

## **One Year Later: An Update on the PUMP Act and Right to Express Milk at Work**

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In just over a year following its enactment, employees across the country have filed a bevy of lawsuits, including class actions, alleging violations of the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), a law that was effective December 29, 2022, which expanded protections for nursing employees. Class actions have been filed against major fast-food chains, retailers, and manufacturers, among others, and allege a range of violations from unsanitary conditions to insufficient break time for pumping. These private lawsuits serve as a reminder to employers, especially manufacturers, to remain cognizant of both the PUMP Act's requirements and the goals it aims to achieve.

Under the law, covered employers must provide reasonable break time and an appropriate place shielded from view and intrusion, other than a bathroom, for employees to express breast milk as needed for up to one year after their child's birth. The PUMP Act had amended the law to expand these protections to 9 million additional employees, including agricultural workers, nurses, teachers, truck and taxi drivers, home care workers, and managers. All employees covered by the Fair Labor Standards Act (FLSA) are now protected under the PUMP Act (with some exceptions, e.g., certain employees of airlines, railroad, and motorcoach carriers).

The PUMP Act also expanded remedies available for violations. Specifically, employers cannot retaliate or discriminate against employees for exercising their rights, and employers who violate the law can be subject to a range of legal or equitable remedies, including employment, reinstatement, promotion, payment of wages lost, liquidated damages, compensatory damages, economic losses, and even punitive damages where appropriate.

Significantly, the law created a private right of action, enabling employees to file lawsuits or complaints with the Department of Labor's Wage and Hour Division (WHD) for noncompliance. Before filing a private suit for failure to provide a compliant area to pump, the employee must notify the employer. Thereafter, the employer must comply within 10 days. Notice is not required if: the employee was fired for requesting reasonable break time or space; the employee was fired for opposing conduct related to their rights; or where the employer expressly refused to comply. Notice is also not required where an employee seeks to file a complaint with the WHD or where the private suit

alleges violations of the break time requirement.

All FLSA-covered employers must comply with the PUMP Act, but employers with fewer than 50 employees need not comply if it poses an undue hardship (which must be proven by the employer in a fact-specific assessment). Employers must prove an employee's specific need for pumping is an undue hardship due to significant difficulty or expense in relation to the size, financial resources, nature, or structure of the business. This exemption applies in very limited circumstances.

With the rise of litigation surrounding the PUMP Act, employers may want to consider the following actions to ensure compliance:

- Review workplace policies and train managers and human resources personnel on PUMP Act requirements;
- Review actual practices to ensure that requests are being managed properly and employees are provided with a break time and an appropriate place for such break time, which is consistent with the law. For example, the litigation over the last year has focused on failures to provide an adequate place and involved employers providing space that is not private, that is not shielded from others, or where others could intrude (e.g., not a bathroom, not a corner of a stock room, etc.);
- Determine whether, depending on the circumstances, the break time should be paid or unpaid;
- Update workplace poster (available [here](#)).

It is important to remember that pregnant workers also have many other protections by law and an employer must remain up to date as it relates to such laws and regulations. For example, the EEOC recently issued final regulations, effective June 18, 2024, implementing the Pregnant Workers Fair Act. This Act applies to employers with 15 or more employees and mandates reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions, which may be applicable to certain nursing employees.

Employers that require guidance may wish to consult competent legal counsel on these issues.

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