

**Date:** April 18, 2011

**Code:** HR 2011-03

**To:** CSU Presidents

**From:** Gail E. Brooks   
Vice Chancellor  
Human Resources

**Subject:** New Break Time Regulation for Nursing Mothers

**Overview**

**Audience:** Human Resources Officers or campus designees responsible for disseminating information regarding federally required accommodations for nursing mothers

**Action Item:** Information Only

**Affected Employee Group(s)/Unit(s):** Nursing mothers who express breast milk for their nursing child while at work

**Summary**

On March 23, 2010, a new federal statute, the "Patient Protection and Affordable Care Act" (PPACA), was signed into law. One of the requirements in the Act is that employers provide break time to nursing mothers to express breast milk for their nursing child for up to 1 year after the child's birth. Section 7 of the Fair Labor Standards Act (FLSA) has been amended to include this new break time requirement. Those individuals listed above should review the remainder of this technical letter for more detailed information.

On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA), also known as the 2010 health care reform legislation, was signed into law. Section 4207 of the PPACA amends Section 7 of the Fair Labor Standards Act ("FLSA") to require employers to provide a break each time an employee needs to express milk, in a location other than a bathroom, that is shielded from view and free from intrusion by coworkers and the public for up to one year after a child's birth.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time.

While employees exempt from the overtime requirements of the FLSA (exempt-classified employees) are not governed by the new FLSA rule, managers and supervisors are encouraged to provide periods of time for exempt-classified nursing mothers to express milk.

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CSU Chancellor  
Executive Vice Chancellors  
Vice Chancellors  
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Associate Vice Presidents/Deans of Faculty  
Human Resources Officers  
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In 2002, a similar California State law (Lactation Accommodation) was passed which required every employer, including the state and any political subdivision, to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The State law does not apply to the CSU, however, the Chancellor's Office and several campuses do currently provide accommodations for nursing mothers.

Detailed policy information will be provided in a forthcoming salary technical letter.

For more information regarding this new regulation, see the attached FLSA Fast Sheet #73: Break Time for Nursing Mothers under the FLSA. <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>

Questions may be directed to Human Resources Management at (562) 951-4411. This document is available on the Human Resources Management's Web site at: <https://www.calstate.edu/HRAdm/memos.shtml>

GEB/dm

Attachment

## **Fact Sheet #73: Break Time for Nursing Mothers under the FLSA**

This fact sheet provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act (“PPACA”), which took effect when the PPACA was signed into law on March 23, 2010 (P.L. 111-148). This law amended Section 7 of the Fair Labor Standards Act (FLSA).

### **General Requirements**

Employers are required to provide “reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.” Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child’s birth).

### **Time and Location of Breaks**

Employers are required to provide a reasonable amount break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother’s use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

### **Coverage and Compensation**

Only employees who are not exempt from section 7, which includes the FLSA’s overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer’s business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for

break time. In addition, the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies. See [WHD Fact Sheet #22, Hours Worked under the FLSA](#).

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

### **U.S. Department of Labor**

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