

Accommodating breastfeeding employees in the workplace

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Handling requests from employees to accommodate breastfeeding in the workplace

About this Guide

Government asked Acas to use its expertise in employment relations to develop this short guide to help employers and employees better manage requests to breastfeed in the workplace. In most instances, these requests will be for facilities to express and store milk and time away from work to do so.

The guidance sets out what employers are required to do by law and also gives good practice around managing a workplace issue that can support an employee moving back into work after her maternity leave.

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1 What the law says

The law requires an employer to provide somewhere for a breastfeeding employee to rest and this includes being able to lie down*. While it is a legal obligation for employers to regularly review general workplace risks**, there is no legal requirement to conduct a specific, separate risk assessment for an employee returning from maternity leave who has notified her intention to breastfeed. However, it would be good practice for an employer to do so, to help decide if any additional action needs to be taken. Guidance on these aspects of health and safety law can be found on the HSE website at www.hse.gov.uk/mothers/

Remember – A breach of Management of Health and Safety at Work Regulations may in addition be unlawful discrimination under the Equality Act 2010 depending on the circumstances.

The law doesn't require an employer to grant paid breaks from a job in order to breastfeed or to express milk for storage and later use. Neither does it require an employer to provide facilities to breastfeed or express milk, however see Frequently Asked Questions on page 9.

2 Good practice and the business case

Breastfeeding can be a sensitive and difficult issue for employees to discuss with their employer, but it is an important one to help their transition back to work after maternity leave.

It is good practice for employers to discuss with employees who are still breastfeeding what could reasonably and proportionately be done to facilitate their return to the workplace. An employer may consider nominating a female employee to conduct these discussions if there is a question of sensitivity or appropriateness.

Enabling employees to continue breastfeeding at work can encourage staff loyalty and the organisation can benefit from the skills of the employee returning sooner than might otherwise be the case. However employers should be careful not to inadvertently pressurise employees to return to work

* Workplace (Health, Safety and Welfare) Regulations 1992

** Management of Health and Safety at Work Regulations 1999

before they are ready. Breastfeeding can help maintain the wellbeing of the returning employee by avoiding health problems such as mastitis and other related issues.

3 Creating the right environment

Policy

It is good practice for an employer to have a policy on breastfeeding which sets out how requests from employees returning from maternity leave for changes to their working conditions would be considered. This will help employers make fair decisions when handling a request. Part 4 and 5 of this guidance gives examples of how to handle these requests in a way which avoids claims of unfairness or sex discrimination from employees.

An employer should make this policy known, this might be part of a flexible working or maternity policy (see Acas guidance, go to www.acas.org.uk/flexibleworking or www.acas.org.uk/maternity) or in a staff handbook or on a company website. In a small business a formal policy might not be needed (see p9, Frequently asked questions).

Ashad is the owner of a business employing around 200 people. He wants to be an employer of choice to harness the benefits of motivation, loyalty and low employee turnover that he believes accommodating breastfeeding within the business will bring. He raises the issue at the Board and notices some Directors view this issue as a problem and have genuine concerns that line managers will be unable to handle this appropriately. He finds this view held by other managers.

Ashad persuades the Board of his commitment and the business benefits of facilitating the earlier return of breastfeeding mothers and employees report feeling more valued and treated fairly as a result.

Support of co-workers – respect and avoiding harassment

As with any request from an employee to temporarily adjust their working conditions to accommodate a domestic circumstance, a request to breastfeed at work is no different. It would be good practice for an employer

to have discussions with other relevant employees around how these requests will impact on the organisation and how their job roles may change for a short period.

Engaging other employees in this way helps the employer explain the business need for these temporary changes. Feedback from employees can help the employer identify any problems that may impact on the effectiveness of the business and whether the request can be approved.

Where requests are approved, an employer must guard against inappropriate behaviour towards an employee who is breastfeeding. This can be achieved by getting the facilities right (see below) and also preventing banter that may be offensive or humiliating to the breastfeeding employee.

Such banter may amount to unlawful harassment under the Equality Act 2010 (see the Acas guide on 'Bullying and harassment in the workplace').

