

## FLSA Alert

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### New FLSA Break Law For Nursing Mothers Incorporated Into Health Care Overhaul

Careful readers of the landmark 2010 Patient Protection and Affordable Care Act, P.L. 111-148 ("PPACA") signed into law by President Obama on March 23 will discover that the PPACA contains a surprising amendment to the Fair Labor Standards Act ("FLSA"). In addition to sweeping health care reforms, PPACA section 4207, which is titled "Reasonable Break Time For Nursing Mothers," also adds a new requirement to the FLSA. Effective immediately, employers must provide a 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. In addition, employers must 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. Employers are not required to pay employees during this break time. There is, however, an exception for small businesses with less than 50 employees. If the small business can show that providing this unpaid break to nursing mothers would impose an undue hardship by causing significant difficulty or expense, the break requirement does not apply.

Significantly, this amendment to the FLSA does not stop a State law from providing greater benefits to nursing mothers. Indeed, in 2001 Illinois enacted the Nursing Mothers in the Workplace Act, which requires employers to provide nursing women with reasonable unpaid break time each day to express breast milk, unless the break time would "unduly disrupt the employer's operations." 820 ILCS 260/1 et seq. The break time can be at the same time as any break already provided to the employee. In 2004, Illinois also enacted the Right to Breastfeed Act, which guarantees nursing mothers the right to breastfeed in any location, public or private, so long as the nursing mother is otherwise authorized to be at that location, and nursing mothers cannot be faced with criminal liability for exposing any part of the breast in the process of nursing. 740 ILCS 137/1 et seq. Many states, including California, Minnesota, Oregon and Connecticut to name a few, have similar laws requiring breaks for nursing mothers.

The impact of the FLSA amendment is that Illinois employers with more than 50 employees can no longer avoid the law by claiming, as they could under Illinois law, that the break time would unduly disrupt operations. Under the FLSA, as amended, only small businesses can argue for relief under the undue hardship exception. As a result, Illinois employers may not prohibit nursing women from breastfeeding or expressing milk at their workplace and must provide them with reasonable times and private facilities to do so. On a broad scale, federal law now requires nearly all employers to provide nursing mothers with an unpaid break during work time to express breast milk for a nursing child for up to one year after the birth of the child.

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For more information, please contact Paul Garry, Jeremy Glenn or any other MBT labor and employment lawyer at (312) 474-7900.

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