

HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

PPACA Amends FLSA to Require Employers to Provide Breaks for Expressing Breast Milk

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The Patient Protection and Affordable Care Act (“PPACA”) brings with it a myriad of changes and provisions that will directly impact employers over the coming months and years. One such provision is Section 4207 of the PPACA, which requires employers to provide their employees with break time and a private place for expressing breast milk during work hours.

The PPACA amends Section 7 of the Fair Labor Standards Act (“FLSA”) by adding a provision which requires employers to provide an employee with an unpaid, reasonable break time “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.” Employers must also provide a place in which their employees may express breast milk. The designated area may not be a restroom and must be shielded from view and free from intrusion from coworkers and the public.

It is important to emphasize that Section 4207 explicitly provides for an unpaid break despite the fact that under the FLSA, rest breaks lasting up to 20 minutes are typically construed as compensable working time. Unfortunately, Section 4207 provides no guidance on what constitutes a “reasonable” break.

The requirements of Section 4207 do not apply to an employer that employs less than 50 employees, if such requirements would impose an “undue hardship by causing the employer significant difficulty or expense.” Also, where a state law provides greater protections to employees than those in Section 4207, the state law will not be preempted but rather will govern the treatment of the employee. For example, if an employer operates in a state which requires payment for breaks of a length required for the expression of breast milk with no exception for that specific activity, an assessment must be made as to whether the employer is required to pay for that break time under state law.

Tennessee Code Annotated 50-1-305 requires all employers to provide a reasonable, unpaid break time each day for an employee to express breast milk for her infant child, although an employer does not have to provide the break if doing so would unduly disrupt the employer’s business operations. The employer must also make reasonable efforts to provide the employee with a private room or other location in close proximity to the work area, other than a toilet stall, where the employee can express breast milk. The most significant difference between the

Tennessee law and PPACA Section 4207 is that the latter requires that an employee receive a break each time that she must express breast milk, whereas the former seems to provide one break per day. Tennessee employers currently providing only one break per day will have to change such policy to allow a break each time that the employee has the need to express breast milk.

Section 4207 is one of the more minor PPACA provisions which will directly affect employers but is one of the provisions that requires immediate attention. We will continue to provide alerts regarding the impact of the PPACA on employers as we all continue to digest this legislation.

If you have questions about this alert, please call one of our labor attorneys listed below.

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