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July 10, 2023

DOL Issues Guidance on PUMP Act for Nursing Workers



The U.S. Department of Labor (DOL) issued [Field Assistance Bulletin No. 2023-2](#) on May 17, 2023, to provide guidance to its field staff regarding enforcement of the [Providing Urgent Maternal Protections for Nursing Mothers Act \(PUMP Act\)](#), which was passed last year. The PUMP Act [expands the Fair Labor Standards Act's \(FLSA\) workplace protections](#) for all employees who need to express breast milk, not just those who are nonexempt. It also extended available remedies for violation of any provision of the PUMP Act. The Act is now in effect in all states. The DOL guidance offers insights into how the DOL interprets and might enforce the PUMP Act.

Break Time Requirements

Employers are required to provide nursing employees with reasonable break time *each time* they need to express breast milk at work for up to one year after the child's birth. There is no maximum number of breaks, so nursing employees are entitled to take as many as needed that day. Reasonable break time varies depending on the need of the nursing employee and their child, as well as other factors such as the location and setup required for expressing milk and the necessary effort to express milk. As such, the DOL emphasizes that a uniform or standardized approach to lactation accommodations will not effectively accommodate all nursing employees. And, while employers and employees can agree on a schedule based on the employee's pumping needs, the employer cannot impose a fixed schedule that does not meet the employee's needs, and the schedule may need to be adjusted over time. The DOL confirms that remote employees are also eligible for pump breaks on the same basis.

Private and Functional Lactation Space

Employers must provide nursing employees with a suitable space for pumping breast milk at work. The PUMP Act requires the space be shielded from view, free from intrusion by coworkers and the public, available each time it is needed by the employee, and *not a bathroom*. To ensure privacy, employers should take measures such as displaying a sign or providing a door lock. Partitions and privacy screens can also satisfy the requirements. The DOL notes that these privacy protections also extend to teleworking employees, who should be free from observation by any employer-provided or required video surveillance system while expressing breast milk.

The DOL guidance expands the PUMP Act requirements and states that the space must also be functional. This includes a comfortable place for the nursing employee to sit; a flat surface, other than the floor, to place the breast pump; and a space to safely store milk, such as an insulated food container, personal cooler, or refrigerator. The DOL recommends that the space should also have access to electricity and access to sinks nearby.

Pay During Breaks

The DOL explains that employers must continue to pay exempt employees their full weekly salaries even if absolutely no work is performed during their pump breaks. In other words, employers cannot "dock" these employees for their break time.

Although the break time a nonexempt employee spends pumping milk is not automatically compensable "hours worked," the DOL opines that breaks that are 20 minutes or less must be compensated in the same way that other employees are compensated for break time. Nonexempt employees should also be paid for their lactation breaks if they are not completely relieved of their duties during their lactation break or if otherwise required by law.

Undue Hardship Exception for Employers With Fewer Than 50 Employees

Under the PUMP Act, employers with fewer than 50 employees may be exempt if they can demonstrate that compliance would impose an undue hardship. All employees who work for the employer, regardless of work site, are counted when determining whether this exemption may apply.

The DOL emphasizes that the employer bears the burden of proving an undue hardship on an individual employee basis and must be able to demonstrate that the employee's specific pumping needs represent an undue hardship due to the "significant" difficulty or expense of compliance in comparison to the size, financial resources, nature, and structure of the employer's business. The DOL warns that employers will be exempt "only in limited circumstances" and only if they employ fewer than 50 employees.

Posting Requirements

The DOL updated its [Minimum Wage Poster](#) (April 2023) that reflects the current pump-at-work requirements, which employers can download at no cost to ensure compliance with the posting requirement.

The DOL alerts employers that electronic posting for remote workers is only permissible if *all* employees exclusively work remotely, customarily receive information electronically, and have readily available access to the electronic posting.

Takeaways

Now that the PUMP Act is in effect in all states, employers should ensure they are providing sufficient break time and suitable lactation spaces and complying with the posting requirements. Employers should also train managers and human resources staff to ensure they are aware of the protections afforded to employees. Employers with questions regarding the PUMP Act or state or local lactation requirements should contact experienced counsel for guidance on related policies or practices.

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