



U.S. Department of Labor

Questions and Answers – Department’s Request for Information (RFI) on the FLSA’s Break Time for Nursing Mothers Provision

About the Request for Information

This notice is a request for information from the public regarding the recent amendment to the FLSA that requires employers to provide reasonable break time and a place for nursing mothers to express breast milk for one year after the child’s birth. The Department seeks information and comments for its review as it considers how best to help employers and employees understand the requirements of the law.

Questions & Answers

Do employers have to comply with the law while the Department’s Request for Information is pending and before the Department issues final guidance?

ANSWER: Yes. The law became effective when the Affordable Care Act was signed on March 23, 2010. To assist employers with complying with the new law, the Department has issued Wage and Hour Fact Sheet # 73: “Break Time for Nursing Mothers under the FLSA” at <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>. The Department has also posted Frequently Asked Questions (FAQs) on its website that reiterate the information provided in the Fact Sheet in a different format. Until the Department issues final guidance, the Department’s enforcement will be based on the statutory language and the guidance provided in WHD Fact Sheet #73 and the associated FAQs.

Why is the Department issuing this Request for Information and will the Department issue further guidance?

ANSWER: The Request for Information (RFI) communicates the Department’s preliminary interpretation of the law and seeks public comment to help the Department refine and strengthen its compliance assistance activities. The Department intends to issue further guidance on the law and comments received from this RFI will help formulate that guidance. The Department’s Wage and Hour Division has a variety of ways to issue guidance to the employer and employee community, including regulations, Administrator Interpretations, and Fact Sheets. At this time, the Department does not plan to issue regulations implementing this provision. Because of the wide variety of workplace environments, work schedules, and individual factors that will impact the number and length of breaks required by a nursing mother, as well as the manner in which an employer complies with the break time requirement, the Department believes that regulations

may not be the most useful or effective means for providing initial guidance to employers and employees. If, however, based on its experience administering and enforcing the break time requirement and the comments received in response to this Request for Information, the Department determines that regulations are necessary, it will initiate rulemaking at that time.

Will the Department enforce the law based on the interpretations contained in the RFI?

ANSWER: The Department intends to continue enforcing the law based on the statutory language and consistent with the information provided in Wage and Hour Fact Sheet # 73: “Break Time for Nursing Mothers under the FLSA” and the associated FAQs. Until the Department issues final guidance, the RFI provides useful information for employers to consider in establishing policies for nursing employees.