



Frequently Asked Questions – Break Time for Nursing Mothers

About the Law

The Patient Protection and Affordable Care Act (P.L. 111-148, known as the “Affordable Care Act”) amended section 7 of the Fair Labor Standards Act (“FLSA”) to require employers to provide “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.” Employers are also required to provide “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.” *See* 29 U.S.C. 207(r). The break time requirement became effective when the Affordable Care Act was signed into law on March 23, 2010. The Fact Sheet and the Frequently Asked Questions below provide basic information about the law.

Questions & Answers

Who is entitled to reasonable break time and a space for expressing breast milk at work under the law?

ANSWER: The federal law provides that employees who work for employers covered by the FLSA and are not exempt from section 7, which sets forth the FLSA’s overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of section 7, they may be obligated to provide such breaks under State laws. The Department encourages employers to provide breaks to all nursing mothers regardless of their status under the FLSA.

What types of employers are covered by the law?

ANSWER: All employers covered by the FLSA must comply with the break time for nursing mothers provision. As explained further below (see Question #5), all such employers are subject to the FLSA break time requirement unless they have fewer than 50 employees and can demonstrate that compliance with the provision would impose an undue hardship.

Many U.S. states, Puerto Rico, and the District of Columbia have laws related to breastfeeding and expressing milk in the workplace. Are these state laws preempted by the new federal break time requirements?

ANSWER: The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child's birth).

What must an employer provide to workers who need to express breast milk in the workplace?

ANSWER: Employers are required to provide a reasonable amount of break time and a space to express milk as frequently as needed by the nursing mother, for up to one year following the birth of the employee's child. The frequency of breaks needed to express breast milk as well as the duration of each break will likely vary. The space provided by the employer cannot be a bathroom, and it must be shielded from view and free from intrusion by coworkers or the public.

Does the nursing mothers break time provision apply to small businesses?

ANSWER: All employers covered by the FLSA, regardless of the size of their business, are required to comply with this provision. However, employers with fewer than 50 employees are not subject to the FLSA break time requirement if the employer can demonstrate that compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, or structure of the employer's business.

For purpose of the undue hardship exemption, how will the Department determine whether an employer has fewer than 50 employees?

ANSWER: All employees who work for the covered employer, regardless of work site, are counted. Consistent with the FLSA definition of employee, "any individual employed by an employer" must be counted, including full-time employees, part-time employees, and any other individuals who meet the FLSA definition of employee found at 29 U.S.C. 203(e)(1).

Does the break time have to be paid break time?

ANSWER: Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition,

the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies. *See Wage and Hour Division Fact Sheet #22, Hours Worked under the FLSA* (<http://www.dol.gov/whd/regs/compliance/whdfs22.pdf>).

Do employers need to create a permanent, dedicated space for use by nursing mother employees?

ANSWER: No. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mothers' use, it must be available when needed in order to meet the statutory requirement. Of course, employers may choose to create permanent, dedicated space if they determine that is the best way to meet their obligations under the law.

Do employers have to provide a lactation space even if they don't have any nursing mother employees?

ANSWER: No. The statute requires employers to provide a space for a nursing employee "each time such employee has need to express the milk." If there is no employee with a need to express breast milk, then the employer would not have an obligation to provide a space.

If the only space available at a work site is a bathroom, can employers require employees to express breast milk there?

ANSWER: No. The statute specifically states that the space provided for employees to express breast milk cannot be a bathroom.