

Q: Can employers require employees to make up time that nursing employees spend on pump breaks in order to meet productivity measures?

No. Employers cannot hold the time that employees take for pump breaks against them when determining whether they met a productivity measure or quota.

Employees also cannot be required to make up the time they took for pump breaks. An employer adding work time to an employee's normal schedule could be considered prohibited retaliation under the FLSA.

Q. I need to make space available for my employee to take pump breaks but there is no private space at the small service center where she works. What can I do?

An employer may temporarily convert an existing space into a private space for pumping or make a private space available when needed by the nursing employee. The space must be shielded from view and free from any intrusion from coworkers and the public and must be available each time the employee needs to pump. The space cannot be a bathroom and it must be functional as a space for pumping. At a minimum, the space must contain a place for the nursing employee to sit, and a flat surface, other than the floor, on which to place the pump. For example, employers can create temporary space for pumping by providing dividers and signs in a portion of a storage room, allowing the employee to block or turn off cameras to ensure the space is shielded from view and free from intrusion, and providing a chair and a table for the employee. Alternately, the employee could be allowed to use the manager's office, allowing the employee to block or turn off any cameras and use the lock or signage to prevent intrusion, as long as the space is available each time the employee needs to pump.

The U.S. Department of Health & Human Services' Office on Women's Health notes that some companies partner with neighboring businesses to share lactation space for nursing employees. For more space accommodation examples from the Office on Women's Health, visit their website, [What Employers Need to Know](https://www.womenshealth.gov/support-nursing-moms-work/what-law-says-about-breastfeeding-and-work/what-employers-need-know), at <https://www.womenshealth.gov/support-nursing-moms-work/what-law-says-about-breastfeeding-and-work/what-employers-need-know>.

Q. I work for a fast-food restaurant that has locations in many different states. If my employer follows federal law, do they also have to follow different state laws that require accommodations for nursing employees?

Yes. Many states have laws related to pumping milk at work. Employees may have greater protections under such State or local laws or ordinances. The FLSA provides that the reasonable break time and space requirements do not preclude greater employee protections provided under these laws.

For example, some states may require that all breaks for pumping be paid or may require that breaks be made available for more than one year. Employers must follow all the laws that apply to them.

Q. I work in a bookstore that has three bathrooms. One of the bathrooms is designated as a family bathroom. It has one stall and a changing table. My supervisor put an out of order sign on the stall door and placed a chair in the family bathroom for me to take pump breaks. Can I be required to use the bathroom to pump breast milk if it is not being used as a bathroom?

No. The FLSA requires that nursing employees have access to a place to pump breast milk at work that is not a bathroom. Using a bathroom to pump breast milk raises health and safety concerns, which may include the risk of contracting bacteria in breast milk or breast pump equipment.