

Department of Labor Releases Guidance on the PUMP for Nursing Mothers Act

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On May 17, 2023, the U.S. Department of Labor (DOL) issued [guidance](#) for enforcing the “pump at work” provisions of the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act). The PUMP Act, which became effective in December 2022, expands the Fair Labor Standard Act’s (FLSA) protections for nursing mothers by including reasonable break times to nurse and requiring private spaces to pump. Although the guidance is aimed internally at the DOL, it shows employers how the DOL will enforce the PUMP Act provisions. Key highlights of the DOL’s guidance are discussed below.

Reasonable Break Times

Under the PUMP Act, employers must provide nursing employees with “reasonable break time” to express milk. According to the DOL, however, this one-size-fits-all approach is not sustainable for all nursing employees. Under the guidance, the frequency, duration, and timing of breaks under the PUMP Act will vary based on a variety of factors unique to each employee and child. The guidance also provides that an employee and employer may agree to a certain schedule based on the nursing employee’s need to pump, but cautions employers not to require an employee to adhere to a rigid, fixed pumping schedule.

The guidance provides examples of employees who may require four 25-minute breaks throughout the day, or two 30-minute breaks, but stresses that the breaks must be given “each time” the employee has to pump. Pumping schedules need to be flexible, as the need to pump may be adjusted over the span of the infancy.

Compensation

Currently, non-exempt employees are generally not entitled to compensation if they are completely relieved from duty during pumping breaks. The guidance, however, clarifies that consistent with the FLSA, “[s]hort breaks, usually 20 minutes or less, provided by the employer must be counted as hours worked.” Similarly, the guidance emphasizes that if a non-exempt employee performs any work during

pumping – for instance, taking a work-related phone call – the employee must be compensated for that time.

Private Space Requirements

The guidance also recognizes that different employers may address lactation space requirements differently. Under the PUMP Act, employers are 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 DOL expands upon this, emphasizing that the location must be a “functional” space for pumping. Such functionalities include a place for the nursing employee to sit, as well as a flat surface (other than the floor) on which to place the pump. Employees must also be able to safely store breast milk while at work through an insulated food container, personal cooler or refrigerator. The DOL further suggests that ideal spaces to pump should also include access to electricity to power an electric pump as well as a sink for proper sanitation. The DOL opines that these “may reduce the amount of time needed by nursing employees to pump breast milk at work.”

Exemption

Not all employers are subject to the PUMP Act requirements. In limited circumstances, employers with less than 50 employees nationwide may be exempt from the pump-time requirements if they can demonstrate that compliance for a particular employee would cause an undue hardship within the framework of a traditional Americans with Disabilities Act (ADA) analysis.

Posting Requirements

Lastly, the DOL updated its FLSA Minimum Wage Poster in April 2023 to reflect the new pump-at-work provisions. Employers will want to replace their August 2016 version to remain in compliance with the FLSA’s posting requirements. The most current poster is available for [download here](#).

Employers should review their current policies surrounding break times for nursing employees, as well as their mechanisms for ensuring they have adequate access to private locations for pumping with the appropriate functionalities set forth above. Contact your Vorys attorney with questions about the impact of the DOL’s guidance and practical suggestions for staying compliant with the PUMP Act and FLSA.