



LEHR MIDDLEBROOKS  
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### **PUMP Act Expands Rights for Nursing Employees**

As we celebrate Women's History Month throughout March, we take a moment to review a recent addition to existing law that seeks to improve economic conditions for nursing mothers, a segment of employees that often struggles to regain their place in the workforce.

#### **PUMP Act**

In an effort to mitigate one of the challenges that many new mothers encounter as they return to the workforce, on December 29, 2022, President Biden signed an appropriations act that included the Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"). The PUMP Act extended the right to receive break time and a private place to pump at work to nursing employees who were excluded from the 2010 Break Time for Nursing Mothers Act. The additional employees included approximately nine million overtime exempt employees who were not previously covered under the law.

#### **What Employers Must Offer Nursing Employees**

The PUMP Act provides a good opportunity to revisit the requirements of the applicable law.

- Employers must provide an employee with unpaid break time to express breast milk for a nursing child for up to one year after the child's birth.
- Employers are required to provide a private location other than a bathroom for this purpose. The space can be temporary but must be shielded from view, free from intrusion and available as needed.
- The frequency and duration of breaks needed to express milk will vary depending on factors related to the nursing employee and the child. Factors such as the location of the space and the steps reasonably necessary to express breast milk, such as pump setup, can also affect the duration of time an employee will need to express milk.

#### **Few Employees Excluded from Coverage**

Following passage of the PUMP Act, very few employees are excluded from coverage. Certain employees of airlines, railroads and motorcoach carriers are exempt from the nursing mother requirements.

Further, employers with fewer than 50 employees are not subject to the break time requirements if compliance would pose an undue hardship. However, the fifty (50) employee threshold includes all of the employer's employees, not just the employees at a particular worksite.

#### **Compensation Guidelines**

Break time to express milk is unpaid unless the employee is not completely relieved of work duties. Employees taking a break to express milk must also be compensated the same as other

employees are compensated for breaks. If a state or local law has more stringent requirements, including possible paid break time, the employer must comply with the more stringent requirements.

### **Penalties for Noncompliance**

Although most of the protections provided by the PUMP Act are not new, the PUMP Act adds teeth to the existing law by including additional “incentives” for compliance by enhancing the penalties available for noncompliant employers including the possibility of liquidated damages.

### **Review Your Policies to Ensure Compliance**

Employers should take time now, i.e., in advance of the April 28, 2023, effective date for the heightened penalties, to review policies and practices to ensure that they are operating in a manner compliant with the requirements for nursing mothers.

Please do not hesitate to contact us if we can be of assistance.