

# Employer Alert

▶ June 16, 2008



## ▶ NYS Department of Labor Issues Guidelines Regarding the Rights of Nursing Mothers

Effective May 7, 2008, the New York State Department of Labor issued guidelines regarding the rights of nursing mothers to express breast milk in the workplace, pursuant to a state law which became effective August 15, 2007 (Labor Law §206-c). The law requires that all public and private employers in New York, regardless of size, provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to express breast milk for her nursing child for up to three years following child birth. Employers must make reasonable efforts to provide a room or other location, in close proximity to the work area, where the employee can express milk in privacy. The law prohibits discrimination against an employee who chooses to express breast milk in the workplace.



The Department of Labor's guidelines add detailed technical requirements that employers need to understand, in order to be in compliance with the new law. The guidelines require written notification of the provisions of the law to employees who are returning to work following the birth of a child. An employee must give advance notice of her desire to avail herself of the benefit. Reasonable unpaid break time is sufficient time to allow the employee to express breast milk. Such a break should generally be at least twenty minutes, or at least thirty minutes if the room or other location is not in close proximity to the employee's work station. The employee may be required to postpone the scheduled unpaid break time for up to thirty minutes if she cannot be spared from her duties until appropriate coverage arrives. While the number of unpaid breaks will vary depending on the amount of time the employee is separated from the nursing infant and the mother's physical needs, in most circumstances the employer is expected to provide unpaid break time at least once every three hours, if requested by the employee. The employee may elect to make up the unpaid break time by working before or after her normal shift, so long as the additional time falls within the employer's normal work hours.

An employer need not provide a room or other location if it is significantly impracticable, inconvenient, or expensive to do so. The guidelines list a number of factors in making such a determination. The Department of Labor prefers that a dedicated lactation room be established, although alternatives exist if the employer is unable to provide such a room under the guidelines. The dedicated lactation room must contain, at a minimum, a chair and small

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▶ **NYS Department of Labor Issues Guidelines Regarding the Rights of Nursing Mothers (continued)**

table, desk, counter, or other flat surface. Although employers are encouraged to provide an outlet, clean water supply, and access to refrigeration for the purpose of storing the expressed milk, the employer is not required to ensure the safekeeping of expressed milk stored in any refrigerator on its premises. The employee is required to store all expressed milk in closed containers, regardless of method of storage, and bring the milk home with her each evening. The employer is responsible for maintaining the cleanliness of the room or location that is set aside. The room or location should be equipped with security devices (usually, a functional lock) to ensure privacy.

The enactment of the law and the issuance of the guidelines present a new area of risk for employers. Employers need to carefully review the guidelines and determine how the requirements are to be addressed in their personnel policies.

Should you have a questions regarding this issue, do not hesitate to contact Mr. Ahlers directly.

## The Author



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