the policy and understand the importance of following the procedures. Prompt notification will help avoid any delays in processing qualified person requests for breaks or a lactation space, and your adherence to these guidelines is crucial.

Authorized Signature

APPROVED: _____

Bennett J. Baur, Chief Public Defender
Law Offices of the Public Defender