

PUBLICATION

DOL Explains Reasonable Break Time and Facilities for Nursing Mothers

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On July 15, the U.S. Department of Labor issued [Fact Sheet #73](#) regarding the Fair Labor Standards Act's (FLSA) new break time requirement for nursing mothers, enacted as part of the Patient Protection and Affordable Care Act (PPACA). The PPACA took effect on March 23, 2010. Under this new law, employers are required to provide "reasonable break time for an employee to express milk for her nursing child for one year after the child's birth each time such employee has need to express the milk."

What employers are covered?

Not all employers are subject to the new break time requirement. Specifically, employers with fewer than 50 employees are not subject to the requirement if compliance would impose an undue hardship. Undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to that employer's size, financial resources, nature and structure of the business. However, all employees who work for the covered employer, *regardless of work site*, are counted when determining whether this exemption applies.

Which employees are eligible?

Not all nursing mothers are entitled to lactation breaks. Employees who are classified as exempt from the FLSA's overtime pay obligations are excluded from this break time requirement. While employers are not required under the FLSA to provide breaks to nursing mothers who are appropriately classified as exempt employees, they may nevertheless be obligated to do so under state laws.

What are the timing and location requirements?

According to the Department of Labor, the frequency of breaks needed to express milk, as well as the duration of each break, will likely vary. As a result, the employer must allow a reasonable amount of time as frequently as needed by the new mother. As to location, it is clear that a bathroom, even if private, will not suffice. Instead, the employer must provide "a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express milk." The employer can assign a temporary location, but it must be functional and private.

Are these breaks compensable?

While employers are not required to compensate nursing mothers for lactation breaks, if an employer already provides compensated breaks which the employee uses to express milk, the employer must compensate the employee in the same way it compensates other employees for their paid breaks. In addition, the Department of Labor reminds employers that if the employee is not completely relieved from duty during the lactation break time, the break should be counted as time worked.

For additional advice concerning compliance with these and other provisions of the Fair Labor Standards Act, contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in

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