



# Code of employment practice on infant feeding

## An Employer's guide to: Section 69Y of the Employment Relations Act 2000

### Foreword

As Minister of Labour, I am pleased to publish the Code of Employment Practice on Infant Feeding. It is important workplaces take a practical and good faith approach to supporting women returning to work after childbirth. This allows for real gains in flexibility and productivity for both employees and employers. Since 1 April 2009, under Section 69Y of the Employment Relations Act 2000, employers have been required to provide unpaid breaks and/or facilities for employees who wish to breastfeed their infants or express milk during working hours. The intent of the new law is to create minimum standards for modern flexible workplaces. To help employers understand their obligations, Parliament mandated that the Minister of Labour publish a Code of Employment Practice. The Code provides useful guidance on the range of factors an employer can consider when negotiating a breastfeeding arrangement. It gives practical ideas on factors to consider such as health and safety, facilities, resources and space for breastfeeding employees. It should be noted that there is no absolute obligation on employers to provide breaks and/or facilities. The Act says the provision of "appropriate facilities" should be "reasonable and practicable in the circumstances". Thus, employers in close geographical proximity may wish to join together to provide a facility all their staff can use. This Code has been developed by the Department of Labour in consultation with groups such as Business New Zealand, the New Zealand Council of Trade Unions, women's community and health groups and the Ministry of Health. I am confident this Code will help employers to meet their obligations under the Act. My department is developing supplementary resources to provide more detailed guidance for employees and employers on matters that cannot be addressed through this Code. I am sure the Code and these resources will assist to encourage family-friendly work practice.

KATE WILKINSON  
Minister of Labour  
February 2010



## Section one – introduction

1. This Code provides a guide for employers who want to know how to meet their obligations under section 69Y of the Employment Relations Act 2000 (the Act). This section of the Act relates to the provision of breaks and facilities for employees who wish to breastfeed during a work period.
2. The Code does not tell employers what decisions to make but provides guidance to assist them to determine what is reasonable and practicable under the circumstances. An employer may be justified in declining a request to provide breaks and/or facilities for the purposes of breastfeeding if it is not reasonable and practicable in the circumstances to do so. Such a case would arise if there is a substantial imbalance between the impact on the employer and the needs of the employee in providing appropriate breaks and/or facilities.
3. The legal framework within which this Code will operate is explained in the content of the Code. While every effort has been made to ensure that explanations included in the Code are accurate, only the courts can give authoritative interpretation of the law.
4. The Act does not require workplaces to use or refer to codes of practice. The fact that the provisions of this Code have been satisfied will not necessarily mean an employer's actions are, or have been, compliant with the Act. 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 employers have met their obligations under section 69Y of the Act. If the Employment Relations Authority finds that an employer has not met their obligations, a penalty may be imposed.

## Section two – interpretation

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

### **'Breastfeeding'**

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

### **'Reasonable and practicable in the circumstances'**

6. The obligation of an employer to provide appropriate breastfeeding facilities and breaks depends on what is reasonable and practicable to provide in the circumstances.
7. The intent behind the terms "reasonable and practicable in the circumstances" is to indicate that the employer's obligation to provide facilities and/or breaks is subject to an objective test ("what is reasonable and practicable") that is applied to the particular circumstances.
8. In order to determine what is reasonable and practicable, an employer should give due consideration to the matter, which is likely to include balancing a range of relevant factors. The Act does not specify all factors that may be considered relevant (as these will vary between each workplace), but the operating environment and resources will most likely be considered as part of the employer's circumstances.



9. The availability and nature of facilities and breaks, therefore, is likely to vary between employers, the circumstances and individual employees. Circumstances may also change over time.

### **Section three – general requirements**

This section provides guidance on employers' obligations under section 69Y of the Act.

