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NEW FEDERAL LAW PROTECTS NURSING MOTHERS

In a largely unnoticed provision of the healthcare reform package signed into law by President Obama on March 23, is a provision granting rights to nursing mothers in the workplace. Although several states have accorded workplace protection to nursing mothers, this is the first federal law to extend that protection nationwide.

Section 4207 of the Patient Protection and Affordability Act requires that employers provide unpaid breaks to nursing mothers to express breast milk for up to one year after the baby's birth. Employers must also provide a suitable place, not a bathroom, where expression can take place. This location must be shielded from view, and free from intrusion by co-workers or the public.

The law does not apply to employers with less than 50 employees where it would cause an undue burden, or significant difficulty or expense, given the employer's size and structure. It is likely it will be up to the small employer to demonstrate undue burden, etc.

The law does not define a "suitable place", or the maximum number or duration of breaks. In time, the US Department of Labor will issue clarifying guidance. However the law itself is effective immediately.

There is a potential conflict with existing law. Regulations issued under the Fair Labor Standards Act require employers to pay employees for breaks of 20 minutes or less. This new law says that breaks for nursing mothers are unpaid. Again, we must wait for clarification from the US Department of Labor.

Practice Pointers:

- While we wait for additional guidance, it is wise to immediately address this issue on a case-by-case basis with employees who are returning from maternity leave or who are pregnant
- Ensure that nursing mothers who do not have a private office, have access to one for breast milk expression breaks. Privacy should be ensured by providing a lock, or a "do not disturb" notice, and blinds or curtains over windows.

If breaks last more than 20 minutes, they should be unpaid. Expect it to take a week or so for a nursing mother to establish a workplace routine. Each case may be different in respect of the number of breaks and their duration. Working with the nursing mother to support her in continuing to breastfeed after return to work will ensure a happier, more productive employee now and after the baby is weaned.

For more information about this or other employment compliance issues, please call us, or visit our website.