

National Activities to Support Implementation of Federal “Break Time for Nursing Mothers” Law

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Break Time for Nursing Mothers



- Effective March 2010, the federal “Break Time for Nursing Mothers” provision requires employers to provide reasonable break time and a private, non-bathroom space for hourly paid workers to express breast milk during the work day.

USBC Break Time Project



- ❑ Funded by OWH to enhance the coordination and reach of effective messaging to mothers



Workplace Support in Federal Law

What is the "Break Time for Nursing Mothers" law?

Effective March 23, 2010, this [federal law](#) requires employers to provide break time and a place for hourly paid workers to express breast milk at work. The law states that employers must provide a "reasonable" amount of time and that they must provide a private space other than a bathroom. They are required to provide this until the employee's baby turns one year old.

This law is part of [Section 4207 of the Patient Protection and Affordable Care Act](#) under the Fair Labor Standards Act (FLSA) of 2011. [Download the text of Section 4207 only.](#)

Questions About the "Break Time for Nursing Mothers" Law

You or your employer may have questions about how the "Break Time for Nursing Mothers" law applies to you. Many common questions and concerns are addressed in the following sources:

- [United States Department of Labor Wage and Hour Division \(WHD\)](#):
 - [Statutory language](#): full text of the "Break Time for Nursing Mothers" law
 - [Fact Sheet #73](#): includes information on general requirements, time and location of breaks, and coverage and compensation requirements under the "Break Time for Nursing Mothers" law
 - [FAQs](#): answers many of the questions about the law
- [United States Department of Health and Human Services Office on Women's Health \(OWH\)](#):
 - [Business Case for Breastfeeding](#) is a comprehensive program developed to educate employers about the value of supporting breastfeeding employees in the workplace.
 - [Womenshealth.gov/breastfeeding](#): tips, suggestions, and important information and resources for breastfeeding

Target Audience Review



- ❑ The USBC selected 100 volunteers in consideration of:
 - ❑ Race and ethnicity
 - ❑ Education/reading level
 - ❑ English as a second language
 - ❑ Age
 - ❑ Employment
 - ❑ Geography
- ❑ Of these, 47 completed reviews of one or more sections

Online Guide



- *What You Need to Know About the "Break Time for Nursing Mothers" Law*
- Guide contents:
 - Basics of the law
 - Intersection of state & federal laws
 - Resources for working with employers
 - How to prepare, pump & store milk
 - Additional resources & information

Guide Highlights



- What does the undue hardship exemption mean for employees?
 - The law covers employers of ALL sizes
 - Employers under 50 *may* appeal for exemption in response to a complaint
 - Have to prove significant difficulty/expense

Guide Highlights



- Who is covered by the law?
 - Limited to non-exempt employees (hourly wage earners)
 - The [Supporting Working Moms Act](#) would expand the law to include an additional 12 million workers

Guide Highlights



- What if your state already has a law?
 - When both federal and state law address the same situation, the stronger law applies
 - How to compare the laws in your state

Use, Promote & Share



- Designed to serve as a resource for employers and families
- Share widely with this link:
 - www.usbreastfeeding.org/workplace-law
- Sample post: Know your rights as a #breastfeeding mom in the workplace: www.usbreastfeeding.org/workplace-law via @usbreastfeeding

Gap Analysis for DoL Recommendations



- Conducted a gap analysis to assess how existing federal guidance addresses common questions from employees and employers.
- From this, crafting additional recommendations for the Department of Labor to support implementation of the law.

Gap Analysis: Process



- ❑ USBC staff made chart comparing FAQ, Fact Sheet #73 and RFI, by topic
- ❑ Nursing Breaks Law Task Force volunteer reviewers compared chart to USBC's commonly received questions, noted gaps
- ❑ Webinar presentation of summary today
- ❑ Incorporate feedback, TF to review final
- ❑ Approved by Rapid Response procedure
- ❑ Submit final recommendations to DoL

Coverage Under the FLSA Nursing Mothers Provision



There is widespread confusion about which employees are covered.

Recommendation 1: add language highlighting existing resources to help mothers determine coverage under the law.

Unpaid Break Time: Extended Work Day



Employees have expressed concern that exercising their rights under the law will impact other workplace benefits.

Recommendation 2: add language that encourages flexibility, particularly in cases where health insurance benefits relate to hours worked.

Reasonable Break Time: Frequency & Duration



The amount of time needed is impacted by many factors.

Recommendation 3: add language clarifying that in assessing the reasonableness of break time, employers should consider all the steps reasonably necessary to express breast milk, not merely the time required to express the milk itself.

Reasonable Break Time: Frequency & Duration



The frequency of breaks needed to express breast milk varies depending on factors such as the baby's age, feeding schedule, whether the baby is eating solid food, health of the mom and baby, and more.

Recommendation 4: add language clarifying that frequency and duration will vary from mother to mother and session to session

Reasonable Break Time: Frequency & Duration



Many employers do not know where to turn for support while seeking to comply with the "Break Time" law.