10. An employer should consider if it is reasonable and practicable in the circumstances to provide appropriate breaks even if appropriate facilities cannot be provided in the workplace.
11. When employers are making a decision about the nature and extent of breastfeeding breaks and facilities provided to employees, they should weigh up:
  - the expected impact on the business (both positive and negative)
  - any potential limitations due to the operational environment and resources
  - the needs of the employee concerned.
12. Impacts (both positive and negative) could relate to health and safety, cost in terms of money, time, space, productivity and profitability and the ability to attract and retain staff.
13. The operational environment which an employer may take into account might include type of workplace, business needs, health and safety requirements, number of employees, number of women employees, location of place of work (e.g. whether fixed or mobile workplace), cover for employees during the break periods, and the nature of the work an employee does.
14. The resources which an employer is able to take into account could include available time, money, workplace facilities, space and staff.
15. Consideration of an employee's needs could include their ability to effectively balance demands of their job and their parenting role.
16. A request may be declined if it is not reasonable and practicable in the circumstances to do so. For instance, an employer may be justified in declining a request when there is a substantial imbalance between the impact on the employer and the needs of the employee in providing appropriate breaks and/or facilities.

#### **Breaks**

17. An employer is required to provide appropriate breastfeeding 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.
18. The appropriate length, timing and frequency of breaks will differ for each employee due to the nature of breastfeeding, the needs and age of an infant, whether the employee is solely expressing milk, and the operational environment the employee works in.
19. An appropriate break is likely to be long enough to provide an employee time to breastfeed or express milk.
20. The appropriate number of breaks is likely to be enough to allow an infant to breastfeed, or for the employee to express milk, an appropriate number of times having regard to the length of the work period.



21. Breastfeeding breaks are in addition to usual rest and meal breaks unless parties agree otherwise.
22. Breastfeeding breaks are paid only if an employer and employee agree.

## Facilities

23. So far as it is reasonable and practicable to do so in the circumstances, an employer is required to provide appropriate facilities in the workplace for an employee who wishes to breastfeed in the workplace.
24. Breastfeeding employees need:
  - a private, quiet, clean and warm room or space
  - a suitable chair or couch.
25. The space does not need to be permanent i.e. a screened off area may be a practical option if a separate room cannot be provided. The space should be large enough to change a nappy unless the employee is solely expressing milk.
26. If an employee is expressing breast milk they may also need access to:
  - a fridge (a communal fridge is acceptable)
  - hygienic hand washing facilities
  - a lockable room (with a power point if an electric pump is used)
  - a clean space to store equipment (cupboard or locker).
27. These facilities do not need to be in the same room or space.
28. Toilets are not considered an appropriate place to breastfeed or express breast milk.
29. A few things an employer might consider when determining whether the facilities they are offering employees are appropriate in the circumstances are:
  - *workplace health and safety implications* – when considering a breastfeeding arrangement involving an infant in the workplace, an employer will need to identify any health and safety issues that might arise in relation to the mother, the infant and co-workers
  - *facilities* - 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 clean running water
  - *available resources* - the facilities provided for breastfeeding do not have to be permanent if there is not a long term need. The type of facilities provided to 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.
30. An employer and employee may agree that breastfeeding breaks can be taken offsite where workplace facilities cannot be provided but it is reasonable and practicable to provide appropriate breaks. An employer is not obligated under the Act to identify appropriate offsite facilities in this situation.
31. Other arrangements could include an appropriate space close by that is provided jointly by employers in the area for their employees, home, or nearby amenities, such as an early childhood centre or Plunket room.



## **Negotiating a breastfeeding arrangement**

32. Establishing arrangements for breastfeeding in the workplace is a matter for an employer and employee to negotiate.
33. What is reasonable and practicable might change as circumstances change. It is important that employers and employees communicate regularly, re-evaluate their arrangement when either party's needs change, and monitor the impact of the arrangement on the workplace, the employee and other staff. Any changes to the arrangement should be agreed between parties to the agreement.
34. Some things which the employer and employee might need to agree to, and renegotiate, from time to time 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
  - the process to change the arrangement.

Breastfeeding breaks do not have to be formalised by a variation to an employment agreement, but a written agreement will help to set out a mutual understanding of the arrangement and the obligations and expectations of both parties. A written agreement also provides a clear basis to negotiate change.