



# South Carolina Passes New Lactation Break Law

Insights

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Governor Henry McMaster recently signed the South Carolina Lactation Support Act into law, soon requiring all employers in South Carolina to make reasonable efforts to provide workers with reasonable break time and space to express breast milk at work. What do employers need to know about this new requirement?

## Supporting Working Mothers

Under the new law, employers must provide employees with reasonable unpaid break time or permit employees to use paid break time or meal time each day to express breast milk. If possible, the break time must run concurrently with any break time already provided to the employee. In addition, employers must make reasonable efforts to provide a room or other location, other than a toilet stall, in close proximity to the work area where an employee may express milk in privacy. The law makes clear that employers are not required to build a room for the primary purpose of expressing breast milk.

Employees must make reasonable efforts to minimize disruption to their employer's operations. Under the law, employers will be held harmless if they make reasonable efforts to comply. Employers are not required to provide lactation breaks if doing so would create an undue hardship on their operations.

## Federal Law Refresher Regarding Lactation Breaks

Employers are already required by the Fair Labor Standards Act (FLSA) to provide reasonable break time for non-exempt employees to express breast milk for one year following the child's birth. Employers with fewer than 50 employees are not subject to these federal requirements if it would create an undue hardship.

South Carolina's new law fills in some gaps of federal law. For instance, unlike federal law, there is no one-year time limit under state law on granting lactation breaks. Accordingly, employers are required to provide breaks beyond one year following a nursing child's birth.

In addition, federal law does not require employers to provide lactation breaks to exempt employees, while the new state law requires that **all** employees be granted the breaks. On the other hand, although state law would permit employers to provide a private bathroom (not a toilet stall) to employees to express breast milk, federal law mandates that employers provide a place, **other than**

**a bathroom**, that is shielded from view and free from intrusion from coworkers and the public that can be used to express breast milk.

### **What Does This Mean For Employers?**

The new state law prohibits employers from discriminating against an employee for choosing to express breast milk at work. Significantly, employees may file charges of discrimination with the South Carolina Human Affairs Commission for alleged violations of the law.

The law directs the Commission to post information on its website to educate employers, employees, and employment agencies about their rights and responsibilities under the law by July 25, 2020. Employers will have 30 days after the Commission posts the website information before they must comply with the law.

South Carolina employers should immediately review their handbooks and employment policies to ensure compliance with this new state law. Furthermore, you should provide training to supervisors and managers on how to address requests for lactation breaks from your employees.

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

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*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.*

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