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How Long and Where Can Employees Breastfeed or Pump Milk? States Continue to Weigh In

Despite the existence of leave laws allowing female employees to take time away from work after the birth of a child, many women return to work while still nursing their children. Given this, employers must be aware of their legal obligations as well as their employees' rights under applicable law.

The federal Fair Labor Standards Act (FLSA) requires employers with 50 or more employees to provide reasonable unpaid break time for the purpose of expressing breast milk to nursing mothers who are non-exempt from its minimum wage and overtime requirements, for up to one year after their child's birth. It also requires employers to provide a private area that is shielded from view and free from intrusion by others, other than a bathroom, for employees to breastfeed or express milk. Employers with less than 50 employees are not required to comply with this law if they can prove that they would suffer undue hardship.

The FLSA does not preclude states from providing greater benefits to breastfeeding employees, and almost half the states in the U.S. have actually done so.

Most recently, ***Massachusetts*** passed the Pregnant Workers Fairness Act, set to take effect on April 1, 2018. According to this new law, an employer must grant the reasonable request for accommodations and/or break time of an employee who is breastfeeding or otherwise expressing breast milk, including access to a private non-bathroom space for this purpose.

Effective January 2018, the ***New Jersey*** Law Against Discrimination was amended to prohibit discrimination against women who engage in breastfeeding or expressing breast milk during their break time and to require employers to provide a reasonable, private location, other than a toilet stall, for such purpose, in close proximity to employees' work area. Although the amendment is similar to the provisions of the FLSA, New Jersey law does not limit how long after a child's birth a nursing mother can take such breaks and applies to any size employer, unless they can prove undue hardship.

Connecticut law, like New Jersey's, places no time limit on how long after the birth of a child a mother is entitled to break time in order to express breast milk.

New York law requires all employers to provide "reasonable unpaid break time" to nursing mothers for up to three years following the birth of a child. It further imposes very specific requirements regarding the length, frequency and location of such breaks. For example, the law defines "reasonable unpaid break time" as no less than 20 minutes, and if the private room provided is not close to the employee's work area, no less than 30 minutes. Employees may choose to take shorter breaks. Additionally, the private room provided must be well lit through either natural or artificial light (any windows must be able to be covered for privacy), and the employer must keep the room clean.

With regard to pay, neither federal nor state law requires that non-exempt employees be paid for breaks to express breast milk so long as they are relieved of all work during such time and are not treated less favorably than employees taking breaks for other purposes (e.g., such as to smoke). However, the FLSA generally considers breaks of less than 20 minutes to be compensable work time, so if these breaks are of shorter duration, employees should be paid. Although the FLSA does not provide exempt employees break time to express milk, state laws may, and such employees should be paid for breaks of any duration due to their exempt status.

Given the above, employers must ensure that they provide the appropriate break time and space to allow employees to breastfeed or pump milk in private. They should also confer with legal counsel to ensure that their policies comply with the laws applying to their jurisdictions.

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Authors



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com



David P. Doyle
Partner

Parsippany, NJ | (973) 966-8136

ddoyle@daypitney.com



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com