

Fact Sheet #73: Break Time for Nursing Mothers under the FLSA

This fact sheet provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act (“PPACA”), which took effect when the PPACA was signed into law on March 23, 2010 (P.L. 111-148). This law amended Section 7 of the Fair Labor Standards Act (FLSA).

General Requirements

Employers are required 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.”

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).

Time and Location of Breaks

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother’s use, it must be available when needed in order to meet the statutory requirement. 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.

Coverage and Compensation

Only employees who are not exempt from 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 overtime pay requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if 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, and structure of the employer’s business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

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 WHD Fact Sheet #22, Hours Worked under the FLSA.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

Lactation Support

This policy is in compliance with The Patient Protection and Affordable Care Act (H.R. 3590) which was signed into law on March 23, 2010.

Purpose

This policy provides guidelines that will assist agencies in the development of work/life balance initiatives to support the wellness and health of employees of North Carolina State Government. Work/life balance initiatives have proven to be effective recruitment and retention strategies as agencies compete for a diverse workforce to deliver efficient services to the citizens of North Carolina.

Research has shown that lactation support is beneficial to the working, nursing mother and her child as well as to employers by decreasing medical expenses; reducing absenteeism; increasing employee retention; and improving morale in the workplace. This policy is intended to give agencies a general outline of the minimum level of support to be provided to employees who are nursing their children. An agency may adopt additional areas of support that are consistent with this policy.

Policy

It is the policy of North Carolina State Government to assist working mothers with the transition back to work following the birth of a child by providing lactation support. A lactation support program allows a nursing mother to express breast milk periodically during the work day.

**Office of State
Personnel
Responsibility**

The Office of State Personnel will designate a program coordinator to assist agencies with questions regarding this policy.

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Lactation Support, Continued

Agency Responsibilities State agencies shall provide space, privacy, and time for nursing mothers to express breast milk by doing the following:

- a. **Designated Space** – The agency shall provide a private space that is not in a restroom or other common area. The space should have a door that can be secured or locked, adequate lighting and seating, and electrical outlets for pumping equipment.

Advisory Note: In identifying a designated space for lactation, the agency should consider the proximity of the space to employees' work areas. Additionally, agencies should consider the distance of the space in relation to a source of running water.

- b. **Time** - The agency may require the employee to use the regularly scheduled paid break time to express breast milk. If time is needed beyond the regularly scheduled paid break times, the agency shall make reasonable efforts to allow employees to use paid leave or unpaid time for this purpose.

Employee Responsibility **Storage** - The employee will be responsible for storage of the expressed breast milk.
