



What Women Need to Know about Health Reform: Reasonable Breaks and Private Space to Express Breast Milk at Work

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The health reform law recently signed by President Obama includes a new provision that requires employers to provide nursing mothers with reasonable, unpaid breaks to express breast milk at work. Although there are substantial health benefits to both babies and mothers from breastfeeding, many working mothers lack the time and space at work to enable them to breastfeed. For women like LaNisa Allen, who was fired from her job at Totes/Isotoner Corp. in Cincinnati for pumping during an “unscheduled” break, the provision makes clear that nursing mothers must be allowed adequate time and space to express breast milk.¹

Health Reform Requires Employers to Provide Breaks for Nursing Mothers to Express Breast Milk

The new health reform law requires employers to allow nursing mothers to take breaks so that they may express breast milk in a private place.

- Employers must provide:
 - Reasonable, unpaid break time for mothers to express breast milk in the first year after the birth of a child;
 - A private space, other than a bathroom, for mothers to express breast milk; the space must be “shielded from view and free from intrusion.”
- The provision applies to all employers:
 - However, employers with fewer than 50 employees may be exempt if they demonstrate that the requirements impose “an undue hardship” by creating significant difficulty or expense, relative to the employer’s size and resources.
- The provision applies to “non-exempt” employees – in other words, workers subject to the minimum wage and overtime provisions of the Fair Labor Standards Act. This would generally include hourly workers, including many factory workers, retail workers, restaurant workers, and others who work on an hourly basis and are subject to federal overtime laws.
- The law makes clear that state laws that provide greater protection are not affected by the new provision.
 - For example, Vermont requires employers to provide reasonable time for a nursing mother to express breast milk for the first three years after the birth of a child.²

The Department of Labor Must Provide Guidance to Assist Employers and Workers in Complying with the New Law

The provision is effective immediately, therefore, it will be critical for the Department of Labor to provide guidance and engage in public education in a number of areas, including:

- Information on what is considered a “reasonable break”;
- Details on the type of space an employer must provide to be sufficiently private;
- Information on the standard for an employer to claim that an “undue hardship” exempts it from the time and space requirement;
- The process for an aggrieved employee to complain; and
- Best practices for employers that demonstrate how they can comply with the new provision.

Numerous studies have highlighted the many benefits of breastfeeding for women and their children.³ In addition, breastfeeding reduces the need for sick days and lowers employers’ healthcare and insurance costs.⁴ This new provision will support these positive outcomes.

¹ Connie Schultz, “Working Moms Need a Break from Lactation Regulations” (Sept. 2, 2009) at http://www.cleveland.com/schultz/index.ssf/2009/09/working_moms_need_a_break_from.html.

² VT. STAT. ANN. tit. 21. § 304 (2008)

³ See e.g. Health Care Reform: Improving Breastfeeding Support Will Save Billions at <http://www.usbreastfeeding.org/LinkClick.aspx?link=Publications%2FHealth-Care-Reform-One-Page-USBC-update.pdf&tabid=36&mid=378>. (Reporting on a study that found that women who breastfed for at least one year were less likely to have high blood pressure, diabetes, high cholesterol, and cardiovascular diseases compared to mothers who never breastfed). See also, U.S. Department of Health and Human Services, Benefits of Breastfeeding at <http://www.womenshealth.gov/breastfeeding/benefits/#a>. (stating that breastfed babies are less likely to develop ear infections, stomach viruses, asthma, diabetes and childhood leukemia and are less likely to die from Sudden Infant Death Syndrome (SIDS)).

⁴ U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau, *The Business Case for Breastfeeding*, (2008) at <http://www.womenshealth.gov/breastfeeding/programs/business-case/breastfeeding-businesscase-for-managers.pdf>.