Recommendation 5: add language highlighting employer resources, including the online guide and state breastfeeding coalitions.

Space for Expressing Breast Milk: Definition, Privacy



There is confusion about what is considered sufficient to meet the law's requirements for space to be "shielded from view" and "free from intrusion."

Recommendation 6: add language addressing privacy concerns, specifically: screens, locks and/or signs that are accompanied by a well-communicated policy on employee behavior.

Space for Expressing Breast Milk: Definition, Privacy



Sometimes most suitable space is manager's office, which may contain a security camera.

Recommendation 7: add language declaring that the presence of a camera in a location does not qualify a business for undue hardship, and suggesting solutions for this circumstance.

Space: Temporary, Not Dedicated



Although the law does not require dedicated, permanent space, employers should still be prepared to accommodate.

Recommendation 8: add language encouraging employers to always have a plan for accommodation, such as in the case of an employee visiting from another branch or worksite.

Space: Adjoining Bathrooms



There is confusion about if/when spaces adjoining toilet areas are acceptable.

Recommendation 9: add language clarifying that an anteroom or lounge area connected to the bathroom would be sufficient only if fully separated from the toilet area by a permanent/closed wall, smoke free, and if "shielded from view" and "free from intrusion."

Space: Locker Rooms



There is confusion about if/when locker room spaces are acceptable.

Recommendation 10: add language clarifying that a locker room would be sufficient only if there is no toilet or shower, or if the pumping space is separated from the toilet or shower by a closed wall.

Space: Number of Mothers Using, Location



Employers need guidance on how to calculate and plan for adequate pumping stations.

Recommendation 11: add language clarifying that employers consider the number of nursing mothers employed and their work schedules to determine the location and number of spaces needed, as well as provide guidance on use of privacy screens or curtains

Space: Number of Mothers Using, Location



Some employees are questioning the definition of milk expression, as they wish to breastfeed directly during the workday.

Recommendation 12: add language clarifying the definition of milk expression, and encouraging employers to allow mothers direct access to their babies, where the worksite can safely accommodate this.

Space Functionality



Employers continually request additional guidance on space requirements.

Recommendation 13: add language defining the term “functional” (introduced in the FAQ), providing more information on the provision of sinks and refrigerators, and clarifying requirements for proper ventilation, lighting, climate control, cleanliness in any lactation space.

Storage



Employers need guidance regarding milk storage.

Recommendation 14: add language stating that employers must allow mother to bring pump and insulated food container to work; also highlight the Occupational Safety and Health Administration statement that expressed breast milk is not a biohazard.

Space: Off Site Locations



Travel is required by many employees.

Recommendation 15: add language clarifying employer's obligation to provide time and space, regardless of where employee is located, including obligation to arrange with client (when employee is off-site), for space at the client's site.

Notice: Employer Communications from DoL



Employers need materials from DoL to embed information about the law.

Recommendation 16: include information in Department publications and trainings:

- ❑ "Know your rights"
- ❑ Trainings on FMLA & minimum wage law
- ❑ Provision of notice to pregnant women
- ❑ May have more rights under state law
- ❑ Multiple languages

Undue Hardship: Counting Employees



There is a widespread misunderstanding that businesses with fewer than 50 employees are not required to comply, as well as about counting of employees for undue hardship exemption.

Recommendation 17: add language clarifying:
a) smaller employers (<50) may not presume undue hardship; b) how/when number of employees is calculated; c) previous exemption will no longer apply if number of employees rises to 50+; d) once accommodations made, cannot be taken away if number of employees drops.

Undue Hardship Exemption: Burden of Proof

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There is widespread confusion about application of undue hardship exemption.

Recommendation 18: add language clarifying that undue hardship will operate as affirmative defense raised by employer seeking to demonstrate why unable to accommodate *particular* employee, it cannot be sought in advance, must be demonstrated in response to each individual complaint.

Relationship to the Family Medical Leave Act



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There is confusion about whether breaks can be considered to be FMLA leave or counted against an employee's FMLA leave entitlement.

Recommendation 19: include information to clarify the relationship between the Family Medical Leave Act and the "Break Time for Nursing Mothers" provision.

Coalition Feedback



- Please use this online survey to share your experiences and feedback on these recommendations:

www.usbreastfeeding.org/DoL-feedback

- Deadline: Friday, January 3

CDC Funding to USBC



New Cooperative Agreement:

- *National Innovative Partnership for Addressing Obesity through Environmental Supports for Nutrition and Physical Activity.*
 - Emphasis on innovative partnerships

CDC Funding to USBC



- Program strategy one:
 - Provide access to professional and peer support for breastfeeding.
- Program strategy two:
 - Promote and facilitate worksite compliance with Federal and appropriate State lactation accommodation laws.

CDC Funding to USBC



Workplace activity details

- Conduct an inventory and analysis of state laws and how they intersect/overlap with federal law.
- Forge new partnerships for promotion, may include partnerships in online media, webinar training to promote new federal law resources.

Thank You

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