

GET TO KNOW NEW NURSING MOTHERS' LAW FOR NEVADA WORKERS

Insights

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Although the federal Fair Labor Standards Act (FLSA) already protects nursing mothers from employment discrimination and retaliation while requiring employers to provide them with reasonable break time and a private space to express breast milk, Nevada has taken things a step further. The state just enacted a broad new nursing mothers law for all public and private employers, other than the Department of Corrections, certain small employers, and certain licensed contractors.

OVERVIEW OF NEW LAW

Under the new law, Nevada employers must provide nursing mothers with a child under one year of age with:

- Reasonable break time, with or without compensation, for the employee to express breast milk as needed; and
- A place, other than a bathroom, that is reasonably free from dirt or pollution, protected from the view of others, and free from intrusion by others.

The main difference from the FLSA is the addition of "reasonably free from dirt or pollution." Under federal standards, the location provided must be functional as a space for expressing breast milk and without the health and sanitary concerns that a typical bathroom presents. It is currently unknown whether this added language imposes a stricter standard on Nevada employers. A few other states, such as Maine and New Mexico, use similar language, specifying that the room must be "clean." Although there is bound to be disagreement over this subjective standard, you

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should use reasonable discretion when considering the state of the lactation space, ensuring that this location is regularly cleaned and maintained.

COMPENSATED TIME

Under the FLSA, while employers do not need to provide compensated break time, they must do so if they already provide paid break time to other employees. The new Nevada law requires compensation for the break time if it is required under a collective bargaining agreement between a private employer and an employee organization.

PENALTIES

A private employer who violates the new law is guilty of a misdemeanor, subject to a civil penalty of \$5,000 per violation from the Labor Commissioner.

EXEMPTIONS

Similar to the FLSA, employers with fewer than 50 employees are not subject to these requirements if they would impose an undue hardship on the employer, considering the size, financial resources, nature, and structure of the business of the employer. The Nevada law provides two additional exemptions. First, the Department of Corrections is exempt from these requirements. Second, employers who qualify as contractors under NRS Chapter 624 are not subject to this law. In particular, contractors do not need to fulfill these requirements if the employee works at a construction job site located over three miles from the employer's regular place of business.

REASONABLE ALTERNATIVE

If an employer determines that complying with this law will cause an undue hardship, considering the size, financial resources, nature, and structure of the business, the employer may meet with the employee to agree upon a reasonable alternative. If the parties cannot reach an agreement, the employer may require the employee to accept a reasonable alternative selected by the employer.

Although this is an option under the Nevada law, there is no equivalent found under the federal law, which means that

employers who must adhere to the FLSA cannot rely on this option to minimize their duty to employees. Thus, an employer who complies with the Nevada law by requiring the employee to accept a reasonable alternative may still be in violation of the FLSA if it is ultimately determined that the employer's alternative is not "reasonable" enough.

This option applies to both private and public employers in Nevada. However, for public employers, there is an additional provision that allows a public employee to appeal the employer's decision, as detailed below.

COMPLAINT PROCESS FOR PUBLIC EMPLOYEES

Public employees in Nevada can file a complaint against a public employer for violations of the law, including a public employer's decision to provide a reasonable alternative. Under this law, the Local Government Employee-Management Relations Board (EMRB) must create an expedited procedure to resolve the complaint. The EMRB will soon create and make available a form that an employee can use to file a complaint, and authorize the EMRB Commissioner to resolve the complaint without referring the matter to the EMRB if necessary. The agency can also establish an expedited timeline for issuing a decision, and take any other action necessary to ensure the complaint is reviewed in a timely manner.

ACTION NEEDED

This law took effect on July 1, 2017. Although the FLSA is already in place, you should review your policies and handbooks to ensure they comply with both federal and state standards for lactation breaks. In particular, you should consider how numerous factors will affect what constitutes a "reasonable" break time. The U.S. Department of Labor anticipates that the mere act of lactation takes 15 to 20 minutes, and encourages employers to keep an open line of communication with the employee to develop shared expectations.

You can minimize the amount of time your employees take for these breaks by controlling such factors as: the location of the lactation space; the time it takes for an employee to walk to and from the lactation space; the wait, if any, an employee experiences before using the lactation space;

providing a pump for the employee; and providing other amenities, such as a refrigerator, sink, or running water.

Another important aspect to consider is whether there is a medical condition hindering an employee's normal lactation process. If so, employers should be aware that other laws, such as the Americans with Disabilities Act (ADA), might also apply.

For more information, please contact any attorney in the [Las Vegas](#) office of Fisher Phillips at (702) 252-3131.

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