



## Health Care Reform: Lactation Accommodation

The Affordable Care Act included an amendment to the Fair Labor Standards Act (FLSA) that requires employers to provide rest breaks to working mothers who wish to express breast milk and to provide an appropriate space, other than a bathroom, in which to express breast milk. The amendment went into effect immediately upon the signing of the Act on March 23, 2010.

All employers are required to comply with the amendment. Employers with fewer than 50 employees are exempt if “if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.” The standard for an undue hardship is a high standard that should be carefully considered before an employer determines they are exempt from the requirement.

The space provided must be a place other than a bathroom that is shielded from view and free from intrusion. The U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau provides the following recommendations for spaces that could be utilized by employers for lactation accommodation:

- A little used office or other room;
- A clean, infrequently used closet or small storage space;
- A section or corner of a room that is sectioned off with either permanent walls or portable partitions;
- A walled off corner of a lounge adjacent to the women’s restroom; or
- Adapt a small unused space that is not utilized for other needs.
- Employers should consider providing locks for doors or “private” signs to further ensure privacy.

An employee may take the rest breaks to express breast milk for a “reasonable” amount of time for up to a year after the child’s birth. A reasonable amount of time is not defined and could vary among different employees. Employers will need to consider each situation separately when determining whether the time is reasonable.

Many states have also passed similar laws that may be more or less stringent than this federal amendment to the FLSA. Employers must comply with whichever requirement provides the most benefit to the employee. For example, California does not limit lactation accommodation to 1 year. California employers and out of state employers with employees in California must provide accommodation for as long as the employee is nursing her baby.

The FLSA does not require that break time be paid; however, state wage payment laws may require that the time be paid. Breaks for nursing should be treated as any other rest or meal break would be treated.

*In response to the Patient Protection and Affordable Care Act and the Health Care and Education Tax Credit Reconciliation Act, collectively known as Health Care Reform, Kistler Tiffany Benefits has formed a Health Care Reform committee to monitor legislation and provide guidance to our valued clients. Our team is creating user-friendly tools and resources, as well as establishing best practices for our clients in regards to the application of this legislation. For more information regarding our services, please contact us at [reform@ktbenefits.com](mailto:reform@ktbenefits.com).*