

HEALTH REFORM

Nursing Mothers

The Patient Protection and Affordable Care Act included an important provision for employers of all sizes to comply with. A new requirement states that employers must provide a reasonable break time for nursing mothers to express breast milk up to one year following the birth of a child. This change is effective immediately as of March 23, 2010 and applies to all employers.

An exception for employers with less than 50 employees is included within the Act, but this exception only applies if the employer is unable to implement the provision due to an undue hardship. The hardship would have to be based on significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business. The terms "undue hardship" or "significant difficulty" have not been defined and further regulations will need to clarify this aspect for employers.

As a result of this provision, an employee who is a nursing mother must be allowed a "reasonable" break time and there is no indication that the number of breaks or maximum time allowed are limited other than being "reasonable". The location must be "shielded from view and free from intrusion from coworkers and the public." The law specifically prohibits the location provided by the employer from being a bathroom. The employer is not required to compensate for time spent expressing breast milk.

The new provision does not apply to any employee who qualifies as exempt under Section 213 of the Fair Labor Standards Act. Thus, employees who qualify under the executive, administrative, professional, outside sales, or computer professional exemptions are not entitled to breaks under the amendment.

Please contact your advisor if you have questions concerning this provision.

FREQUENTLY ASKED QUESTIONS

Does an employer with multiple locations need to designate a place for nursing mothers at each location?

The law ensures that nursing mothers will have a private place to express breast milk at their place of employment. Thus, an employer with multiple locations will need to comply with the requirements of the act. The only exception would be for employers with less than 50 employees who are unable to implement the provision due to an undue hardship. It should be noted that a location with less than 50 employees would not qualify for the exception if there are 50 or more total employees within the company.

Are part-time employees entitled to the same provisions under this Act?

If the part-time employee is not an exempt employee, then under Section 203, the term "employee" is broadly defined to include any individual employed by the employer. There are exceptions for individuals employed by the Federal Government, United States Post Office, and individuals employed by a State, and political subdivision of a state (which includes municipalities and county governments). Thus, there is no exception for non-exempt part-time employees. At this time, non-exempt part-time employees would be eligible for protections for nursing mothers unless future regulations state otherwise.

Do teachers meet the exception for professional employees under the Fair Labor Standards Act?

Nursing mother protections do not apply to any employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools. For assistance determining whether employees are exempt under the executive, administrative, professional, outside sales, or computer professional exemptions, the following link from the Department of Labor provides a fact sheet on each category and an interactive system to assist employers in identifying exempt employees.

For more information visit www.dol.gov/elaws/esa/flsa/overtime/menu.htm

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