

Content for Code of Employment Practice: An Employer's guide to Section 69Y of the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008.

Section One - Introduction

1. The Employment Relations Act 2000 (the Act) was amended by the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008. The amended Act requires employers to provide facilities and breaks for employees who wish to breastfeed when it is reasonable and practicable in the circumstances, and to provide employees with minimum rest and meal breaks.
2. These amendments came into force on 1 April 2009. The objective of these amendments is to create minimum standards for a modern workforce in respect of the protection and promotion of infant feeding through breastfeeding and rest and meal breaks. These amendments balance the need to support the choices of employees, particularly regarding their work-life balance and caring responsibilities, with the operational requirements of New Zealand businesses.
3. The Minister of Labour is required by the Act to approve a Code of Employment Practice as soon as is practicable after the commencement date of the Act. The Code relates to an employer's obligation under section 69Y of the Act to provide breaks and facilities for employees who wish to breastfeed during work periods and in the workplace.

Purpose of this Code

4. This code provides help for employers who want to know how to meet their obligation under section 69Y of the Act, which relates to providing breaks and facilities for employees who wish to breastfeed.
5. This Code does not necessarily contain the only means of meeting the Act's requirements.
6. The fact that the provisions of this Code have been satisfied will not necessarily mean the Act has been complied with. This Code is not a substitute for the Act, but the Employment Relations Authority or Employment Court may have regard to this Code in determining whether or not the parties have met their obligations under the Act.
7. Failure to comply with a code of practice is not an offence in itself. The Act does not require workplaces to use or refer to codes of practice.

Section Two – Interpretation

This section provides guidance as to the intent behind some of the key phrases and terms used in section 69Y of the Act.

'Breastfeeding'

8. As the Act states in section 69X, breastfeeding includes expressing breast milk.

'Reasonable and Practicable in the Circumstances'

9. The obligation of an employer to provide appropriate facilities and breaks depends on what is reasonable and practicable to provide in the circumstances.
10. When employers are making a decision about the resources they can provide for breastfeeding breaks and facilities, they should try to balance the impact on the business (cost in terms of money, time, and space), and any limitations due to operational requirements, against the benefits to the business, and the needs and entitlements of the employee concerned. If there is a substantial imbalance between the impact on the business and the needs and entitlements of the employee, then the employer may be justified in deciding that it is not reasonable and/or practicable in the circumstances to provide breaks and/or facilities for the purposes of infant feeding.

'Operational Environment'

11. The 'operational environment' which an employer is able to take into account might include the location of the employee's place of work and the nature of the work the employee does.

'Resources'

12. The 'resources' which an employer is able to take into account could include available time, money, space, and staff.

Section Three – General Requirements

Employers' obligations under section 69Y of the Act.

Facilities

13. An employer is required to provide appropriate facilities in the workplace for an employee who wishes to breastfeed in the workplace, so far as it is reasonable and practicable to do so in the circumstances. The nature of breaks and facilities provided for breastfeeding employees is likely to vary between businesses and between individual employees.
14. Breastfeeding employees need:

- A private, quiet, clean and warm room or space
- A suitable chair or couch.

The private room or space ideally should be big enough to be able to accommodate a pram. Facilities do not need to be permanent i.e. a screened off area may be a practical option if a separate room is not available.

15. If an employee is expressing breast milk they may also need access to:

- A fridge (a communal fridge is acceptable)
- A washbasin (with hot water supply and detergent)
- A lockable room (with a power point if using an electric pump)
- A clean space to store equipment (cupboard or locker).

16. Toilets are not considered an appropriate place to breastfeed or express breast milk.

17. A few things an employer might consider when determining whether facilities they are offering breastfeeding employees are appropriate in the circumstances are:

- *Health and Safety Implications* - An employer should consider: the standard of hygiene, comfort, and privacy of the allocated space; the suitability of equipment such as power-points for breast pumps and the availability of running water.
- *Available Resources* - The facilities provided for breastfeeding do not have to be permanent if there is not a long term need. The nature of the facilities provided to breastfeeding employees will vary depending on the size and nature of the workplace and the resources available.
- *Space* - If the physical workplace is not a suitable environment for breastfeeding, employers and employees may agree to make other arrangements. Other arrangements could include an appropriate space close by that is provided jointly by employers in the area for their breastfeeding employees, or a nearby crèche, home or Plunket room.

Breaks

18. An employer is required to provide appropriate breaks for an employee who wishes to breastfeed during a work period, so far as it is reasonable and practicable to do so in the circumstances.

19. An employer must consider if it is reasonable and practicable in the circumstances to provide breaks even if appropriate facilities cannot be provided, or if an employee does not want to breastfeed in the workplace but does want to breastfeed during a work period.

20. An employer and employee may agree that breaks can be taken offsite if appropriate facilities cannot be provided in the workplace, or if the employee does not want to breastfeed in the workplace but does want to breastfeed during a work period.

21. It is up to the employer and employee to negotiate the nature of breaks. Some things which the employer and employee might need to agree to are:

- the length, timing and frequency of breastfeeding breaks
- the location in which these breaks will be taken
- whether the breaks will be paid or unpaid (the breaks are paid only if the employee and employer agree that they are paid)
- whether another staff member will need to cover the employee's work duties during her breastfeeding break
- whether start and finish times can be shifted to accommodate breastfeeding requirements.

Accommodating changes to needs and circumstances

22. What is reasonable and practicable might change as circumstances change. It is important that employers and employees communicate regularly, re-evaluating their arrangement when either party's needs change, and monitoring the way the arrangement is working for all staff affected by the arrangement. Any changes to the arrangement should be agreed between the parties.

Documenting arrangements

23. Breastfeeding breaks do not have to be formalised by a variation to an employment agreement, but a written agreement is advisable as it helps to ensure that there is clarity around the arrangement and the expectations and responsibilities of both parties.