



Another Nursing Mother's FLSA Claims Settled

Insights

2.28.17

The U.S. Department of Labor reports that a California restaurant company has agreed to take steps to remedy alleged:

- ◇ Non-compliance with the federal Fair Labor Standards Act's requirement that covered employers give unpaid break time to a worker for the purpose of expressing breastmilk for her nursing child; and
- ◇ Retaliation against an employee who sought to take such breaks.

The FLSA's [Section 7\(r\)](#) generally obligates covered employers to permit reasonable break time for an employee to express breast milk for her nursing child each time she has need to do so. The exceptions are limited.

Management must make a place available for this purpose (other than a bathroom) that is shielded from view and is free from intrusion from coworkers and the public.

The employer must provide these things for a year after the child's birth.

USDOL Investigates

USDOL looked into the restaurant worker's claims that management had discouraged her from taking the breaks she needed. She also asserted that her employer had not provided an appropriate place for them. She further contended that, after she sought the required time and place to take these breaks, she was assigned to a different shift and to a different work station, actions that she said reduced her tips.

The agency concluded that the employer had created a "hostile environment" for this employee and for other nursing mothers. USDOL also contended that the complaining worker's rescheduling and reassignment had been retaliatory and had caused her to lose income. The resulting compliance agreement called for the company to:

- ◇ Conduct FLSA compliance training for its managers; and
- ◇ Pay the worker \$666 in back-wages and unspecified other "damages".

The Bottom Line

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It appears from USDOL's account that other potential measures were not invoked as to this particular employer. But USDOL can file a lawsuit asking the court to order an employer to comply, which could in turn result in contempt-of-court measures for future violations.

Furthermore, a retaliating employer could face potential exposure in a lawsuit, the remedies in which might include things like back-pay, front-pay, liquidated damages, reinstatement, promotion, and possibly even substantial sums as compensatory and/or punitive damages.

All of this serves as an important reminder: Employers should be *certain* that their responses to requests for these breaks are consistent with FLSA Section 7(r).

Many states also require these kinds of breaks. Section 7(r) does not override those laws to the extent that they are more favorable to the employee than the FLSA is. A nursing-mother policy must also take the applicable requirements of these other jurisdictions into account.