



MEMORANDUM

TO: Marijuana Control Board DATE: August 19, 2020

FROM: Glen Klinkhart, Interim Director RE: Regulations Project – Infants on
Jane P. Sawyer, Regulations Specialist Premises

The board opened this project at the May 2019 meeting. The intent of this project is to allow infants 1 year of age and younger to be on the licensed premises of a marijuana establishment for the purposes of breastfeeding.

Description:

Working with the Department of Health and Social Services who assisted in proving AMCO with the various rules and regulations, determined there is no state law which directly addresses business requirements for Onsite breastfeeding by an employee who is nursing. Federal labor laws do have regulations, however it only mandates requirements for businesses with over 50 employees.

What we are presenting today is designed to assist all marijuana licensees of any size of can request an exception to allow a specific area within the licensed premises for the use of and compliance with federal labor laws for nursing mothers and their infant(s).

According to the U.S. Department of Labor businesses with more than 50 employees are **required** under federal to provide a reasonable, safe, unrestricted, and unviewable area upon a licensed premise for use by an employee who is a nursing mother and whose infant is under the age of 1 year of age. Those licensees who are **not** required under federal or state statute (those with less than 50 employees) may want to participant in helping employees who are nursing to be allowed to utilize a designated safe area within the licensed premises for the purposes of nursing an infant under the age of 1 year of age.

The Federal rules state that the area within the licensed premises need not be specifically designated for the activity by an employee for the breastfeeding of an infant under the age of 1 year of age (Note: Under 1 year of age is a federal regulation standard) or the expression of breastmilk (Note: federal regulation standard), however the area **must**:

- Be made available upon request by the employee for the purposes of nurse/ expression of breastmilk (Note: federal regulation standard)

- NOT be a bathroom (Note: federal regulation standard)
- Be shield from view, including video surveillance camera(s) (Note: federal regulation standard)
- Free from intrusion from co-workers and the public (Note: federal regulation standard)
- Be accessible in such a way as to allow the employee to utilize the space to, from, and within without exposing herself, or the infant, to potentially harmful substances, chemicals, or any additional potential health risks. (Note: federal and state safety regulation standards)

The attached regulation is designed to allow the board to help required licensees meet the federal labor requirements which are currently not being met due to the Alaskan Marijuana Control Board regulations which prohibit anyone under the age of 21 on premises, and to allow voluntary licensed premises exceptions for those smaller licensees who wish to assist their employees who are nursing.

Options for the board:

- Put out for public comment
- Amend and put out for public comment
- Send back to staff for revisions
- Close the project without action

(Words in boldface and underlined indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 306.325(a) is amended to read:

(a) **Except as provided under 3 AAC 306.712, a** [A] person under 21 years of age may not enter a retail marijuana store.

(Eff. 2/21/2016, Register 217; am 5/9/2019, Register 230; am ____/____/_____, Register _____)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200

AS 17.38.070 AS 17.38.190 AS 17.38.900

AS 17.38.121

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.712. Breastfeeding on Licensed Premises. (a) A licensee or employee of a licensee may bring a child up to 12 months of age, who is the child of the licensee or employee, onto a licensed premises, excluding a restricted access area under 3 AAC 306.710 and an onsite consumption area under 3 AAC 306.370, for the purpose of breastfeeding the licensee or employee’s child.

(b) A licensee may designate an area for breastfeeding or for the expression of breast milk. A designated area may not include a restricted access area described under 3 AAC 306.710.

(c) This section may not be construed to supersede or change the requirements of 29 U.S.C. 207 (Section 7 of the Fair Labor Standards Act of 1938) or any other law applicable to breastfeeding in the workplace. (Eff. ____/____/_____, Register _____)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121