



---

## Break Time for Nursing Mothers Under the FLSA

---

Buried deep within the historic [Patient Protection and Affordable Care Act](#) is an amendment to the Fair Labor Standards Act (FLSA) requiring employers to provide reasonable break times and a private place for nursing mothers to express breast milk. P.L. 111-148, § 4207 (2010). The U.S. Department of Labor recently issued a [fact sheet](#) about that new law.

What employers need to know:

- **Timing and Number of Breaks.** Employers covered by the FLSA must provide a reasonable amount of break time to a nursing mother to express milk as frequently as she needs in the one-year period after the child's birth.
- **Location of Breaks.** The place provided cannot be a bathroom, must be shielded from view, and must be free from intrusion from coworkers and the public. The DOL's fact sheet adds that the location must be "functional as a space for expressing breast milk" and, if not dedicated for use by nursing mothers, available when needed.
- **Employee Coverage and Compensation.** Only non-exempt employees are entitled to nursing breaks under the law. The nursing breaks need not be paid, but if a nursing mother uses a paid break to express milk, she must be compensated in the same way that other employees are compensated for break time. Keep in mind that the nursing mother must be relieved completely from work duties during the break time or else the time must be compensated as working time.
- **Employer Coverage.** Only employers covered by the FLSA are subject to the new law. Under a hardship exemption, employers with fewer than fifty employees are excused from complying with the law if its requirements "would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business." All employees of the employer—not just those at the worksite in question—are counted in determining employer coverage.
- **Relationship to State Laws.** The law does not preempt state laws that provide greater protection to nursing mothers. Currently, twenty-four states, including Texas, have legislation related to breastfeeding in the workplace.
- **Effective Date.** This new law took effect when President Obama signed the Patient Protection and Affordable Care Act on March 23, 2010.

**QUESTIONS?**

Thompson & Knight's Labor and Employment Law attorneys are dedicated to updating clients about developments in labor and employment law. If you have questions or need additional information about this Client Alert or any other legal matters, please contact the Thompson & Knight attorney with whom you regularly work or one of the attorneys listed below.

**CONTACTS:**

**Anthony J. Campiti**  
214.969.1565  
[Tony.Campiti@tklaw.com](mailto:Tony.Campiti@tklaw.com)

**Andrea Hyatt**  
214.969.1577  
[Andrea.Hyatt@tklaw.com](mailto:Andrea.Hyatt@tklaw.com)

**Bryan P. Neal**  
214.969.1762  
[Bryan.Neal@tklaw.com](mailto:Bryan.Neal@tklaw.com)

**Steven W. Sloan**  
214.969.1113  
[Steven.Sloan@tklaw.com](mailto:Steven.Sloan@tklaw.com)

**Bennett W. Cervin**  
214.969.1124  
[Bennett.Cervin@tklaw.com](mailto:Bennett.Cervin@tklaw.com)

**Tamara R. Jones**  
214.969.1448  
[Tamara.Jones@tklaw.com](mailto:Tamara.Jones@tklaw.com)

**Micah R. Prude**  
214.969.1698  
[Micah.Prude@tklaw.com](mailto:Micah.Prude@tklaw.com)

**Stephen F. Fink**  
214.969.1120  
[Stephen.Fink@tklaw.com](mailto:Stephen.Fink@tklaw.com)

**Marc H. Klein**  
214.969.1795  
[Marc.Klein@tklaw.com](mailto:Marc.Klein@tklaw.com)

**Elizabeth A. Schartz**  
214.969.1737  
[Elizabeth.Schartz@tklaw.com](mailto:Elizabeth.Schartz@tklaw.com)

*This Client Alert is sent for the information of our clients and friends. It is not intended as legal advice or an opinion on specific circumstances.*

© 2010 Thompson & Knight LLP