



News & Trending

PUBLICATIONS & ALERTS

ETRENDS - FLSA NOW REQUIRES EMPLOYERS TO PROVIDE NURSING MOTHERS WITH UNPAID BREAKS AND PRIVATE LOCATIONS TO EXPRESS MILK

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On March 23, President Obama signed into law the Patient Protection and Affordable Care Act of 2010 (the "Act"), which includes a provision amending the Fair Labor Standards Act ("FLSA") to require employers to provide to nursing mothers unpaid break time to express breast milk for one year after a child's birth. Specifically, the new law requires employers to provide "reasonable break time...each time such employee has a need to express the milk" and to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers or the public" that employees may use to express breast milk.

All employers will be required to provide these breaks, except for those employing less than 50 employees who can show that compliance "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." This language appears to indicate that employers of less than 50 employees will have the burden to demonstrate that they cannot comply with the new requirements.

Approximately half of the states in the country already have laws related to expressing breast milk in the workplace. The new law will not preempt any state law that provides greater protections for nursing mothers. Given the differences between the various state laws and the new federal law on this subject, employers should carefully consider the requirements applicable to them and prepare an appropriate workplace policy.

Because the Act does not include an effective date for the new break requirement, it is presumed effective as of March 23, 2010. The U.S. Department of Labor (DOL) has authority to propose regulations offering guidance on the new requirement, but has not done so at this time. Until DOL issues such guidance and clarifies, for example, what constitutes a "reasonable" time for breaks and an "undue hardship," prudent employers should interpret the new requirements liberally and consult with legal counsel regarding particular employee situations that may arise in order to reduce the risk of litigation.

Download the text of the new law [here](#).

Please contact [Travis Hockaday](#) with any questions.

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