Georgia Expands Lactation Break Law
8.28.20

Georgia’s recent passage of a new lactation break law earlier this month has taken many employers by surprise – or may even be news to you. Over the past weeks, news headlines have been saturated with coverage on an array of pressing national matters. In the midst of an ongoing COVID-19 pandemic, civil unrest, a hotly contested presidential election year, and an already catastrophic hurricane season, many employers have shifted focus away from state and local initiatives for more pressing national concerns. As a result, you could be forgiven for not knowing about this new employer obligation. But given that the new lactation break law took effect immediately once it was passed on August 5, 2020, you need to turn your attention to understanding your new responsibilities and working on compliance measures.

What Does The New Law Require?

Georgia passed HB 1090 (codified at O.C.G.A. § 34-1-6), requiring employers to provide reasonable break time to working mothers who desire to express breast milk at their worksite during working hours (“lactation breaks”). Prior to this legislation, Georgia maintained a permissive lactation break law which encouraged employers to provide such lactation breaks but did not require it.

The new law applies to employers with one or more employees and requires that working mothers be provided a location, other than a restroom, where they can express milk in private. It also requires that the lactation breaks be paid at the employee’s regular rate. Where an employee is salaried, employers cannot require employees to use paid leave for such breaks or reduce their salary as a result of such breaks.
The new law largely overlaps with existing federal law. However, there are important differences to be mindful of. Under the Federal Fair Labor Standards Act (FLSA), employers are required to provide reasonable unpaid lactation breaks to non-exempt employees for up to one year after a child’s birth. Unlike federal law, Georgia’s law applies to all employees, requires break time to be paid, and does not contain a one-year time limit on granting of lactation breaks.

Notably, the new law does not require employers to provide paid lactation breaks to employees working away from their worksite. However, employers should continue to follow federal requirements.

Similar to federal law, state law carves out an undue hardship exemption for employers with fewer than 50 employees. These employers could avoid obligations where compliance would cause significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the business. You should consult with legal counsel before attempting to escape the reach of the law with an undue hardship defense.

What Does This Mean For Employers?

Georgia employers should review their handbooks and employment policies to ensure compliance with this new law. You should also provide training to supervisors and managers on how to address requests for lactation breaks from employees.

We will continue to monitor any further developments and provide updates on this and other labor and employment issues affecting Georgia employers. Please make sure you are subscribed to Fisher Phillips’ alert system to gather the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or any attorney in our Atlanta office.

This Legal Alert provides an overview of a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.