



Guide to the Rights of Breastfeeding Employees in Oregon

Purpose: This guide was developed to provide an overview of the laws that protect the rights of breastfeeding employees in Oregon to express breast milk during the workday. The factors that are addressed and the level of protection provided vary widely from one law to another. The chart below details the Oregon and federal laws that impact breastfeeding employees, and the protections those laws provide for each listed component. Components that are not addressed by the law are shaded in gray.

How to Use This Guide: To identify your rights as a breastfeeding employee or obligations as an employer, you must first determine which of the laws apply to you. Then compare each part of the applicable laws. If an employee is covered by more than one law, and those laws address the same component, the employee is entitled to the strongest protection available. If an employer does not provide the required accommodations, a complaint can be filed with the regulatory agency. The agency responsible for enforcement of each law and information on how to file a complaint is included in the chart.

The template was developed to address every component considered in existing state and federal workplace lactation accommodation laws. Some components may not apply to your state.

Where to Go for Help: Many breastfeeding coalitions provide support for employees and employers. See the [Breastfeeding Coalition of Oregon website](#) or visit the U.S. Breastfeeding Committee [Coalitions Directory](#) for a list of all breastfeeding coalitions.

Important Note: The information provided in this guide is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. Check with a lawyer or the regulatory agency if you believe your rights have been violated.

Oregon Law:

[Oregon Revised Statute § 653.077.](#)

SECTION 1. ORS 653.077:

(1) As used in this section:

(a) "Reasonable efforts" means efforts that do not impose an undue hardship on the operation of an employer's business.

(b) "Undue hardship" means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business.

(2)(a) An employer shall provide reasonable unpaid rest periods to accommodate an employee who needs to express milk for her child.

(b) The employee shall provide reasonable notice to the employer that the employee intends to express milk upon returning to work.

(c) Unless otherwise agreed to by the employer and the employee, the employer shall provide the employee a 30-minute rest period to express milk during each four-hour work period, or the major part of a four-hour work period, to be taken by the employee approximately in the middle of the work period.

(d) The employee shall, if feasible, take the rest periods to express milk at the same time as the rest periods or meal periods that are otherwise provided to the employee.

(e) If the employer is required by law or contract to provide the employee with paid rest periods, the employer shall treat the rest periods used by the employee for expressing milk as paid rest periods, up to the amount of time the employer is required to provide as paid rest periods. If an employee takes unpaid rest periods, the employer may allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid rest periods. If the employee does not work to make up the amount of time used during the unpaid rest periods, the employer is not required to compensate the employee for that time.

- (3) When an employer's contribution to an employee's health insurance is influenced by the number of hours the employee works, the employer shall treat any unpaid rest periods used by the employee to express milk as paid work time for the purpose of measuring the number of hours the employee works.
- (4) An employer is not required to provide rest periods under this section if to do so would impose an undue hardship on the operation of the employer's business.
- (5)(a) An employer shall make reasonable efforts to provide a location, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private.
- (b) The location may include, but is not limited to:
- (A) The employee's work area if the work area meets the requirements of paragraph (a) of this subsection;
- (B) A room connected to a public restroom, such as a lounge, if the room allows the employee to express milk in private; or
- (C) A child care facility in close proximity to the employee's work location where the employee can express milk in private.
- (6) An employer may allow an employee to temporarily change job duties if the employee's regular job duties do not allow her to express milk.
- (7) This section applies only to an employer whose employee is expressing milk for her child 18 months of age or younger.
- (8) This section applies only to employers who employ 25 or more employees in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the rest periods are to be taken or in the year immediately preceding the year in which the rest periods are to be taken.
- (9) Notwithstanding ORS 653.020 (3), this section applies to individuals engaged in administrative, executive or professional work as described in ORS 653.020 (3).
- (10)(a) In addition to, and not in lieu of, any other requirement under this section, each school district board shall adopt a policy regarding breast-feeding in the workplace to accommodate an employee who needs to express milk for her child.
- (b) Each policy must, at a minimum, designate a location at the school facility, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private.
- (c) A policy adopted under this subsection, including the designated locations where an employee may express milk, must be published in an employee handbook. In addition, a list of the designated locations must be readily available, upon request, in the central office of each school facility and in the central administrative office for each school district.
- (11) The Commissioner of the Bureau of Labor and Industries shall adopt rules to implement and enforce this section.

