

Health Care Reform Act Requires Reasonable Break Times for Nursing Mothers

by Kathleen M. Laubenstein, Esq.

Although it was widely discussed for its impact on health insurance, the recent Patient Protection and Affordable Care Act (also known as the Health Care Reform Act or "HCR Act") will also affect what employers need to do to support nursing mothers. In short, Section 4207 of the HCR Act amended Section 7 of the Fair Labor Standards Act ("FLSA") of 1938 (29 U.S.C. § 207) to require employers to provide employees who are nursing mothers with "reasonable break time" and a private (non-bathroom) place to express breast milk during the workday through the child's first birthday.

All employers covered by the FLSA are covered by the new amendment; however, those with fewer than 50 employees will not be required to provide such breaks if doing so would impose an "undue hardship" by causing "significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business."

Notably, this amendment would not require an employer to compensate an employee for time spent expressing milk.

Although the amendment went into effect immediately, the implementing regulations have not yet been put into place, giving employers time to prepare to accommodate nursing mothers.

It is possible that the state law in Oregon, which served as a model for the federal provision, will provide guidance for those regulations; for example, under Oregon law, a reasonable schedule is "a 30-minute rest period to express milk during each four-hour work period, or the major part of a four-hour work period, to be taken by the employee approximately in the middle of the work period."

Examples of workplace breastfeeding programs and policies have been compiled by the National Business Group on Health and can be found at: www.businessgrouphealth.org/pdfs/NBGH%20Breastfeeding%20IB_Final%20Proof.pdf

Contact Kathy Laubenstein (610.408.2039 or klaubenstein@rubinfortunato.com) if you would like further information on this amendment or other issues impacting employers.



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