

FIRM NEWS

DOL OFFERS GUIDANCE ON EMPLOYER OBLIGATIONS UNDER THE NEW NURSING MOTHERS' "PUMP" ACT

Article

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On June 17, 2023, the recently-enacted Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) will go into effect. That law amended the Fair Labor Standards Act (FLSA) with respect to employer obligations to nursing mothers. In advance of the effective date, the U.S. Department of Labor has issued detailed guidance to its field staff on enforcement of the changes, including examples of acceptable employer conduct.

Under the FLSA, nursing mothers are entitled to a "reasonable" break time to expel breast milk *each* time the employee has a need. The employee is entitled to such breaks for the first year of the child's life. According to the DOL guidance, while an employee and employer can agree on a pumping schedule, the employer cannot require the employee to adhere to a fixed schedule, because such agreements may need to be adjusted as the need to expel breast milk changes over time. Thus, a mother with a newly-born child may need more frequent, and longer breaks than a nursing mother with a nine-month old child.

Notably, employees who telework are entitled to take pump breaks on the same basis as on-site employees. The PUMP Act also expands agricultural workers' and certain transportation workers' right to take breaks to expel breast milk. These workers were not previously entitled to such breaks, so employers should revisit any policies currently in place pertaining to pump breaks.

Compensation

The Act does not require employers to compensate employees for time spent expelling breast milk unless required to do so by federal, state, or municipal laws. Generally, then, an hourly, non-exempt employee need not be paid for pump breaks if the employee is *completely* relieved of her duties during the break. If, for example, the employee interrupts her pump break to take a work-related call, that break time is compensable. Additionally, under the FLSA, short breaks (usually 20 minutes or less) are counted as hours worked, for which the employee must be compensated. Because salaried exempt employees must receive the full salary for *any* week in which the employee performs *any* work, employers may not reduce the salary of an exempt employee who takes pump breaks.

Space Requirements

Under the Act, employers are required to provide a space (which cannot be a bathroom) for nursing employees to expel breast milk. The provided space must be shielded from view (including security cameras or web conferencing platforms), free from intrusion by coworkers and the public, and available each time the employee has a need to take a pump break. Employers should provide a sign indicating when the space is in use, or provide a space with a door that locks. Finally, the space must provide somewhere, other than the floor, for the employee to sit, and a flat surface on which to place the breast pump. Ideally, according to the DOL, the space should also have access to electricity and a sink. For employers with a number of covered employees, a large room with privacy screens would be an acceptable way to accommodate multiple nursing employees.

Possible Exemption for Small Employers

Small employers – those with fewer than 50 employees – maybe able to claim an exemption from the Act's requirements if they can show that providing a pumping location would cause an undue hardship. Factors such as "significant" difficulty and expense in light of the employer's size, financial resources, nature, and structure of the business are considered in the undue hardship determination. The DOL guidelines indicate that exemptions will only be granted in limited circumstances.

Posting Requirements

Employers subject to the FLSA are required to post a notice explaining the Act (including the Pump Act's requirements). The DOL considers an electronic posting sufficient where all of the company's employees work remotely, and all have access to and customarily receive electronic information from the employer. The DOL has updated its poster to include Pump Act information; A PDF version is available [here](#).

Enforcement and Non-Retaliation

Finally, employers are prohibited from retaliating against employees who file a complaint or institute any proceeding regarding PUMP Act protections. Employers that violate the Act may be liable for equitable and economic damages for retaliation or non-compliance.

Nemeth Bonnette Brouwer PC will continue to monitor changes in FLSA, as well as laws pertaining to pregnant and nursing employees. Feel free to contact any of the attorneys at the firm with your questions.