

## [Update: Break Time for Nursing Mothers under the FLSA](#)

July 23, 2010 by [Adam Santucci](#)

On [May 3, 2010](#), we posted information about what was then a little known provision of the [Patient Protection and Affordable Care Act \(PPACA\) \(pdf\)](#): the requirement that employers provide reasonable unpaid breaks for nursing mothers to express breast milk. Recently, the [Department of Labor](#) issued [Fact Sheet #73: Break Time for Nursing Mothers under the FLSA \(the "Fact Sheet"\)](#). The Fact Sheet clarifies the unpaid break provision of the PPACA.

Essentially, the PPACA requires that employers provide reasonable, unpaid break time and a private space for mothers to express breast milk for children up to one year in age. There is an exemption for small employers, those with fewer than 50 employees, if the PPACA's requirements would pose an undue hardship.

The Fact Sheet clarifies that employers need not provide the break to those employees who are considered FLSA exempt. It also makes clear that while the breaks are unpaid, if employees are not completely relieved from duty during the breaks, then they must be compensated for the time.

The Fact Sheet also clarifies that the private space to be provide does not have to be dedicated solely to breast feeding. However, if it is not, the space must be available when needed, as well as shielded from view and free from intrusion from coworkers and the public.

The Fact Sheet also states that the small employer "undue hardship" exemption will be analyzed by examining the difficulty or expensive of compliance, with reference to "the size, financial resources, nature and structure of the employer's business."

Employers should evaluate their practices with regards to breaks for breastfeeding mothers to ensure compliance with the PPACA, as clarified by the Fact Sheet.

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