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New Federal Health Care Reform Act Requires Breaks for Nursing Mothers

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The Health Care Reform Act enacted on March 23, 2010, includes a provision amending the Fair Labor Standards Act (“FLSA”). The FLSA now requires employers to provide “reasonable” breaks for nursing mothers to express milk and a private location, other than a bathroom, for doing so. The statute provides that such breaks need not be compensated, but the requisite number and duration of such breaks will likely be the subject of future regulation. Employers with fewer than 50 employees may get a reprieve from the requirement if it would cause “significant difficulty or expense” in light of the employer’s size.

As with other provisions of the FLSA, the most favorable law governs in the event of a conflict between state and federal requirements. Washington prohibits discrimination against a breastfeeding mother (RCW 49.60.215) and protects the right of mothers to breastfeed (RCW 49.60.030(g)) in places of accommodation but does not explicitly mandate rest periods. As a result, Washington employers will likely be held to the standards of the FLSA, as amended, and must provide rest breaks to nursing mothers each time they need to express milk. There is some uncertainty regarding whether such breaks, under state law, must be compensated. Because the FLSA treats employees more favorably than Washington law, by providing uncompensated breaks to express milk rather than no breaks at all, Washington employers likely must only provide uncompensated breaks to avoid running afoul of federal and state wage and hour laws.

To determine whether your rest policies are sufficient or to revise your employee handbook to address the new requirements of the FLSA, contact a member of Eisenhower’s Labor and Employment Group.