SECTION 2. ORS 653.256:

- (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 or any rule adopted thereunder.
- (2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.
- (3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS 183.745.
- (4)(a) All sums collected as penalties under this section shall be first applied toward reimbursement of costs incurred in determining the violations, conducting hearings under this section and addressing and collecting the penalties.
- (b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt for the money to the commissioner.
- (c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section shall be paid over by the commissioner to the Department of Human Services for the benefit of the Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the moneys to the commissioner.

Resources:

- [Oregon State Legislature:](#)
 - [Statutory language:](#) full text of Oregon Revised Statute § 653.077.
- [Oregon Bureau of Labor and Industries:](#)
 - [Technical Assistance for Employers:](#) frequently asked questions about rest periods for expression of breast milk
- [Oregon Health Authority:](#)
 - [Oregon versus Federal Law Ensuring Workplace Support For Breastfeeding Mothers and Babies:](#) detailed summary and comparison of Oregon and federal workplace breastfeeding laws
 - [Breastfeeding Laws:](#) includes information on general requirements and key resources for all breastfeeding laws

Federal Laws:

[Section 7\(r\) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision:](#)

(r)(1) An employer shall provide—

A. a 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; and

B. 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.

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

Resources:

- [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 questions about the law.

[Title VII of the Civil Rights Act](#): The Pregnancy Discrimination Act, passed in 1978, amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, and related medical conditions. In 2013, the United States Court of Appeals for the Fifth Circuit held that firing a woman because she is lactating or expressing milk is unlawful sex discrimination under Title VII of the Civil Rights Act.

Title VII states:

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

Resources:

- [U.S. Equal Employment Opportunity Commission](#):
 - [The Pregnancy Discrimination Act of 1978](#): statutory language of amendment to Title VII of the Civil Rights Act.
 - [Pregnancy Discrimination](#): webpage detailing prohibited treatment of employees impacted by pregnancy, childbirth, or related medical conditions.
 - [Enforcement Guidance: Pregnancy Discrimination and Related Issues](#): guidance regarding the Pregnancy Discrimination Act and the Americans with Disabilities Act as they apply to pregnant workers. The Enforcement Guidance states that there are various circumstances in which discrimination against a female employee who is lactating or breastfeeding can implicate Title VII. Because lactation is a pregnancy-related medical condition, less favorable treatment of a lactating employee may raise an inference of unlawful discrimination. An employee must have the same freedom to address lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions.

| | State: Oregon Revised Statute § 653.077 | Federal: Break Time for Nursing Mothers Law | Federal: Title VII of the Civil Rights Act |
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| Eligible Employees | Any employee who needs to express milk for her child, and works for an employer who employs 25 or more employees in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the rest periods are to be taken or in the year immediately preceding the year in which the rest periods are to be taken. Notwithstanding ORS 653.020 (3) , this section applies to individuals engaged in administrative, executive or professional work. | Nursing mothers who are employees covered by the Fair Labor Standards Act (FLSA) and not exempt from FLSA overtime pay requirements. Important note: if an employer is not covered by the FLSA, its employees may still be covered if the employee's own duties meet certain interstate commerce requirements. | Title VII protects employees of private and state and local government employers with 15 or more employees, labor organizations, employment agencies, and apprenticeship and training programs. Title VII also applies to employees in the federal sector. |
| Are Employers Required to Have a Policy on Breastfeeding Employees? | In addition to, and not in lieu of, any other requirement under this section, each school district board shall adopt a policy regarding breast-feeding in the workplace to accommodate an employee who needs to express milk for her child. (b) Each policy must, at a minimum, designate a location at the school facility, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private. (c) A policy adopted under this subsection, including the designated locations where an employee may express milk, must be published in an employee handbook. In addition, a list of the designated locations must be readily available, upon request, in the central office of each school facility and in the central administrative office for each school district. (11) The Commissioner of the Bureau of Labor and Industries shall adopt rules to implement and enforce this section. | | No policy is required under Title VII. However, if an employer allows employees to take breaks, change their schedules, or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances. Or, if an employer freely permits employees to use break time for personal reasons, it would violate Title VII to deny break time for expressing breast milk. |
| Frequency of Milk Expression Breaks | Unless otherwise agreed to by the employer and the employee, the employer shall provide the employee a | As frequently as needed by the nursing mother. The frequency of breaks needed | |

