

DOL ISSUES FACT SHEET ON BREAK TIMES FOR NURSING MOTHERS.

7. August 2010 By Steve Palazzolo

A while back I wrote a post about the break time provisions for expressing breast milk in the new health care bill. You can see that post at <http://negotiumlex.wnj.com/?p=227> Friday the Department of Labor published its Fact Sheet #73, outlining “general information on the break time requirement for nursing mothers” According to the Fact Sheet, “Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.” Breaks must be provided for up to 1 year after the birth of the child. The Fact Sheet goes on to state that the employee is entitled to a room to express milk that is “functional as a space for expressing breast milk.” A bathroom, even if private, is not, according to the Fact Sheet, a permissible location under the Act. In addition, if the space is not dedicated for use to express milk, the space must be “available when needed” to meet the requirements of the Act.

The requirement to provide break time only applies to non-exempt employees and the employee does not have to be paid for her time spent expressing as long as she is completely free from duty while expressing. But if the employee uses her normal paid break time as time to express milk (say for example you give all non-exempt employees 2 ten minute paid breaks, one in the morning and one in the afternoon) then the time spent expressing milk must be paid like it is for every one else. If you have less than 50 employees, you don’t have to provide breaks if doing so would cause you an undue hardship. For purposes of this statute, undue hardship means “looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature and structure” of that employer’s business.

Before we leave, yes, the Fact Sheet says that the requirement to provide breaks only applies to “employees who are not exempt from the FLSA’s overtime pay requirements” But in my opinion, denying an exempt employee time to express breast milk isn’t a very good idea.

Finally, if you work in a state that provides more rights to employees, the state law will still apply.

You can see the fact sheet at <http://www.dol.gov/whd/regs/compliance/whdfs73.htm> If you have any questions you can find my contact information at http://www.wnj.com/steve_palazzolo/