



One Minute Memo[®]

Nursing Mother Amendment to the Fair Labor Standards Act

As part of the recent Patient Protection and Affordable Care Act of 2010 (PPACA), Congress amended the Fair Labor Standards Act to provide breaks for nursing mothers. Under section 4207 of the PPACA, which appears to be effective immediately, employers must provide a “reasonable break time” for an employee to express breast milk for her nursing child. The requirement applies for one year after the child’s birth. The PPACA places no limit on the number of the breaks to be provided, and does not contain any guidance with respect to the duration of such breaks.

In addition to providing reasonable breaks, the employer must also provide a place where the employee can express breast milk. The place must be somewhere other than a bathroom and must be “shielded from view and free from intrusion from coworkers and the public.”

The law exempts any employer with fewer than 50 employees if providing the break (or the place to express breast milk) would impose an “undue hardship” on the employer. For the purposes of the PPACA, “undue hardship” is defined as “causing the employer significant difficulty or expense” when considered in relation to relevant factors.

The new provision does not require an employer to pay for reasonable break time provided under the new law. Depending on the length of the break in particular cases, the PPACA may run contrary to existing Department of Labor regulations, which require employers to compensate for rest breaks of short duration (5-20 minutes) or even certain state laws related to breaks.

Until such time as the Department of Labor provides guidance regarding the issues surrounding this new entitlement for nursing mothers, employers should tread carefully and consult with counsel in formulating appropriate practices and policies.

Finally, keep in mind that 24 states, including California, Georgia, Illinois, and New York, as well as the District of Columbia and Puerto Rico, already have laws related to breastfeeding in the workplace. The PPACA does not preempt application of those laws and employers with operations in states with such laws should continue to comply with state law if it is more protective of employees.

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