

GIVE NURSING MOTHERS A BREAK NEW FLSA AMENDMENT REQUIRES REASONABLE BREAK TIMES FOR NEW MOMS

By Christine Stanton

Are you following new federal rules on providing breaks to nursing mothers? With all the press on healthcare reform, little attention has been paid to certain provisions buried within the *Patient Protection and Affordable Care Act (PPACA)*. The PPACA, signed into law on March 23, 2010, contains an amendment to the *Fair Labor Standards Act (FLSA)* requiring breaks for new moms. Unlike many of the PPACA provisions, there's no wait period on this new law...it's effective NOW.

Looking at the New Law

- Employers with 50 or more employees are required to provide a nursing mother with “a reasonable break time” to express breast milk when needed, for up to a year after her child’s birth.”
- Employers with less than 50 employees are also covered by the requirements unless they can show that the breaks would cause an “undue hardship by causing the employer significant difficulty or expense.”
- The PPACA does not define what a “reasonable” break time period is, or define the number of breaks per day.
- Only non-exempt employees (those who are not exempt from the FLSA’s overtime pay requirements) are entitled to these breaks. Employers may extend break practices to exempt employees on a voluntary basis.
- Breaks for nursing mothers are not required to be paid, although employers must allow employees who get compensated breaks to use them for nursing or expressing milk.
- **IMPORTANT:** Employers are required to provide a private place *other than a bathroom* where the employee may express milk. The place must be “shielded from view” and “free from intrusion from coworkers and the public.”
- Employers still must still comply with any state law providing greater protections to nursing mothers including California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Maine, Minnesota, New Mexico, New York, Oregon, Tennessee, Vermont, and the District of Columbia.

What You Should Do Now

- Review the fact sheet issued by the Department of Labor (DOL), available at www.dol.gov/whd/regs/compliance/whdfs73.pdf.
- Update your break policies and practices for nursing mothers. Take employee needs into consideration in setting break lengths and frequency until further direction is provided.
- If you have locations in multiple states, be sure to research state laws to determine if extra protections are required.
- If you don't already have a private (non-bathroom) space for nursing mothers, identify and designate a new space and ensure that it meets the new law's requirements.
- Communicate the new rules and practices to employees.
- Watch for DOL updates with further directions on break times/frequency, and the definition of undue hardship (for small employers).

- If you have questions, contact the DOL Wage and Hour toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, at 1-866-4USWAGE (1-866-487-9243)

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