

News from our Employment & Labor Group

Fair Labor Standards Act Amended to Require Employers to Provide Breaks to Breastfeeding Mothers

Introduction

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act, H.R. 3590, and on March 30, 2010, President Obama signed the Reconciliation Act of 2010, H.R. 4872 (collectively the "Healthcare Reform Law"). Section 4207 of the Healthcare Reform Law ("Section 4207") allows nursing mothers to take reasonable breaks to express breast milk. Additionally, the employer must provide a private place, other than a bathroom, for the employee to express breast milk. Note that this law does not preempt state laws that provide greater protections to employees.

What are the requirements of the law?

Section 4207 amends Section 7 of the Fair Labor Standards Act of 1938, as amended, by adding Section 7(f) (to be codified as 29 U.S.C. § 207(r)). The provision requires an employer to provide a place, other than a bathroom, for an employee to express breast milk. Additionally, an employer must provide reasonable break time for an employee to express breast milk for her nursing child each time the employee has a need to express milk. The employer is not required to compensate an employee receiving reasonable break time for any work time spent for such purpose. The term "reasonable" is not defined in Section 4207; therefore, employers will have to look to the U.S. Department of Labor to issue regulations or guidance to define this term.

When does the law become effective?

The effective dates for some provisions of the Healthcare Reform Law are not clear. It appears that Section 4207 is effective as of March 23, 2010, because the law does not specify any other date. It is also unclear when the U.S. Department of Labor will issue regulations addressing the implementation and enforcement procedures of the provisions of Section 4207. In the absence of a clear date, covered employers should assume the law is now effective.

Which employers are covered?

All employers are covered; however, employers with fewer than 50 employees may be exempt from the requirements of Section 4207 if the 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."

Which employees are covered?

A female employee who needs to express milk for her nursing child for up to one year after the child's birth.

If you have questions about this *Alert*, please contact one of the attorneys listed below. ■

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