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New Employer Obligations to Nursing Mothers Under the Fair Labor Standards Act

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The Department of Labor recently issued a fact sheet addressing the new break time requirement for nursing mothers mandated by the Patient Protection and Affordable Care Act (PPACA). The PPACA was signed into law on March 23, 2010 and amended Section 7 of the Fair Labor Standards Act (FLSA). The new FLSA amendments require all employers covered by FLSA to provide “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.” Only non-exempt employees are entitled to breaks to express milk under the amended regulations. Moreover, employers are not required to compensate nursing mothers for breaks taken for the purpose of expressing milk unless they already provide compensated breaks. In that case, employees who use their break time to express milk must be compensated in the same way that other employees are compensated for break time.

In order to be in compliance with the regulation, employers must provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.” If the space provided is not solely for the use of nursing employees, it must be made available when needed. Temporary spaces created for nursing mothers to express milk are sufficient so long as the space meets the statutory requirement that it be “shielded from view and free from intrusion of coworkers and the public.”

Employers with less than 50 employees may be exempt from the new break time requirement if compliance with the provision would pose an “undue hardship.” The existence of undue hardship will be determined by looking at “the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer’s business.”

This new provision was effective on March 23, 2010 when the PPACA was signed into law. The Department of Labor has not yet determined the penalties for non-compliance.

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