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| | rest period to express milk, to be taken by the employee approximately in the middle of each four-hour work period. The employee shall, if feasible, take the rest periods to express milk at the same time as the rest periods or meal periods that are otherwise provided to the employee. | to express breast milk will likely vary. | |
| Length of Time for Milk Expression Breaks | Unless otherwise agreed to by the employer and the employee, the employer shall provide the employee a 30-minute rest period to express milk during each four-hour work period, or the major part of a four-hour work period. | Reasonable. The duration of each break will likely vary. | |
| Duration of Milk Expression Breaks | This section applies only to an employer whose employee is expressing milk for her child 18 months of age or younger. | 1 year after the child's birth. | |
| Space Requirements | <p>An employer shall make reasonable efforts to provide a location, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private. The location may include, but is not limited to:</p> <p>(A) The employee's work area if the work area meets the requirements of this subsection;</p> <p>(B) A room connected to a public restroom, such as a lounge, if the room allows the employee to express milk in private; or</p> <p>(C) A child care facility in close proximity to the employee's work location where the employee can express milk in private.</p> <p>A "private location" is a place, other than a public restroom or toilet stall, in close proximity to the employee's work station, where the employee may express milk concealed from view and without intrusion by other employees or the</p> | 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 location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mothers' use, it must be available when needed in order to meet the statutory requirement. Of course, employers may choose to create permanent, dedicated space if they determine that is the best way to meet their obligations under the law. | |

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| | public. This could include an empty or unused office, conference room, or storage space. | | |
| Pay Requirement | If the employer is required by law or contract to provide the employee with paid rest periods, the employer shall treat the rest periods used by the employee for expressing milk as paid rest periods, up to the amount of time the employer is required to provide as paid rest periods. If an employee takes unpaid rest periods, the employer may allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid rest periods. If the employee does not work to make up the amount of time used during the unpaid rest periods, the employer is not required to compensate the employee for that time. | <u>Unpaid</u> , unless concurrent with <u>paid breaks</u> . If a nursing employee is not completely relieved from duty during a break to express breast milk, the time must be compensated as work time. | |
| Are Employers Required to Notify Employees of Their Rights? | All Oregon employers are required to post the Oregon Minimum Wage Poster in an area where all employees can easily see it. The poster does not provide information specifically about Oregon Revised Statute § 653.077. Each school district board is additionally required to adopt a policy regarding breast-feeding in the workplace to accommodate an employee who needs to express milk for her child, which must be published in an employee handbook. | | Employers are required to post the "EEO is the Law" English poster . <i>Note: This notice does not specifically address the rights of breastfeeding employees.</i> |
| Requirements for Employees | The employee shall provide reasonable notice to the employer that the employee intends to express milk upon returning to work. | | |
| Exemption | An employer is not required to provide rest periods under this section if to do so would impose an undue hardship on the operation of the employer's business. "Reasonable efforts" means efforts that do not impose an | All employers covered by the FLSA , regardless of the size of their business, are required to comply with this provision. However, employers with fewer than 50 employees are not subject to the FLSA break | |

