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BLOGS

Wage & Hour; Workplace Policies

Employers Must Provide a Private Place to Pump

Recent Department of Labor statistics indicate that the majority of employers who have breached Fair Labor Standards Act ("FLSA") provisions related to breastfeeding mothers have failed to provide an appropriate space for new moms to express milk. The FLSA was amended by the 2010 Patient Affordable Care Act to require employers to provide reasonable break time and a private space for a nursing mother to express milk for one year after the child's birth. All employers are expected to comply with the law, but employers with fewer than 50 employees are not subject to the requirements if compliance would impose an undue hardship. Whether the employer faces an undue hardship is decided on a case-by-case basis.

It is not clear from the Department of Labor's statistics whether employers have failed to provide a place at all, or if they have failed to provide an appropriate space. The law mandates that the designated place be "shielded from view and free from intrusion by coworkers and the public." The law specifies that the place provided *cannot be a bathroom*. Although some bosses may be surprised that sending an employee to a bathroom stall is not an option, it has not been an option in Minnesota for some time.

Minnesota law has long required employers to make accommodations for breastfeeding mothers. State statute requires all employers to provide "reasonable unpaid break time" to nursing mothers, as long as doing so does not unduly disrupt the employer's operations. Employers must also "make reasonable efforts to provide a room or other location, in close proximity to the work area, *other than a toilet stall*, where the employee can express her milk in privacy." Minnesota law would probably allow an employer to design a private, single bathroom with no stall and a locking door. Not so under the FLSA.

Employers who haven't already done so should think about designating a space specifically for this purpose, or at least consider what space(s) could be temporarily re-purposed when the need arises. Some workplaces have a small room set aside where employees may privately pump. Another option might be an empty office with a locking door. And while the statute doesn't require it, a comfortable chair and a mini-fridge would probably be most welcome.