Brigit works in an insurance claims office and has just returned from maternity leave. Her employer has allowed her some additional breaks to express breast-milk in appropriate facilities within the office. The team is aware of this and covers her phone calls whilst she is away from her desk.

Jack starts to make jokes in the office and in particular around the pump that Brigit takes with her. Although these jokes are meant to be amusing, Jack persists in making a comment every time and the employer can see this is beginning to have an effect on Brigit who tries to slip out of the room un-noticed.

The employer decides to act quickly to prevent this from becoming a problem and has a word privately with Jack. The banter stops and Brigit seems relieved and more open about her short absences. The employer also introduces bullying and harassment training during a staff meeting to reinforce the need to treat each other with dignity.

4 Facilities – getting it right

A private space

A breastfeeding employee may ask for a private, hygienic, safe and secure area where she can express milk, this could be an unoccupied office or an area used for meetings that can be discreetly screened. If in doubt an employer should ask the employee what would be most appropriate.

In any event it would be inappropriate to use toilets or sick rooms as there may be a hygiene risk.

If, after careful consideration, an employer is physically unable to provide an appropriate space, they should discuss the issue with the employee to see if there is any alternative facility.

Mary runs a small business on an industrial estate. She is unable to offer a breastfeeding employee suitable space in her factory to express milk, however she discusses this with the owner of an adjoining office and they are happy to let Mary's employee use a small unused office there.

Fridge and storage

Most businesses have refreshment areas that contain a fridge or cool area. Employers should consider enabling expressed milk to be stored there, perhaps secured in a re-sealable container for hygiene purposes. It would be good practice to discuss storage preferences with the employee.

Adapting the workplace

Sometimes employers can make simple adaptations for little cost.

Anne is a truck driver making multiple drops across Wales and the Midlands. On return from maternity leave she tells her manager that she wants to breastfeed her baby and needs to express during the working day.

The manager and Anne discuss options and agree to fit a curtain to clip to the cab window for privacy and space for a cool box in the back of the cab. They agree safe areas where Anne can do this such as in the yards of customers after making a delivery. The manager doesn't want Anne stopping in lay bays on the open road and Anne agrees to abide by these rules. Finally the manager makes an appropriate time adjustments to her round to allow her time express milk during the day. They agree to review this arrangement regularly.

5 Making and considering requests

An employer may first receive a request to breastfeed at work as part of the normal KIT (keeping in touch) meetings held with an employee whilst she is on maternity leave. This will give the employer an opportunity to discuss how to best manage this issue to enable an employee return to work more easily and more effectively.

Employers should make it clear how the employees should ask to breastfeed at work. This should include what changes are requested and, as employees may know their job requirements best, how these might be accommodated by the business.

Considering requests for additional breaks

Employers should consider any short break from work reasonably and objectively against the likely impact it might have on the business. Employers should be careful not to discriminate against breastfeeding employees. See p9 in 'Frequently asked questions' example 2.

Tip – It is good employment practice for the employer to keep a short note of any request and the decision you reached with the employee.

Susan works as a call centre operator and asks her manager for two additional short breaks in order to express breast milk. The manager asks when she would need these breaks and whilst one would occur in a quiet period the other was during a peak busy time when everyone is needed to answer calls.

The manager tells Susan she will have to turn down her request however on further discussion they agree to bring the second break forward by half an hour thereby avoiding the busy period. Both are happy with this arrangement and the manager keeps a short note of the discussion.

If employers are unable to grant additional breaks, they could consider slightly extending normal breaks for the employee such as a mid morning coffee break or leaving earlier in the day to minimise any disruption to the business.

Rouji works in a warehouse and asks her manager to extend her coffee and tea breaks so that she can breastfeed her baby. Rouji lives close to the business and also asks if the manager would allow her mother, who is caring for the child during the day to bring the baby into the warehouse at these times to allow Rouji to feed her baby.

The manager considers this request, the health and safety issues of these visits and can foresee no problem. She therefore agrees to the request and informs other staff that Rouji's mother has permission to enter the business at these times. Colleagues think this is a positive demonstration that the business cares for its employees.

Use of flexible working

Although the law allows employees to ask for flexible working for any reason (Children and Families Act April 2014), such requests from employees who want to breastfeed are likely to be temporary and so a permanent change to an employment contract would not be appropriate. However a temporary change to working arrangements may enable the employer and employee to both meet business and breastfeeding needs.

