

THE HEALTH CARE BILL PROVIDES IMMEDIATE BREAKS FOR NURSING MOTHERS

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The landmark health care law signed by President Obama on March 23, 2010, incorporates a new provision into the Fair Labor Standards Act ("FLSA") pursuant to Section 4207 of the Patient Protection and Affordable Care Act of 2010 ("PPACA"). Effective immediately, employers must now provide "reasonable breaks" to nursing mothers for the purpose of pumping breast milk for nursing children. Previously, there was no federal law requiring employers to provide such breaks.

This requirement applies to all nursing mothers for one year following the child's date of birth. The PPACA does not place any limits on the number of breaks that must be provided to the nursing employee, and does not provide any guidance with respect to the duration of the breaks. In addition to providing reasonable breaks, employers must also provide a place for their employees to pump breast milk. The place must be located somewhere other than a bathroom and must be shielded from view and free from intrusion from coworkers and the public.

The PPACA provides an exemption to employers with fewer than 50 employees if, and only if, providing the break would impose an "undue hardship" on the employer. For purposes of the PPACA, "undue hardship" is defined as causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

The new requirements do not require employers to pay their employees during the break time. However, depending on the length of the break the PPACA may actually conflict with existing Department of Labor regulations, which require employers to compensate all employees for rest breaks of short durations.

Until the Department of Labor provides more specific guidance regarding the above outstanding issues for nursing mothers in the workplace, employers should tread the waters carefully and consult with counsel in formulating appropriate policies and practices.

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