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HEALTH CARE REFORM

BREAKS FOR NURSING MOTHERS

May 17, 2010

We continue our series of memos for employers on selected topics under Health Care Reform (Patient Protection and Affordable Care Act, modified by the Health Care and Education Reconciliation Act of 2010 (collectively "PPACA")) with this memo addressing the requirements for employers to provide breaks for nursing mothers. On April 28, 2010 we sent a brief summary of PPACA and on May 11, 2010 we sent a memo addressing coverage of adult children to age 26.

- PPACA amended the Fair Labor Standards Act (FLSA) to require employers to provide reasonable break time and a private place for an employee to express breast milk after giving birth to a child.
- PPACA is silent as to the effective date essentially making the requirements effective once signed into law on March 23, 2010 and requiring employers to comply immediately.

What is a "reasonable" break time for nursing mothers?

PPACA does not define how long a "reasonable" break must be or how often a break must be provided. Breaks must be long enough for an employee to express milk and should be provided each time an employee has a need to express milk. General guidelines indicate that an average employee may need between 15 and 20 minutes of break time every two to four hours to express

milk. However, employers should consider individual circumstances given the broad language of the law and its intent to accommodate nursing mothers in the workplace.

What qualifies as a private place to express milk?

The most common place currently available to nursing mothers - a bathroom - does not qualify as a private place. The place must be “shielded from view and free from intrusion from coworkers and the public.” Thus, employers must designate a private location, other than a bathroom (e.g., room with locks or other measures to protect privacy) for nursing mothers.

When does an employer’s obligation to provide breaks to a nursing mother end?

Employers must allow nursing mothers to take breaks for purposes of expressing milk until her child is one year old.

Is an employer required to compensate a nursing mother while on break?

No. The break time may be unpaid.

Are all employers required to establish a private place to provide breaks for nursing mothers?

The law provides an exception for employers with fewer than 50 employees if compliance would impose an undue hardship by causing the employer significant difficulty or expense relative to the size, financial resources, nature or structure of the employer’s business. Case law and regulations addressing the undue hardship exception to the reasonable accommodation requirements in the Americans with Disabilities Act may provide some guidance until regulations are issued in this area. Employers should consult legal counsel in determining whether the undue hardship exception applies.

What about state laws addressing breaks for nursing mothers and does Iowa have such a law?

PPACA provides that state laws that provide greater protections for employees will not be preempted. Iowa does not have a state statute addressing breaks for nursing mothers in the workplace, but other states do. For instance, Oregon requires employers with 25 or more employees to provide breaks for nursing mothers until the child is 18 months old. Employers that have locations in other states with statutes providing greater protections for nursing mothers will need to continue to comply with that state’s law as well as any additional PPACA requirements.

What action should an employer take now with respect to the new requirements for nursing mothers?

1. Designate a private place for nursing mothers to take breaks, unless you are an employer with less than 50 employees and you determine that compliance would impose undue hardship.
2. Amend break policies and employee handbooks to include reasonable breaks for nursing mothers and communicate changes to employees, supervisors and managers.

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