Henicka works in an office. On returning from maternity leave she tells her employer that she wants to breastfeed her baby and would need to visit her child's nursery to do this. Henicka has arranged the nursery close to the office to help with this request.

As a temporary accommodation the employer allows her time to attend the nursery and breastfeed her baby during the day. Henicka acknowledges this is a temporary arrangement with her manager and agrees to review this arrangement after three months.

The manager has discussions with other staff that are affected by this change in covering her work, explaining the company policy that supports this temporary change and secures their support for his actions.

Employers may find it helpful to consider including accommodating the needs of breastfeeding employees within a policy for requesting flexible working. This can help employers make objective, correct and fair decisions.

If, after discussion, an employer has to turn down a request to breastfeed from an employee, the employer should explain the business reasons to the employee.

6 Myth-busting – Frequently asked questions

Q I've been told this is a legal right and I might end up in a Tribunal if I say no?

A No, the Law doesn't require you to allow time off for breastfeeding (see p2) although there are some health and safety issues and possible discrimination issues you need to be aware of.

Q Is it sex discrimination if I refuse extra breaks for breastfeeding?

A A refusal to allow a breastfeeding employee to express milk or to adjust her working conditions to enable her to continue to breastfeed may amount to unlawful sex discrimination. However, if you have considered the request objectively, discussed the issue with your employee and still cannot allow extra breaks without there being an unacceptable impact on your business then this would help explain your decision and would be much less likely to constitute indirect sex discrimination (see Acas guidance on the Equality Act 2010 at www.acas.org.uk/equality). Make sure you consider a request for breastfeeding as you would for a temporary change to working conditions from any employee for any reason.

Q What does breastfeeding in the workplace actually mean in practice?

A For some employees who live close to their workplace, breastfeeding may mean going home or to a nearby nursery to feed their child. Alternatively it may mean a relative or child minder bringing the child to the workplace to be fed. In most cases it is likely to mean the employee will express milk which she will then store in a cool place. The expressed milk will then be used to feed the baby from a bottle. Expressing milk usually requires the use of either an electric or manual pump. The pump and bottles must be sterile in order to avoid contaminating the milk so it's vital that the woman has access to clean, hygienic facilities to express milk.

Q Must I have a formal written policy on making requests to breastfeed?

A There is no requirement to have a formal policy on breastfeeding. Larger employers can find such policies helpful in making sure

employees know they can ask and help managers consider requests fairly but a smaller employer such as a policy may well not be needed.

Q Will other colleagues think this is unfair on them and will it cause friction in the team?

A You need to strike a balance between the needs of a breastfeeding employee, bearing in mind it will only be for a short period and any additional work that colleagues may have to do over this time. Employees have temporary changes to their working patterns for all sorts of reasons and you should explain your decision from this standpoint.

Be careful in this instance where there is some evidence of dissatisfaction to prevent inappropriate or harassing behavior of other employees to this woman (see section 3, p3).

Q I want to say yes but can I put a time limit on how long I will make these adjustments?

A While it would be good practice to have periodic reviews to check how the arrangements are working for both employee and employer, a breastfeeding employee may not know herself how long she will breastfeed for and, to a certain extent, this may be beyond her control. She may initially plan to breastfeed for a year but may encounter physiological problems which make it difficult for her to continue. Conversely, she may intend to breastfeed only for a short period of time but may find that she changes her mind, or that her baby does not take to formula feeding easily, and she may end up breastfeeding her baby for much longer than initially planned. The additional stress for the employee created by a fixed time limit imposed by her manager may outweigh any benefit to the employer.

Useful contacts

Equality and Human Rights Commission

Go to www.equalityhumanrights.com for further information.

Employee Assistance Professional Association (EAPA)

Information on Employee Assistance Programmes

Tel 0800 783 7616

Acas Equality Services

Advice on diversity in employment

Tel 08456 00 34 44

Acas Helpline

For confidential and impartial advice on employment related issues.

Tel 08457 47 47 47

Information in this booklet has been revised up to the date of the last reprint – see date below. For more up-to-date information go to the Acas website www.acas.org.uk.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

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