Reasonable Breaks for Nursing Mothers Under New Federal Law
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Fair Labor Standards Act—Amended

- The Patient Protection and Affordable Care Act (Health Care Reform) added an amendment to FLSA
- Requires lactation accommodation nationwide

Why Protect BF in Workplace Within Health Care Reform?

- 6 mo exclusive BF = public health imperative
- Not breastfeeding = higher disease risk
- Not breastfeeding = higher health care $$$
  - If 90% of women reach goal, US to save $13 billion per year*
- Most women return to work < 6 mos.
- Need support to make BF and work – work

*Bartick, Pediatrics, 2010
Why Was the Law Necessary?

- Longer BF = lower risk of disease
- 6 mo exclusive is the goal, continued BF
- Supply problem if accommodation is NOT in place
- Women comprise half US labor force
- Fastest growing segment – women with children under 3 years old
- State hodge-podge of laws

What Does Employer Gain?

- Lactation programs prove financial benefit
- **Basic** (time, space)
  - $1 investment
  - $2 return
- **Comprehensive** (policy, LC, flex, childcare)
  - $1 investment
  - $3 return
When Did the Law Take Effect?

- Law was effective when Act was signed (March 23, 2010)
- State branch offices will administer
- Official Regulations or guidance not yet in place, but US DOL issued Fact Sheet #73
  [http://www.dol.gov/whd/regs/compliance/whdfs73.htm](http://www.dol.gov/whd/regs/compliance/whdfs73.htm)
- “The Wage and Hour Division will issue additional guidance on the break time requirement in the near future.”
- Advocates working to support process

What Have Advocates Done to Support Process?

- Worked with Senator Merkley’s office in drafting amendment and media outreach
- Background paper from U.S. Breastfeeding Committee
- Met with other organizations and provided letters and suggestions to DOL
- Continuing to talk with DOL about what resources would be most helpful
  - Searchable database of non-office solutions
What Does This Law Do?

- Women are provided time and space to express milk
- Reasonable breaks match
  - Bio rhythm of nursing dyad
  - Break structure of a workday

What Does the Law Say?

- Employers shall provide:
  - Reasonable break time
  - “Each time” employee has need
  - A place “other than a bathroom”
  - Unpaid (?)
- Until child’s first birthday
- State law is not preempted

29 U.S.C. section 207(r)
What Does the Law Say?

WHAT IS “REASONABLE” TIME?

- Federal law is intentionally vague
- Effort is to match bio rhythm to clock
- DOL Fact Sheet “as well as the duration of each break will likely vary.”
- Experience is approx 30 min / 4 hours
- If location is further away, 10-15 minutes will likely not be enough
  - Travel, set up, expression, clean, store, return

What’s Non-Bathroom Space?

WHAT IS “A PLACE OTHER THAN A BATHROOM”?

- Must be “shielded from view and free from intrusion from co-workers and the public”
- DOL emphasis: “A bathroom, even if private, is not a permissible location under the Act.”
- Functional for expressing breast milk
- Available when needed
- It can be temporary or multi-use space
  - Rotating room, curtained-off area, space shared by businesses, car privacy panels at last resort
- Ideally: Clean, private space
- Ideally: Designated, permanent space
  - Chair, table, sink, outlet, fridge
What Does the Law Say?

WHAT TYPES OF EMPLOYERS?

- All employers covered by the FLSA….
  - But those with less than 50 may argue *undue hardship*
- Undue hardship not available for employers that employ less than 50 in one location
- Undue hardship is consider in totality of circumstance (burdensome)
  - Significant difficulty or expense in relation to size, financial resources, nature or structure of employer

What Does the Law Say?

WHAT CLASSIFICATION OF WORKERS

- Amends the FLSA (federal wage and hour law) to add 29 U.S.C. 207(r)
- Covers most workers, but some are exempted under Section 213(a) and (b)
- "Non-exempt workers" (most hourly wage) are covered
  - Retail
  - Restaurant
  - Call centers

*Note: This means most working WIC moms!*
What the Law Doesn’t Say....

- It doesn’t say “in close proximity to employee’s work area”
- It doesn’t say “All employees anywhere are covered”
  - Salaried (executive, administrative, or professional), and certain other employees (like teachers) not covered by provisions of FLSA section 207....
  - So not covered by this new federal law
  - But STATE law still applies
- It doesn’t say “PAID”

Why Doesn’t It Cover Everyone....

- Health Care Reform was not passed like other laws/bills
- The law was not sent to committee to vet out each and every section
- Legislative strategy of including in Health Care Reform had advantage of covering the most amount of workers and most vulnerable hourly workers
- The law will likely start to change the workplace cultural from the lower wage earners up....
- The “law” is not necessarily done....
  - Legislative action is often incremental
Reminder: State Laws Not Preempted

- Approximately 14 states + D.C. have BF workplace laws that require accommodations for private employers
- Montana requirements only relate to public employers
- 9 states encourage or “permit” accommodations, some with “infant friendly” designation options
- Most detailed and strongest is OR
- OR Senator Jeff Merkley included federal law in Health Care Reform
- Federal law provides minimum, uniform protection for all states

Enforcement

- US DOL still working on issue
  - Framing broadly as new worker right
- State branch offices will admin
  - Complaints, penalties, exemptions processed here
- Penalties – Section 216 (?)
So What Are Employers Doing Now?

- National policies are being implemented
- Trying to find solutions to comply – that’s a good thing!
- Asking the right questions...
- The biggest issues...

Employer Questions: Location

- Given constraints:
  - Security camera’s in manager’s office
  - Break rooms shared by all
  - Fast-food restaurants without offices
  - Contractors sent to other locations
  - Spaces that are ‘under construction’
  - Campuses with multiple buildings, but only one designated mother room
  - Employees working in multiple locations – is a space needed everywhere?
  - Change the temporary space every day
Employer Questions: Break Time

- **How to provide Break Time given constraints:**
  - Employers with only one person scheduled at a time during the day (usually retail). Do we have to increase payroll and hire more people to cover breaks for lactation accommodation?
  - If regular paid break already taken, do we have to provide another one for expressing breast milk? Paid?
  - Can we mandate employees use their normally scheduled break to pump?
  - How long do we have to provide for breaks?
  - Less than 20 minutes, do we have to pay for it? Some state follows federal law....
  - What if break time would seriously disrupt normal business operations? Are there any exceptions to the law?
  - How much of the break do we have to pay to be in compliance with state & federal law?

What Can Advocates Do Now?

- **HRSA Business Case Toolkit**
  - trainees/materials
- Contact state office of DOL
- Read fact sheets and FAQ:
  - DOL, USBC, NPWF, Littler
- Counsel BF workers
- Work with and contact employers for solutions
- Continue to lobby for Breastfeeding Promotion Act
- Document process
State Breastfeeding Coalitions
Teleconference

Questions & Answers

Thank You

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