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New Amendment To Fair Labor Standards Act Requires Employers To Provide Break Time For Nursing Mothers

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On March 23, 2010 President Obama signed into law The Patient Protection and Affordable Care Act (“PPACA”), which amends section 7 of the Fair Labor Standards Act (“FLSA”), to require employers to provide “a reasonable break time” for nursing mothers to express breast milk. The new amendment further requires that employers provide such breaks for one year after the child’s birth. In addition, it requires employers to provide a private place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which the employee may use to express breast milk. Employers are not required, however, to pay for these breastfeeding breaks under the PPACA.

Employers with less than 50 employees are exempt from the PPACA amendments to the FLSA if providing the break or place to express breast milk would impose an “undue hardship” on the employer by causing the employer “significant difficulty or expense” in light of the employer’s size, resources and business structure.

Effective immediately, employers should be aware of break requirements under the PPACA and consider what private locations they may be able to use to accommodate nursing mothers. In addition, employers should consult counsel in formulating appropriate practices and policies, especially in light of the PPACA’s failure to provide any guidance as to the definition of “reasonable break time” and its failure to set forth any limit to the number of breaks that may be taken per day.

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