



The GSH 60-Second Memo

January 19, 2011

Sponsored by the GSH Employment Group



Ken Chang, Esq.

www.gshllp.com

(414) 277-8500

Want more
information on
this topic?

[CLICK HERE!](#)

[Join Our Mailing List!](#)

Breastfeeding in the Workplace: An Update for 2011

By Ken Chang, Esq.

Although we here at GSH have written about breastfeeding in the workplace before (see, for example, [Alejandro Valle's article](#) from July 2008), 2010 was a year that saw new developments at both the state and federal level. A new Wisconsin law established a mother's right to breastfeed her child wherever both mother and child are otherwise authorized to be, and a new federal law has recognized the reality that many employees will want to continue breastfeeding, even after returning to work.

To make life easier for these employees, the Fair Labor Standards Act now requires employers to provide accommodation for nursing mothers. This includes "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." The accommodation must also include "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 with fewer than 50 employees might be excluded from these federal requirements, but only if such requirements would impose "an undue hardship." Finally, the new provisions do not preempt any state law that provides greater protections to employees.

Since this new provision was passed, employers have been working hard to ensure that they are in compliance. On December 20, 2010, the U.S. Department of Labor ("DOL") set forth its preliminary interpretation of these new requirements, thus providing some helpful clarification.

**GONZALEZ
SABGIO
HARLAN**

Office Locations:

Arizona
California
Georgia
Illinois
Indiana
Iowa
Nevada
New Jersey
New York

First, federal law does not require employers to compensate nursing mothers for breaks used for breast-pumping. Where an employer already provides paid breaks, however, a mother who uses that break time to pump must be paid in the same way that other employees are compensated for that break time.

Second, flexibility is important. Employers must recognize that the number and timing of the breaks may vary based upon the baby's nursing schedule and the mother's health needs. The DOL estimates that mothers typically need two or three breaks during an eight hour shift, and that longer shifts would require additional breaks. Although the act of expressing breast milk typically takes about 15 to 20 minutes, employers should also consider other factors, including the time it takes at their particular workplace to take care of setting up, pumping, cleaning up, and storing the milk.

Third, the new provision's space requirements require employers to make a private room available for use if possible. Where that's not possible, employers can create a space by using partitions or curtains and covering all windows. Further, the employee's privacy must be ensured through appropriate signage or a lock on the door.

The space itself need not be dedicated to nursing; it is enough that the space be available to nursing mothers when needed. At a minimum, the space must contain a place to sit and a flat surface (other than the floor) on which to place a pump. Ideally, the space would also have access to electricity, running water, and a clean refrigerator for the storage of milk. While these additional features are not required by the new law, the DOL has noted that their provision may decrease the time needed by nursing employees.

In light of this new law and its interpretation by the DOL, employers may wish to consider drafting a written policy addressing breastfeeding in the workplace. The policy should include the following elements:

- Flexible break schedules for nursing mothers;
- Provision of a private space with a seat and a table;
- Access to electricity, running water, and refrigeration, if possible;
- A procedure for requesting other accommodations; and
- A statement that jokes and/or harassment based on breastfeeding will not be tolerated.

This last requirement should not be overlooked. In addition to being in generally bad taste, breastfeeding jokes can become evidence of a hostile work environment in employment discrimination cases. They are not to be taken lightly. Luckily, this potential liability can be avoided through careful planning, clear communication, and consistent enforcement.

By embracing the requirements of this new breastfeeding law and adopting appropriate policies, employers can use this law as an opportunity to demonstrate their full support for employees and their families. These efforts will not go unappreciated by new

Ohio
Tennessee
Washington D.C.
Wisconsin

www.gshllp.com

parents, for whom a little help can go a long way.

The 60-Second Memo is a publication of Gonzalez Saggio & Harlan LLP and is intended to provide general information regarding legal issues and developments to our clients and other friends. It should not be construed as legal advice or a legal opinion on any specific facts or situations. For further information on your own situation, we encourage you to contact the author of the article or any other member of the firm. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

Copyright 2011 Gonzalez Saggio & Harlan LLP. All rights reserved.