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LEGAL UPDATES

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DOL Issues Guidance on Requirements of PUMP Act

On May 17, 2023, the Department of Labor (DOL) issued enforcement guidance on the “pump at work provisions” of the Fair Labor Standards Act (FLSA), as amended by the passage of the PUMP Act last December 2022.

As a reminder, the PUMP Act expanded the applicability of the FLSA’s provisions requiring employers to provide a private space and allow for “reasonable break time” for nursing employees to pump at work to approximately 9 million employees not previously covered, including exempt employees. The Act also expanded the remedies available under the FLSA for violation of these provisions.

“Reasonable break time”

Under the Act, employers must provide nursing employees with “reasonable break time” to express milk. According to the DOL guidance, the frequency, duration, and timing of “reasonable” breaks may vary depending on the individual circumstances of the nursing employee—such as the location of the pumping space and the pump setup. Furthermore, the guidance states that an employer cannot require an employee to “adhere to a fixed schedule that does not meet the employee’s need for a break time each time the employee needs to pump,” as an employee’s pumping needs may change over the one-year period to which the provisions apply.

The guidance provides examples of employees who may require four 25-minute breaks throughout the day, or two 30-minute breaks, but emphasizes that the breaks must be given “each time” the employee has a need to pump.

Space requirements

Under the Act, employers must provide a private space—meaning shielded from view and free from intrusion by others—for nursing employees to pump,

and the space must not be a restroom. The DOL guidance elaborates that the space must be functional, including that it must have a place to sit, a flat surface for the pump other than the floor, and an accessible electric outlet to accommodate the pump's plug. The space need not be a permanent or dedicated pumping space; it can be an empty office or storage room, and privacy should be ensured through signage indicating the space is in use or with a locking door.

In addition, the Act requires that the space be available each time it is needed. Thus, the guidance provides that employers should consider the number of nursing employees who may need access to the space.

Compensation

Under the Act, non-exempt employees are generally not entitled to compensation if they are completely relieved from duty during pumping breaks; however, the DOL guidance also states, consistent with the FLSA, that “[s]hort breaks, usually 20 minutes or less, provided by the employer must be counted as hours worked.” Furthermore, the guidance explains that if a non-exempt employee performs any work during the pumping break—for example, by taking a work-related call—then the employee must be compensated for that time.

Remedies

While the Act imposes a 10-day waiting period in which an employee must notify an employer of any deficiencies with the pumping space provided and give the employer 10 days to comply with the Act before filing a lawsuit, the DOL guidance clarifies that there is no waiting period for an employee to:

1. File a lawsuit to enforce the reasonable break time requirement of the PUMP Act; or
2. File a complaint with the Wage and Hour Division regarding an alleged violation of the PUMP Act.

Key takeaways

Maintain regular communication with employees regarding their anticipated break time needs in order to adapt to any required changes.

Especially in larger workplace settings, consider the location of the pumping space in relation to the employee's workstation and how the distance will affect the length of the break time an employee may need.

If multiple employees need access to the space, consider maintaining multiple available spaces to ensure a space is available each time it is needed. The guidance also provides that employers may

offer one large space with privacy screens between employees so that multiple employees may use the space at the same time.

Develop a mechanism for employees to provide notice of any alleged inadequacies to the pumping space provided. If an employee makes a complaint, investigate promptly to determine whether further action is needed in order to comply with the space requirement within 10 calendar days.

As indicated in the DOL guidance, an FLSA poster updated in April 2023 to reflect the new pump-at-work provisions can be downloaded from the DOL's website and should be posted in accordance with the FLSA's posting requirements.

Contact us

If you have questions regarding the PUMP Act or its amendments to the Fair Labor Standards Act, contact Julianne Story, Eleanor Kittilstad, or your Husch Blackwell lawyer.