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| | undue hardship on the operation of an employer’s business. “Undue hardship” means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer’s business. | time requirement if the employer can demonstrate that 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, or structure of the employer’s business. | |
| Milk Storage | An employer must allow the employee to bring a cooler or other insulated container to store the expressed milk. If the employer allows employees to use a refrigerator for personal use, the employee must be permitted (but may not be required by the employer) to use the available refrigeration to store the milk. | | |
| Does Unpaid Break Time Impact Full Time Status and/or Eligibility for Health Insurance? | When an employer’s contribution to an employee’s health insurance is influenced by the number of hours the employee works, the employer shall treat any unpaid rest periods used by the employee to express milk as paid work time for the purpose of measuring the number of hours the employee works. | | |
| Is Unpaid Break Time Expressly Separated from Paid Leave or Paid Time Off? | If an employee does not want to work before or after her shift to make up the unpaid time for the rest periods, and employer may not require her to use paid leave time. | | |
| Are Employers Required to Consider Providing Additional Accommodations for Breastfeeding Employees? | An employer may allow an employee to temporarily change job duties if the employee’s regular job duties do not allow her to express milk. | | |
| Discrimination/ Retaliation | Under Oregon Revised Statute 653.060 § an employer may not discharge or in any other manner discriminate against an employee because: | It is a violation for any person to discharge or in any other manner discriminate against an employee who files a complaint or cooperates | Firing a woman or taking other adverse employment action against her because she is lactating or expressing milk is unlawful sex discrimination. An employer |

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| | <p>(a) The employee has made a complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261.</p> <p>(b) The employee has caused to be instituted or is about to cause to be instituted any proceedings under or related to ORS 653.010 to 653.261.</p> <p>(c) The employee has testified or is about to testify in any such proceedings.</p> <p>(2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A person unlawfully discriminated against under this section may file a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries.</p> | with the investigation of a complaint. | may not discriminate against an employee because of her breastfeeding schedule. Women breastfeeding and lactating must be able to take breaks as other employees who take breaks for other medical or personal reasons. Employers are prohibited from firing, demoting, harassing or otherwise retaliating against an employee because she has complained of discrimination or participated in an employment discrimination proceeding. |
| Protection from Harassment | | | Employers are required to provide a work environment free of harassment based on pregnancy, childbirth, or related medical conditions, including breastfeeding. |
| Agency Responsible for Enforcement | Oregon Bureau of Labor and Industries , Wage and Hour Division. | U.S. Department of Labor, Wage and Hour Division . | U.S. Equal Employment Opportunity Commission . |
| How to File a Complaint | <p>Mothers who have concerns about their employer's compliance with Oregon law should contact the Bureau of Labor and Industries (BOLI), Wage and Hour Division. BOLI's Wage and Hour Division accepts complaints that are filed within 180 days of the date on which the alleged violation first occurred. You may submit a complaint by:</p> <ol style="list-style-type: none"> 1. Filling out and submitting the online form in English or Spanish 2. Downloading and filling out the PDF of our complaint form in English or Spanish and then mailing it to: <p>Bureau of Labor and Industries</p> | File a complaint by calling the WHD toll-free at 1-800-487-9243 or visiting www.dol.gov/whd . You will then be directed to your nearest WHD office for assistance. | You may file a charge of employment discrimination at the EEOC office closest to where you live, or at any one of the EEOC's 53 field offices . You may call 1-800-669-4000 or visit the EEOC website for more information on filing a charge and filing deadlines. Important Note: Federal sector employees have a different complaint process . |

