



Health Care Reform

LEGISLATIVE BRIEF

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Break Time for Nursing Mothers

The Affordable Care Act (ACA) included a requirement that employers provide **rest breaks** and **accommodations** for employees who are nursing mothers to express breast milk. This requirement took effect immediately upon enactment of the ACA on March 23, 2010.

WHAT DOES THE LAW REQUIRE?

The ACA amends the Fair Labor Standards Act (FLSA) by requiring that employers provide:

- A 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 the need to express the milk; and
- 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 breast milk. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided it meets the privacy standards.

TO WHOM DOES THE LAW APPLY?

All employers that are covered by the FLSA are required to comply with this law. However, an employer that employs fewer than 50 employees may be exempt from the law if 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. Only employees who are not exempt from the FLSA's overtime pay requirements are entitled to breaks to express milk.

MUST EMPLOYEES BE COMPENSATED?

The rule provides that an employer is not required to compensate an employee receiving reasonable break time for any work time spent to express milk. However, employers that provide compensated breaks must compensate employees who use that break time to express milk. In addition, employees must be completely relieved from duty or else time must be compensated.

WHAT IF STATE LAWS DIFFER FROM FEDERAL LAW?

Nothing in the provision preempts a state law that provides greater protections to employees than the protections provided by the ACA. That is, if employers operate in a state where the state law offers greater protections to nursing mothers, those protections must be followed. These protections could include requirements that employers provide breaks for nursing mothers who are exempt employees.

WHAT SHOULD EMPLOYERS DO?

Covered employers should confirm that they are providing the time and resources for nursing mothers to express breast milk. Appropriate policies and training should be amended and/or developed in this regard, and should be communicated to employees and managers.

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