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Break Time for Nursing Mothers: Little Known Provision of This Year's Healthcare Reform Law

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The Healthcare Reform bill debate earlier this year included many topics. The Law, as passed, includes many provisions. In the 2,000 plus pages of the Patient Protection and Affordable Care Act ("PPACA"), which was signed into law on March 23, 2010 (P.L. 111-148), there was a provision that received little publicity at the time: a break time (at work) requirement for nursing mothers. This provision went into effect immediately with the PPACA. Many states already had laws on the books dealing with the issue of breast feeding in public (e.g. no longer an act of public indecency and accommodation in public places required) but this law amended Section 7 of the Fair Labor Standards Act (FLSA), federal wage and hour law and created workplace accommodation obligations for covered employers. Recently (July 15, 2010), the US Department of Labor published a Fact Sheet and Guidance for covered employers on this new law. The following is a summary of that information.

General Requirements

Employers are required to provide "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. 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 FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child's birth).

Time and Location of Breaks

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided



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that the space is shielded from view, and free from any intrusion from co-workers and the public.

Coverage and Compensation

Only employees who are not exempt from the FLSA's overtime pay requirements are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the overtime pay requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies.

Where to Obtain Additional Information

For additional information, visit USDOL's Wage and Hour Division Website: <http://www.wagehour.dol.gov>.

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