

U.S. Department of Labor's Investigation of Arizona Hospital Highlights Need for Awareness of Workplace Lactation Accommodation Laws and Policies

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As the result of an investigation by the U.S. Department of Labor's Wage and Hour Division (WHD), a hospital in Arizona was recently ordered to comply with the Fair Labor Standards Act (FLSA) requirement that employers must provide nursing mothers adequate time and space to express breast milk. The WHD announced on December 11 that it entered into a compliance agreement with Yuma Regional Medical Center requiring the employer to provide training to all supervisors, and to provide all employees returning from maternity leave with information about their right to express milk in the workplace. The investigation revealed that the hospital previously denied requests for breaks from nursing employees and failed to provide a private location in which to express breast milk in violation of the FLSA.

Section 7(r) of the FLSA, known as the Break Time for Nursing Mothers provision, requires employers to provide nursing employees with: 1) a reasonable break time to express breast milk each time the employee has such a need for one year after the birth of the child; and 2) a place other than a bathroom within which to express breast milk that is shielded from view and free from intrusion from coworkers and the public. The FLSA provides an exception to employers with 50 or fewer employees if providing the accommodation according to these 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." Section 7(r) was enacted on March 23, 2010 following the passage of the Affordable Care Act.

Increasingly, however, many states and municipalities are passing more expansive laws that provide protections to nursing employees who are not covered under the FLSA. Jackson Lewis' Government Relations group recently reported that in New York City, Mayor de Blasio is expected to sign legislation in the coming weeks that will require all private employers with at least four employees to provide lactation rooms to nursing mothers. In particular, employers would be required to equip the lactation room with an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water and a refrigerator. The lactation room also must be located "within reasonable proximity" to the nursing mother's work area. New York State Labor Law Section 206-c also prohibits discrimination or retaliation against nursing employees who request accommodations to express breast milk.

Twenty-nine states, as well as the District of Columbia and Puerto Rico, have laws recognizing the rights of nursing mothers to express breast milk in the workplace. Given the patchwork of laws addressing breastfeeding in the workplace, it is essential for employers to be aware of local and state laws when developing lactation room policies. To learn more about this evolving area of the law, please contact your Jackson Lewis attorney.

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National Law Review, Volume VIII, Number 352

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