

MODERN MANAGEMENT

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EMPLOYERS' OBLIGATION TO NURSING MOTHERS

A new fact sheet has been issued by the Department of Labor, Wage and Hour Division outlining employers' obligations under the break time requirement for nursing mothers found in the Patient Protection and Affordable Care Act. Fact Sheet #73: Break Time for Nursing Mothers under the FLSA provides general information on the break time requirement for nursing mothers, including:

General Requirements

Employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk." The FLSA requirement of break time for nursing mothers to express breast milk does not pre-empt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child's birth).

Time and Location of Breaks

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary. A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from coworkers and the public.

Coverage and Compensation

Only employees who are not exempt from the FLSA's overtime pay requirements are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the overtime pay requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies.

HARASSMENT AND SOCIAL WEBSITES – TIME FOR A NEW POLICY

As Facebook and similar social websites are quickly becoming embedded in our culture and employees interact on these sites, employers need to create new policy to ward-off harassment lawsuits. Employees' social media websites use can lead to lawsuit exposure. Employers should create and enforce a social media and anti-harassment policy which takes into consideration the employees' privacy rights.

UI BENEFITS EXTENSION SIGNED INTO LAW

H.R. 4213 that extends emergency unemployment insurance benefits to Nov. 30 was signed into law by President Obama on July 22. This new law will restore benefits to 2.5 million unemployed workers.

I-9 FORM UPDATE

The Department of Homeland Security's Immigration and Customs Enforcement ("ICE") finalized a regulation that provides greater flexibility for employers to electronically sign and store I-9 forms. This applies to employers, recruiters and fee based referral services who are required under the Immigration and Nationality Act to verify employment eligibility using I-9 forms for each new employee including U.S. citizens.

The regulation modifications include:

- I-9 form must be completed within three business work days of the date of hire;
- Paper, electronic systems, or a combination of paper and electronic systems may be used;
- Changes may be made to electronic storage systems as long as the systems meet the performance requirements of the regulations;
- Requirement to retain audit trails when the I-9 form is created, completed, updated, modified, altered, or corrected; and
- Requirement to provide or transmit a confirmation of an I-9 transaction only if employee requests a copy.

LEMLE & KELLEHER LABOR AND EMPLOYMENT ATTORNEYS

The labor and employment attorneys in our firm have a national and international practice representing union and non-union companies in almost every industry. From hotels to manufacturing to health care, retailing to restaurants, to financial institutions, trucking companies to warehouses to nursing homes, and many others, our labor attorneys have developed strong experience and hands-on knowledge of how business really works.

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