



MEMORANDUM

TO: Marijuana Control Board DATE: March 3, 2023

FROM: Jane P. Sawyer, Program Coordinator RE: Regulations Project – Infants on
licensed Premises -
Breastfeeding

The board opened this project at its December 2022 meeting. The intent is to allow for a licensee's or employee of the licensee's child to be in a restricted access area of the licensed premises for the purpose of being breastfed. The attached is a draft for board discussion. It proposes to amend:

3 AAC 306.712

- (a) raises the age of the child from 12 months to 18 months.
- (b) it removes the prohibition of the child being in a restricted access area but it stipulates that the RAA must not expose the child in any way to marijuana or marijuana products, including pollen.
- (c) simply corrects the year of the Fair Labor Standards Act to 1938 (we have it as 1983).

For reference, a restricted access area is the area of a marijuana establishment where marijuana or marijuana product is grown, processed, tested, stored, and stocked (3 AAC 306.710). Additionally, an area of a retail marijuana store's licensed premises where marijuana or any marijuana product is stocked for sale or dispensed for sale is a restricted access areas (3 AAC 306.325) e.g. the counter and behind the counter.

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

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

3 AAC 306.712 is amended to read:

(a) A licensee or employee of a licensee may bring a child up to **18** [12] months of age, who is the child of the licensee or employee, **onto the licensed premises, [EXCLUDING A RESTRICTED ACCESS AREA DESCRIBED UNDER 3 AAC 306.710 AND AN ONSITE CONSUMPTION AREA DESCRIBED 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. **An area designated for breastfeeding must not expose the child in any way to marijuana or marijuana products, including marijuana pollen.** A designated area may not include [A RESTRICTED ACCESS AREA DESCRIBED UNDER 3 AAC 306.710 OR] **an** onsite consumption area described under 3 AAC 306.370.

(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** [1983]) or any other law applicable to breastfeeding in the workplace (Eff. 1/1/2021, Register 237; 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

Commented [SJP(1): Federal law allows for the expressing/pumping of breast milk for her nursing child for 1 year. Federal law also allows for a greater protection by state law. State of Alaska labor laws refer back to federal law. See federal law language on second page (for reference only).

Commented [SJP(2): Licensed premises includes restricted access areas. There should not be a restricted access area without it being licensed.

Commented [SJP(3): Removing the restriction of the area being a RAA and moved the Onsite reference to (b).

Commented [SJP(4): My thinking in saying "in any way" is to include the sales counter at a retail store.

Commented [WJM(5R4): That can be widely interpreted by different individuals. I understand the idea of not at the retail store counter, but I think as you state the issue is danger to the child. I would leave this to board discussion and likely drafting on scene based on those comments.

Commented [SJP(6): Correction on the year; should be 1938.

Federal law for reference only.

[Section 7\(r\) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision | U.S. Department of Labor \(dol.gov\)](#)

Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision

Effective March 23, 2010, the Patient Protection and Affordable Care Act amended the FLSA to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child. The amendment also requires that employers provide a place for an employee to express breast milk.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

(r)	An employer shall provide--
(1)	<ol style="list-style-type: none"> 1. a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and 2. a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.
(2)	An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.
(3)	An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.
(4)	Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

State law for reference only. <https://health.alaska.gov/pages/breastfeeding.aspx>

[Section 7 of the FLSA](#) requires employers to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. The break time requirement became effective when the Affordable Care Act was signed into law on March 23, 2010.