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The Patient Protection and Affordable Care Act of 2010 (PPACA) places new burdens upon employers. Employers of 50 or more employees are now required to provide unpaid break times for nursing mothers to express breast milk. A nursing mother is entitled to these breaks until the child's (or children's, in the case of multiple births) first birthday.

This provision (Section 4207) of the PPACA amends the Fair Labor Standards Act of 1938 (FLSA), commonly referred to as the national minimum wage/overtime wage law. The PPACA does not provide a specific time limit for the break, but the break time must be "reasonable." The mother may take a break each time she has need to pump breast milk. The employer must provide a place for the mother's break, other than a bathroom, that is shielded from view and free from interruptions from coworkers or the public.

An employer of less than 50 employees is not required to provide such breaks if the breaks would impose an undue hardship. Section 4207 defines a hardship as "undue" if it causes the employer "significant" difficulty or expense in relation to the employer's size, financial resources, or business structure. Section 4207 does not define the term "significant."

Section 4207 has many undefined terms and is open to interpretation. For example, if an employer has a day care center on its premises, would a nursing mother be entitled to an unpaid break to actually breast feed her child? Also, it is unclear what remedies, other than injunctive relief, would be available to a nursing mother whose employer failed to provide break time to pump breast milk. Because Section 4207 states that this break time is unpaid, the mother would be unable to claim that she lost wages as a result of the employer's violation of Section 4207. Employers should consult with legal counsel to reduce the risk of running afoul of Section 4207