

## Enforcement Provisions Under The PUMP For Nursing Mothers Act Take Effect April 28, 2023

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### The PUMP For Nursing Mothers Act

On December 29, 2022, President Biden signed the PUMP for Nursing Mothers Act (PUMP Act)[1] into law, expanding workplace protections to all breastfeeding employees covered by the Fair Labor Standards Act (FLSA). Building off the Break Time for Nursing Mothers Act of 2010, which applied only to certain employees, the PUMP Act requires nearly all employers to provide reasonable break time and a private space, other than a bathroom, to nursing employees for up to one year after the child's birth. Most employees now have the right to take reasonable break time to express breast milk and may take such break each time the employee has the need to do so.

Covered employees must also be provided with 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. While a space need not be dedicated solely to the nursing employee's use, it must be available when needed. Notably, both the reasonable time and space protections extend equally to telework employees.

Under the PUMP Act, break time for non-exempt employees may be unpaid, except if the nursing employee is not completely relieved from duty; if the employer pays other employees for similar breaks; or if a nursing employee pumps during a paid break. Exempt employees should be paid their full salary even if the employee takes pump breaks.

Despite the expanding nature of the PUMP Act, employers with fewer than 50 employees are exempt from the break time and space requirements if compliance would impose an undue hardship. All employees who work for the covered employer, regardless of work site, are counted when determining if the exemption applies. Additionally, an employer may take into account its size, financial resources, nature, and structure of its business when determining if compliance would impose an undue hardship. Certain employees, such as crewmembers of air carriers, are exempt from the law.

### Remedies for Violations

New remedies are available for PUMP Act violations effective **April 28, 2023**. Remedies for violations may include employment, reinstatement, promotion, the payment of lost wages, liquidated damages, and punitive damages where appropriate. An employee may file a complaint with the Wage and Hour Division or a private cause of action. Employees who allege a violation of the private lactation space requirement must first notify their employer of noncompliance ten (10) days before filing an action. This provides employers with an opportunity to cure the noncompliance.

To ensure best practices, employers should:

- Provide training to human resources and supervisors on the reasonable break and private space requirements.
- Review or update policies regarding employees entitled to protections under the PUMP Act.
- Determine and designate appropriate space(s) for employees to express breast milk.

[1] Also known as the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act.

\*The PUMP Act does not preempt State or local law. Employees may have greater protections under State or local law or municipal ordinance.

Members of the Labor and Employment Group at White and Williams LLP are available to assist employers with issues related to the PUMP Act and litigation under the FLSA. If you have questions, please contact Nancy Conrad ([conradn@whiteandwilliams.com](mailto:conradn@whiteandwilliams.com); 610.782.4909), Joseph M. Carr ([carrj@whiteandwilliams.com](mailto:carrj@whiteandwilliams.com); 610.782.4907), or another member of the Labor and Employment Group.

For more developments on labor and employment, head to [The Employment Law Counselor blog](#).

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