

June 9, 2023

## PUMP Act Guidance

Client Bulletins

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On May 17, 2023, the Department of Labor (DOL) issued guidance for enforcement of the Providing Urgent Maternal Protections for Nursing Mothers Act, commonly known as the PUMP Act. The PUMP Act was signed into law on December 29, 2022 and expands the Fair Labor Standards Act (FLSA) to provide nursing mothers with reasonable breacktime and a private space to pump breast milk at work. The Pregnant Workers Fairness Act (PWFA), which requires employers to provide reasonable accommodations to an employee's known limitations related to pregnancy, childbirth, or related medical conditions, was signed into law with the PUMP Act and takes effect on June 27, 2023. [Click here to review our prior alert on these laws.](#)

The DOL's guidance regarding enforcement of the PUMP Act is directed toward the Wage and Hour Division's (WHD) field staff, but employers should familiarize themselves with how the DOL will be enforcing the protections afforded to nursing employees. Key takeaways from the DOL's guidance are summarized below.

### **Reasonable Breaktime**

Employers are required to provide nursing employees "reasonable break time" **each time** the employee needs to pump breast milk at work. Reasonable break time must be provided for one year after the child's birth.

Determining what constitutes "reasonable break time" is fact dependent. The frequency, duration, and timing of breaks may vary based on several factors, including the location of the break space and the steps reasonably necessary to pump. An employee and employer may also agree to a certain schedule based on the nursing employee's need to pump, but employers cannot require an employee to stick to a fixed schedule that does not provide the employee with a break each time the employee needs to pump.

The DOL provides examples of "reasonable break time" which highlight the individual needs of each nursing employee. While one employee may need four 25-minute pump breaks each day, another employee may need two 30-minute pump breaks each day. In addition, employers should be mindful that an employee's pumping needs may change as the child grows.

### **Compensation**

Under the FLSA, all hours worked must be compensated. Short breaks provided by employers must be counted as hours worked under the FLSA.

Employers cannot reduce an exempt employee's salary to reflect break time to pump. Non-exempt employees are not entitled to compensation during pump breaks as long as the employee is completely relieved from duty (or the break is a short rest break, generally 20 minutes or less). If the employee is not completely relieved from duty, then the time spent pumping is counted as hours

worked and must be compensated. The DOL emphasizes that if a non-exempt employee performs **any** work during a pump break, even simply taking a work call from a coworker, the employee must be compensated for time spent pumping.

### **Private Space**

Employers are required to provide nursing employees with a private space to pump breast milk at work that is shielded from view, free from intrusion from coworkers and the public, available each time the employee needs to pump, and not a bathroom. A space temporarily created for pumping is sufficient as long as it satisfies all of these requirements. The DOL recommends that employers display a sign when the space is in use or provide a space with a locked door to ensure the nursing employee's privacy.

The private space must also be "functional" for pumping and "must contain a place for the nursing employee to sit, and a flat surface, other than the floor, on which to place the pump." Also, "[e]mployees must be able to safely store milk while at work, such as in an insulated food container, personal cooler, or refrigerator." The DOL notes that the ideal private space would also include electricity for employees who use electric pumps as well as sinks for employees to wash their hands and clean pump attachments.

Employers have some flexibility in designating a private space for nursing employees. Some employers may choose to designate a vacant office or storage room with a door that closes, while other employers may create a space using partitions. The DOL provides that both options are sufficient as long as the employer ensures the nursing employee's privacy.

### **Remote Employees**

Employees who work remotely are eligible to take pump breaks on the same basis as employees who work on-site. While pumping, remote employees are entitled to be free from observation by any video system provided or required by their employer.

### **Exemptions**

Employers with less than 50 employees may be exempt from the PUMP Act requirements by demonstrating that compliance would impose an undue hardship. Employers bear the burden of establishing that compliance with the PUMP Act would impose an undue hardship. To satisfy this burden, employers must be able to prove that "the employee's specific needs for pumping at work is an undue hardship due to the difficulty or expense of compliance in light of the size, financial resources, nature, and structure of the employer's business."

### **Liability and Remedies**

Employers who violate any requirement of the PUMP Act may be liable for legal or equitable remedies under the FLSA. Remedies include, without limitation, reinstatement, promotion, payment of lost wages, make-whole relief, and punitive damages.

### **Posting Requirement**

Employers that employ any employee subject to the FLSA minimum wage, overtime, or PUMP Act requirements must post an FLSA notice. The WHD published an updated FLSA poster in April 2023 that reflects current requirements under the PUMP Act. Employers should download the updated poster and post it in a conspicuous location.

**For more information, contact a member of the firm's Labor & Employment Practice Group.**

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