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DOL Issues Guidance to Employers on Implementing the PUMP Act

On May 17, 2023, the U.S. Department of Labor (DOL) released guidance on the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), which can be found here: Enforcement of Protections for Employees to Pump Breast Milk at Work. Employers that violate the PUMP Act may be subject to reinstating the employee, paying lost wages and liquidated damages, and paying compensatory and punitive damages.

Key aspects of the guidance are summarized below.

Reasonable Break Time

An employer must provide a nursing employee with a reasonable break period to express breast milk. This requirement lasts for one year after the birth of the child.

- Whether or not a break is "reasonable" is different for each employee and can change over time. Reasonableness depends on considerations such as the frequency, duration and timing of the break. Factors such as the location of the pumping space and the time and effort required to express the breast milk may also affect whether a break is reasonable.
- The employer and employee may agree to a break schedule, but the employer may *not* require the employee to adhere to a fixed schedule that does not meet the employee's need to express milk. If the employer and employee agree to a certain schedule, it may need to be adjusted over time if the employee's pumping needs change.
- Teleworking employees are entitled to the same accommodations as if they were working on-site.

Compensation for Pump Breaks

Whether or not a pump break needs to be compensated is subject to the same requirements as provided by federal, state and local law.

- Break time counts as hours worked if the employee is not completely relieved from their duty during the entirety of their pumping break.

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- Short breaks (usually 20 minutes or less) must be counted as hours worked.
- If the employer otherwise provides paid break time and the employee chooses to use that time to pump, then the employee must be paid for this break time.

Space Requirements

The nursing employee must have access to a place to express breast milk at work that is (1) shielded from view; (2) free from intrusion; (3) available each time the employee needs it; and (4) not a bathroom.

- The pumping space must be private. Some ways an employer may provide a private space include displaying a sign when the space is in use or providing a lock for the door.
- Employers must also provide a private pumping space to teleworking employees. This means that the employee must be able to pump without being viewed by a computer camera or other video system.
- The employer must provide a pumping space that is functional. This means the employee must have a place to sit and a flat surface other than the floor to place the pump. The space also must include a place to safely store the milk, such as a fridge or cooler.
- The DOL recommends that the pumping space include access to electricity (for plugging in a pump) and access to sinks (for personal clean up).
- Employers should consider how many employees they have when determining whether to provide multiple pumping spaces. For example, large employers may choose to create permanent, dedicated spaces for pumping on each floor.

Exemption for Small Employers

Employers with fewer than 50 employees may be exempt from the PUMP Act if they can establish the "undue hardship" defense, which includes showing "significant" difficulty or expense. The exemption will only be allowed in limited circumstances.

Retaliation Prohibited

Employers may not retaliate against employees for exercising their rights or making a complaint under the PUMP Act.

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Remedies

The employee usually must first notify the employer of their need for a pumping space. Employers are expected to respond promptly and provide a space within 10 days.

Posting Requirements

A covered employer must post a notice explaining the employee's rights under the FLSA, including the PUMP Act, in a clear place in every establishment where employees work. To satisfy the notice requirements for remote workers, covered employers should also post the notice electronically. An updated poster may be downloaded here: FLSA Poster.

Please contact Robert S. Driscoll, Katie D. Triska or your Reinhart attorney if you have questions about the PUMP Act or your obligations to provide reasonable break time. Additional information on the PUMP Act can be found in our previous alert: Employers May Have to Provide Reasonable Accommodations to Pregnant Workers.

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