



## FLSA Amendment Requires Breaks for Mothers to Express Breast Milk

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The recently enacted healthcare reform act signed into law by President Obama on March 23 amends the Fair Labor Standards Act (FLSA) to require employers to provide "reasonable" breaks for nursing mothers to express milk for their infants for one year from the child's birth. Additionally, the employer must provide a private location, other than a bathroom, where affected employees may express milk. The location must be shielded from view and free from intrusion from coworkers and the public.

Employers of fewer than 50 employees are exempt from the new law if the breastfeeding 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, in recognition that many states require breastfeeding breaks, the amendment makes clear that an employer must comply with either the FLSA or the applicable state law provisions that are most favorable for the employees.

It is not yet known whether DOL will issue regulations or guidance on how these provisions are to be implemented, and what the penalties are for noncompliance.

At this point, there are a number of unanswered questions, including:

- whether and when the breaks must be compensated as hours worked remains unclear. Short breaks running from 5 to 20 minutes generally are counted as hours worked under the FLSA regulations and subject to compensation for non-exempt employees. The recent amendment states that the employer will not be required to compensate an employee receiving "reasonable" break times. It remains unclear if "reasonable" refers to breaks of 20 minutes or less, or if the amendment applies a different standard.



- the definition of "undue hardship" that would qualify an employer with fewer than 50 employees for the exemption is unknown. Note that the exemption is not automatic, but is available only if employers with fewer than 50 employees can meet the "undue hardship" requirement.

Though these questions should be addressed in future regulations issued by the DOL, at this time, employers receiving requests for breaks of this nature should contact an employment attorney.