

## Health Care Reforms Require Break Time for Nursing Mothers

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Among the many provisions of health care reform, one amendment in particular may require immediate attention by employers. Section 4207: Reasonable Break Time for Nursing Mothers amends the Fair Labor Standards Act (FLSA) to add new section 7(r). It says:

(1) An employer shall provide—

(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth; and

(B) 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.

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements 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.

The amendment neither sets a limit on the number of breaks that nursing mothers are permitted to take, nor does it specify a limit on the length of each break. In fact, the language could be read to suggest that employers will be required to provide nursing mothers with reasonable breaks, and a private area, each time that they need to express milk.

The new law also states employers must comply with any state law that specifically requires paid break times for nursing mothers. Although many states currently have laws to protect nursing mothers, many states, including Michigan, do not. Thus, employers operating in multiple states will continue to be subject to differing obligations. A summary of state laws dealing with breastfeeding (within and outside the workplace) can be found [here](#).

### **Lots of questions remain**

Michigan's wage and hour laws do come into play on this issue, however. For example, under the Michigan Minimum Wage Act, the State Wage/Hour Division takes the position that breaks of less than 15 minutes must be counted as working time and must be paid. And while the Michigan Minimum Wage law generally does not apply to employers who are covered by the FLSA, it does apply if the minimum wage under the FLSA would be less than under state law. This means that there could be a claim for unpaid

minimum wages under the Michigan law if employers do not pay nursing mothers for short breaks to express breast milk.

In addition, employees may be able to make a claim for unpaid wages (including overtime) under the Michigan Payment of Wages and Fringe Benefits Act as a result of an employer's failure to pay for short-term break time to express breast milk. The Michigan Wage/Hour Department has not issued a formal position on the interplay between the new federal law and Michigan's wage and hour laws, and it may be some time before we have clear answers on these issues as cases come before the Wage/Hour Division or the courts.

Unfortunately, Congress did not specify an effective date for the changes, so the safest course of action is to assume that the requirements take effect immediately. If or when the U.S. Department of Labor provides guidance on this new law, we will provide updates. Until then, employers should tread carefully and consult with counsel in formulating appropriate practices and policies.

If you have questions about Section 4207, please contact your WNJ Labor and Employment attorney.

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