

Legislative Brief

Health Care Reform: Break Time for Nursing Mothers



On **March 23, 2010**, President Obama signed into law the health care reform bill, the Patient Protection and Affordable Care Act. This legislation, along with the Health Care and Education Reconciliation Act of 2010, makes sweeping changes to the U.S. health care system, including a little noticed requirement that employers provide rest breaks and accommodations for employees who are nursing mothers to express breast milk. Though many of the changes will be implemented over the next several years, this new requirement took effect **immediately**.

This Legislative Brief provides a brief summary of the provisions requiring employee rest breaks for nursing mothers to express breast milk. Please read below for more information and contact FAS-EBA, Inc. with any questions.

What Does the Law Require?

The provision amends the Fair Labor Standards Act (FLSA) by requiring that employers provide:

- A reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has the need to express the milk; and
- A place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk.

To Whom Does The Law Apply?

All employers that are covered by the FLSA and employ 50 or more employees are required to comply with the new law. An employer that employs less than 50 employees will not be subject to the requirements of this law, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business. Additionally, based on where this amendment was placed in the FLSA, it appears the law does not apply to white-collar exempt employees. Future regulations may clarify this point.

Must Employees Be Compensated?

The provision provides that an employer is not required to compensate an employee receiving reasonable break time for any work time spent for such purpose.

What If State Laws Differ From Federal Law?

Nothing in the provision preempts a state law that provides greater protections to employees than the protections provided by this federal law. That is, if employers operate in a state where the state law offers greater protections to nursing mothers, those protections must be followed.

What Should Employers Do Now?

Covered employers who do not already provide the time and resources for nursing mothers to express breast milk should do so now. Appropriate policies and training should be amended and/or developed in this regard, and should be communicated to employees and managers. Further, employers should watch for regulations which are expected from the U.S. Department of Labor to clarify various aspects of the law. FAS-EBA, Inc. will keep on top of developments regarding this and other legislative initiatives and will work to keep you informed.

This FAS-EBA, Inc. Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.