Nursing Mother's USDOL Claim Settled

Insights
10.06.15

The U.S. Labor Department reports that a temporary-staffing employee has received $1,152 in back-wages and unspecified "other damages" for what it contended was a violation of the federal Fair Labor Standards Act's Section 7(r).Readers will recall our series of posts discussing this 2010 FLSA amendment that obligates covered employers to give unpaid break time to a worker for the purpose of expressing breastmilk for her nursing child.

Assignment Lost After Break Request

Presumably in response to a complaint by the employee, USDOL investigated and concluded that she was directed not to return to the staffing company's client's workplace after she asked for time to express milk during her workday.

The staffing agency eventually placed the employee with another of its clients.However, for a period of eight workdays, she remained unassigned and received no pay.

USDOL's press-release does not say exactly what the "other damages" portion of the payment consisted of.It might be that, as a condition of settlement, the agency demanded FLSA "liquidated damages" in an amount equal to what it calculated to be eight days' worth of pay, that is, $576 plus an additional, equal sum.*See* 29 U.S.C. § 216(b).

The Bottom Line

Section 7(r) says that, for a year after a child's birth, a covered employer must provide the required unpaid break to the nursing mother:

- In a suitable location (other than a bathroom) that is shielded from view and is free from intrusion by co-workers or the public,

- For a period of time that is "reasonable" under the circumstances, and

- Each time the employee "has need" to express milk.

Employers should be certain that they understand and are prepared to observe the details of these requirements.USDOL issued "Preliminary Interpretations" of Section 7(r) in 2010 and has prepared Fact Sheet #73 to summarize its views.

We have also published an article discussing a variety of compliance considerations.