



## The GSH

# 60-Second Memo

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### **A Private Location Other Than A Restroom Stall: Update On Workplace Protections For Breastfeeding Mothers**

**By Alejandro Valle, Esq.**

As we first reported a year ago, there is a trend among the states to pass legislation requiring employers to accommodate breastfeeding mothers in the workplace. Earlier this month, Indiana became the latest state to pass such a mandate. Effective July 1, 2008, Indiana requires both government and private employers with twenty-five (25) or more employees to provide, "[t]o the extent reasonably possible," a private location where mothers can express breast milk.

The phrase "expressing breast milk" refers to the process of extracting breast milk, either by hand or with a manual or electric pump. Once the milk is extracted, it can be stored in bottles, containers and/or packets to feed the mother's baby at a later date.

The Indiana law, codified at Indiana Code § 5-10-6-2 and § 22-2-14, also specifically provides that the private location must be a place "other than a toilet stall," where an employee can both have privacy and be away from her assigned duties. Interestingly, this law also requires government employers to provide reasonable **paid** break time for nursing employees to express milk, although an exception is provided if such break time would "unduly disrupt" the organization's operations. This paid break requirement does not extend to private sector employers. Indiana also mandates that employers either

provide adequate refrigeration storage for expressed milk, or allow nursing mothers to bring and use their own cold storage units.

Now, more than twenty states, along with the District of Columbia, have passed laws requiring employers to accommodate breastfeeding mothers in the workplace. Most of these states, such as Illinois and New York, require that employers provide reasonable unpaid breaks and make reasonable efforts to provide nursing mothers a private place or other location to express breast milk. Many states also explicitly provide that employers may not designate a restroom toilet stall as the private area. The District of Columbia provides that the private location may include a childcare facility in close proximity to the employee's workplace. D.C. Code. Ann. § 2-1402.81, *et seq.* Additionally, some states, such as New York and Hawaii, specifically prohibit employer discrimination against employees choosing to express milk in the workplace.

Last month, California issued its first citation to a company found to have violated California's workplace private accommodations statute. The company, a private security firm, was fined \$4,000 for not allowing an employee the necessary privacy and break time to express milk. Perhaps the most egregious fact was that the company, when converting the room from the computer server room to a private lactation room, failed to remove the security cameras that monitored the room.

As we also noted previously, providing accommodations for nursing mothers also has its benefits. The accommodations help reduce health care costs, employee absenteeism, and improve employee retention.

What should employers in states with breastfeeding accommodation laws do? The answer of course depends on the specific circumstances of each respective workplace. For some employers, due to their size, workforce and other needs, the most appropriate solution may be to create specifically designated "lactation rooms." If possible, these rooms should be provided with locks. One creative company installed an access code system. Other employers with less need for a permanent room and little available space may be able to comply with its state mandates by providing an area curtained off from other work space or partitioned with a wall divider. This will be the case in states, such as Indiana, where the statute does not require that a room is provided, but instead a "private location."

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Whatever an employer decides to do, it must ensure that the designated area is and remains private. If there is no door that can be secured, all unauthorized employees should be made aware that they are not to enter the area. Further, the area should be equipped with an electrical outlet (as many breast pumps are electric), a table and a chair. Employers may also want to provide a sink to allow mothers to wash pumping apparatus and a specially-dedicated refrigerator to store expressed milk. As noted above, Indiana requires that an employer either provides a refrigerator or accommodates a nursing employee who brings in her own.

Each state's law is different, so solutions must be tailored to each state's requirements. Companies operating in multiple states need to be aware of the various requirements in each location.

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