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| | Wage and Hour Division 800 NE Oregon Street #1045 Portland, OR 97232 | | |
| Is the Agency Required to Monitor and Compile Enforcement Reports? | | | Yes. |
| Sanctions for Non-Compliance | <p>(1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 or any rule adopted thereunder.</p> <p>(2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.</p> <p>(3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS 183.745.</p> <p>(4)(a) All sums collected as penalties under this section shall be first applied toward reimbursement of costs incurred in determining the violations, conducting hearings under this section and addressing and collecting the penalties.</p> <p>(b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt for the money to the commissioner.</p> <p>(c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section shall be paid over by the commissioner to the</p> | An employee whose rights are denied can file a complaint with the Wage and Hour Division, which can go to court to obtain an order requiring the employer to comply. In addition, any employee who is “discharged or in any other manner discriminated against” because, for instance, he or she has filed a complaint or cooperated in an investigation, may file a retaliation complaint with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including, but not limited to, employment, reinstatement, lost wages and an additional equal amount as liquidated damages. | Remedies may include reinstatement, compensatory damages, punitive damages, back pay for lost wages where someone has been terminated, and requiring an employer to take certain actions to prevent future discrimination. |

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| | Department of Human Services for the benefit of the Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the moneys to the commissioner. | | |
| Do Employees Have Private Action Rights? | No. | Yes. | Yes, but employees are first required to file a charge with the EEOC. |
| Worksite Designation Program | Breastfeeding Mother-Friendly Employer Project . <i>Note: designation is not required under Oregon law.</i> | | |
| Additional Resources | <p>Breastfeeding Coalition of Oregon: - - Worksite Rest Breaks for Breast Milk Expression - Workplace Support in Federal Law</p> <p>Nursing Mothers Counsel of Oregon: Workplace</p> <p>U.S. Department of Labor Women’s Bureau: Employment Protections For Workers Who Are Pregnant or Nursing</p> <p>Or. Rev. Stat. § 659A.029, 659A.030 prohibits employment discrimination on the basis of sex, defined to include pregnancy, childbirth and related medical conditions or occurrences. This law applies to all employers. Employers must treat women affected by pregnancy, childbirth or related medical conditions or occurrences the same as other employees with a similar ability or inability to work due to a physical condition, and therefore would require accommodations for pregnant women under similar circumstances that Title VII of the Civil Rights Act requires.</p> | <p>Office on Women’s Health: - Supporting Nursing Moms at Work: Employer Solutions</p> <p>- Business Case for Breastfeeding</p> <p>U.S. Breastfeeding Committee: - Resource and Referral Guide for Breastfeeding Employees and their Employers</p> <p>- Online Guide: “What You Need to Know About the “Break Time for Nursing Mothers” Law</p> <p>Especially see Online Guide sections: - How should you store your breast milk? - What are the space requirements?</p> <p>Wage and Hour Division: Family and Medical Leave Act</p> <p>Center for WorkLife Law: - Pregnant @ Work - Guide for doctors on writing work notes for nursing mothers</p> | <p>Equal Employment Opportunity Commission: - Guidance: Questions and Answers about the EEOC’s Enforcement Guidance on Pregnancy Discrimination and Related Issues</p> <p>- Press release: Fifth Circuit Holds Lactation Discrimination is Unlawful Sex Discrimination</p> <p>National Women’s Law Center: Fact Sheet: The Pregnancy Discrimination Act and the Amended Americans with Disabilities Act: Working Together to Protect Pregnant Workers</p> <p>American Civil Liberties Union: Federal Law and Pregnant, Post-Partum and Breastfeeding Workers</p> <p>A Better Balance: Babygate</p> |

This document was developed in partnership with Breastfeeding Coalition of Oregon. Oregon Revised Statute § 653.077 content was reviewed by the Oregon Bureau of Labor and Industries, Wage and Hour Division in July 2016. Title VII of the Civil

Rights Act content is based on Equal Employment Opportunity Commission publications. Break Time for Nursing Mothers law content was reviewed by the U.S. Department of Labor, Wage and Hour Division in May 2016.