

Break Time for Nursing Mothers

Under the Fair Labor Standards Act



U.S. Department of Labor
Wage and Hour Division



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The Patient Protection and Affordable Care Act (“Affordable Care Act”) amended section 7 of the FLSA requires employers to provide nursing employees with:

- Reasonable break time to express breast milk
- A place, other than a bathroom, that may be used to express milk
- For up to one year after the child’s birth

The new requirement became effective March 23, 2010, when the President signed the ACA into law.



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Reasonable Break Time

The Affordable Care Act requires employers to provide:

- “Reasonable break time”
- “Each time such employee has need to express the milk”
- For 1 year after the child’s birth.

As the Act does not define “reasonable break time,” the Department is working to develop guidance on this issue.



Compensation for Break Time

Employers are not required to provide compensated break time. As with other breaks under the FLSA, the employee must be completely relieved from duty, or the break time must be compensated as work time.

If an employer already provides paid break time and if an employee chooses to use that time to express breast milk, she must be compensated for that time just as other employees would be compensated for break time.



Space Requirements

An employer shall provide:

- A place, other than a bathroom
- Shielded from view
- Free from intrusion from coworkers and the public
- That may be used by an employee to express breast milk.

An employer may temporarily designate a space or make a space available when needed by the employee; the location must be functional as a space for expressing milk.



Additional Issues to Consider

- Securing space from intrusion
- Space adjacent to restrooms
- Dual use rooms
- Storage of milk and pumps
- Notice



Interaction with State Laws

The federal provision explicitly states that it does not preempt a state law that provides “greater protections” to employees than those provided by the federal law.

Over 20 states have laws related to breastfeeding or expressing milk in the workplace

- See the National Conference of State Legislatures (NCSL) for a compilation of relevant state laws
<http://www.ncsl.org/issuesresearch/health/breastfeedinglaws/tabid/14389/default.aspx>



Enforcement

The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) administers and enforces the FLSA.

The WHD and information on the laws it enforces can be found on the internet at the following address: www.wagehour.dol.gov

Voice Phone: 1-866-487-9243 (1-866-4US-WAGE)

*TDD Phone: 1-877-889-5627



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Enforcement

If employee is discharged or in any manner discriminated against because she has filed a complaint, the employee may file a retaliation complaint with the Department or may file a private right of action under the FLSA for retaliation seeking reinstatement, lost wages, and other appropriate remedies.

If employer does not comply, the Department could file suit to seek injunctive relief under the FLSA, including reinstatement and lost wages if appropriate.



News Release

U.S. DEPARTMENT OF LABOR INVESTIGATION RESULTS IN YUMA MEDICAL CENTER IMPROVING CONDITIONS FOR NURSING MOTHERS

PHOENIX, AZ – A U.S. Department of Labor Wage and Hour Division (WHD) investigation found that Yuma Regional Medical Center – based in Yuma, Arizona – failed to provide adequate breaks and accommodations for nursing mothers attempting to express breast milk while on the job, violating the [Break Time for Nursing Mothers provisions](#) of the Fair Labor Standards Act (FLSA).

The medical center agreed to sign a compliance agreement with the Department requiring the employer to provide training to all their supervisors at all locations, and to provide all employees returning from maternity leave with information on their rights to express milk in the workplace.

WHD investigators determined the employer denied workers breaks to express milk and failed to shield from public view the break room it provided to nursing mothers. Under the FLSA, nursing mothers must be given breaks to express milk and an appropriate location in which to do so privately.

“Employers must understand and abide by their obligations under the law,” said Assistant Wage and Hour Division District Director Patricia Canites, in Sacramento, California. “We offer a wide variety of compliance assistance materials and provide [numerous tools](#) to assist employers and to help them avoid violations.”

For more information about the FLSA and other laws enforced by the Wage and Hour Division, contact the Division’s toll-free helpline at 866-4US-WAGE (487-9243). Information is also available at <https://www.dol.gov/whd> including a [search tool](#) to use if you think you may be owed back wages collected by the Division.

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Browser window showing a news release from the U.S. Department of Labor. The address bar displays <https://www.dol.gov/newsroom/releases/whd/whd20190426>. The page title is "Texas Counseling Company...". The search bar contains the text "nursing mothers". The page header includes the U.S. Department of Labor logo and the text "U.S. DEPARTMENT OF LABOR". The navigation menu includes "TOPICS", "AGENCIES", "FORMS", "ABOUT US", and "NEWS". The search bar contains the text "Search". The breadcrumb trail is: Home > News > News Releases > WHD News Releases > Texas Counseling Company to Pay \$22,000 in Back Wages, Damages For Violating Anti-Retaliation Law in Nursing Mothers Case.

News Release

TEXAS COUNSELING COMPANY TO PAY \$22,000 IN BACK WAGES, DAMAGES FOR VIOLATING ANTI-RETALIATION LAW IN NURSING MOTHERS CASE

LUBBOCK, TX – In a settlement with the U.S. Department of Labor, Allegiance Behavioral Health Center of Plainview doing business as Inspirations, a subsidiary of Allegiance Health Management Inc. based in Shreveport, Louisiana, will pay \$22,000 in back wages and compensatory and liquidated damages to a former employee for violating the anti-retaliation provisions of the Fair Labor Standards Act (FLSA).

The Department filed a lawsuit against the employer in federal court after an investigation by the Department's Wage and Hour Division (WHD) found that the family counseling company violated the FLSA's nursing mothers provision when it denied the employee adequate time and space to express milk. The employee had no choice but to express

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Additional Resources

Federal resources

Department of Health and Human Services (HHS) tool kit: "The Business Case for Breastfeeding"
<http://www.womenshealth.gov/breastfeeding/government-programs/business-case-for-breastfeeding/index.cfm>

Centers for Disease Control and Prevention (CDC) Toolkit/Paper about workplace lactation Programs
<http://www.cdc.gov/nccdphp/dnpao/hwi/toolkits/lactation/index.htm>

Other resources

U.S. Breastfeeding Committee (federal and non-federal partners) maintains a state directory of organizations
<http://www.usbreastfeeding.org/Coalitions/CoalitionsDirectory/tabid/74/Default.aspx>

International Lactation Consultant Association maintains a workplace lactation directory so ERs can find local consultants to help set up workplace lactation programs
http://www.ilca.org/i4a/member_directory/feSearchForm.cfm?directory_id=6&pageid=3725&showTitle=0

Note: These resources provide general guidance on workplace lactation and do not address the FLSA requirement to provide breaks for nursing mothers. WHD does not endorse these organizations or guarantee the accuracy of the information they provide.



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