

BREAKING NEWS

LABOR & EMPLOYMENT

New Lactation Code Regulation: Key Compliance and Enforcement Considerations for Employers

On August 25, 2026, the Puerto Rico Department of Labor and Human Resources (“DTRH”) and the Office of the Women’s Advocate (“OPM”) adopted Joint Regulation No. 9796 (“the Regulation”), establishing the investigative, adjudicative, and administrative penalty procedures applicable to violations of Puerto Rico’s Lactation Code, Act No. 87-2025. The regulation will become effective 30 days after its filing with the Puerto Rico Department of State.

Key Provisions

- **PR-OSHA referrals to the OPM:** The Regulation provides that the DTRH, through its PR-OSHA Inspection Bureau, will refer to the OPM any instances of employer noncompliance identified during workplace inspections.
- **Alternative complaint procedures:** Employees in the private sector may file complaints with the DTRH’s Anti-Discrimination Unit for violations relating to their right to breastfeed and/or express breast milk, in addition to the complaint procedure available before the OPM.

- **Anonymous complaints and agency-initiated investigations:**

The OPM may accept anonymous complaints when the information provided is sufficient to permit a preliminary verification. In addition, the OPM and the Secretary of the DTRH, as applicable, may initiate investigations *motu proprio*, even without an identified complainant, when potential violations are identified through inspections, audits, or compliance visits.

- **Scope of investigations and inspections:**

Investigations may include employee interviews, requests for information, and workplace visits. With respect to lactation rooms, the agencies may evaluate, among other factors, cleanliness and hygiene; availability of electrical outlets and appropriate furniture; privacy and accessibility; and ventilation, lighting, and safety. PR-OSHA may also inspect lactation rooms on its own initiative and without a prior complaint and must refer identified violations to the OPM.

- **Opportunity to correct minor deficiencies:**

When the OPM identifies minor or correctable deficiencies, it may issue a



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Preliminary Notice of Noncompliance and provide the employer with up to 30 calendar days to correct them. If the employer demonstrates that the deficiencies were timely corrected, the matter may be closed without the imposition of sanctions. Failure to comply with the notice, or the identification of serious or repeated violations, may result in an Order of Noncompliance and/or the imposition of applicable administrative fines.

- **Administrative fines and additional remedies:** The OPM may impose administrative fines for violations of the Lactation Code, the Regulation, or any order, resolution, or decision issued thereunder. Fines range from \$500 to \$10,000 per violation, unless mitigating circumstances warrant otherwise. In cases of repeat violations, the fine may be doubled, subject to the statutory maximum. These penalties are in addition to any other remedies available under applicable labor or civil-rights laws.
- **Notice and training requirements:** Employers must ensure adequate dissemination of the Regulation to all employees through workplace postings and/or electronic distribution and must provide annual orientation concerning employees' lactation rights and the applicable compliance mechanisms. The Regulation also calls for periodic training sessions concerning workplace lactation rights, duties, and compliance procedures.

What should Employers do?

- Employers should review their current lactation policies and facilities to confirm compliance with the Lactation Code and the new Regulation before the Regulation becomes effective. In particular, employers should:
- Confirm that an appropriate lactation space is available and meets the required standards of privacy, hygiene, accessibility, ventilation, lighting, and safety.
- Ensure that eligible employees have access to the space for the required 12-month period following their return to work.
- Review existing policies and procedures concerning lactation and the expression of breast milk.
- Ensure that HR personnel and managers understand employees' rights and the employer's obligations.
- Disseminate the Regulation to employees through appropriate workplace postings and/or electronic distribution and provide annual orientation regarding lactation rights and compliance procedures, as expressly required by the Regulation.

Given the potential for significant administrative penalties and agency-initiated inspections, we recommend that employers address any compliance gaps proactively and update their policies and practices before the Regulation becomes effective.

If you have any additional questions or require legal counsel regarding this matter, please contact us at (787) 945-0380.