

## **FLSA Mandates Break Time for Nursing Mothers**

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Pursuant to the Patient Protection and Affordable Care Act of 2010 (PPACA) that was signed into law by President Obama on March 23, 2010, substantive amendments have been made to the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.* (FLSA). These amendments will impact Section 7 of the FLSA, and will add Section 7(r) that will be codified as 29 USC § 207(r). In particular, Section 7 of the FLSA now requires that employers must provide reasonable unpaid break time to allow mothers to express breast milk her nursing child.

Under Section 4207 of the PPACA, the following accommodations must be made by employers for nursing mothers:

- “A reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk; and
- a place, other than 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.”

Further, employers with less than 50 employees are exempt from these FLSA amendments “if such requirements would impose an undue hardship by causing the employer significant difficulty when considered in relation to the size, financial resources, nature, or structure of the employer’s business.” Also, an employer is not required to compensate an employee for receiving break time taken to express milk her nursing child.

Finally, the PPACA states that it does not preempt any State laws that seek to provide greater protections to employees than those provided under this subsection. So, for example, it is possible that a State could impose a law that requires breaks taken by employees for expressing milk (or any other reason such as a rest break) be compensated as paid time by employers. A State law could also be created that is descriptive and detailed in terms of the type of facility an employer must provide to those employees for expressing milk. It is also possible that a State law could be created that narrowly defines what a “reasonable break time” actually means. Only time will tell.

These FLSA amendments are effective immediately. Thus far, the United States Department of Labor (DOL) has not issued or provided any guidance on these new provisions. The DOL has also not provided any guidance on the extent of any penalties that will be imposed against employers who fail to comply with the new provisions.