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What Employers Need to Know to Comply With PUMP Act Breastfeeding Law, Keith Gutstein, Libbi Vilher 5/18/2023

The U.S. Department of Labor (DOL) has begun enforcement of the Providing Urgent Maternal Protections for Nursing Mothers Act (the "PUMP Act"), which expands the rights of working mothers to ensure they have the time and space to express breastmilk in the workplace.

Employers should be aware of their obligations under the law, which amends Section 7 of the Fair Labor Standards Act ("FLSA") Break Time for Nursing Mothers Act (the "Break Time Act"), by clarifying and extending protections for nursing mothers in the workplace.

Initially, in 2010, the Break Time Act amended the FLSA to require employers to provide employees with reasonable break time to express breast milk for up to one year after the birth of the employee's child. The Break Time Act required the employer to provide a private space "shielded from view and free from intrusion," other than a bathroom, for the employee to express breast milk. The Break Time Act also provided that an employer need not compensate the employee for time spent expressing breast milk.

The PUMP Act, which was signed into law on December 29, 2022, clarifies and expands these protections.

PUMP Act Key Provisions

Primarily, the PUMP Act clarifies that both salaried and hourly employees are covered.[1] This clarification extended protections to an additional nine million nursing mothers in the workplace.

The PUMP Act provides that an employee need not be compensated for break time used to express breast milk, but clarifies that if an employee is not "completely relieved from duty during the entirety" of a break used to express breast milk, she must continue to be compensated for the time.

An employer who employs less than 50 employees may not be subject to the requirements set forth under the PUMP Act if they can show that the requirements would "impose an undue hardship by causing the employer significant difficulty or expense." Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business, according to the DOL.

Enforcement

Notably, beginning April 28, 2023, the PUMP Act provides a private cause of action, not previously included in the Break Time Act, allowing employees to bring suit against employers who violate any portion of the PUMP Act. In the event an employee wishes to bring suit specifically alleging an employer's failure to provide a proper space to express breast milk, the employee must notify the employer of the alleged violation 10 days prior to commencing such a suit to allow the employer time to provide a compliant space. The employee is relieved from the 10-day requirement if the employee has been terminated as a result of requesting accommodations under the PUMP Act, or opposing violation thereof, or if the employer indicated that they do not intend to provide an adequate place to express breast milk.

An employer who violates the PUMP Act may be found liable to the employee and required to produce both monetary compensation and equitable relief such as "employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages."

To assist employers, the U.S. DOL has issued Frequently Asked Questions and updated its Fact Sheet on the FLSA's protections for nursing employees, as extended by the PUMP Act.

Steps Employers Can Take

- Review their current policies to make sure they are in compliance;
- Establish a private space for breastfeeding mothers if they have not already done so;
- Put protocols in place to review requests for accommodation including outlining how employees can make requests; and
- Train managers in proper responses to employees' requests for accommodations.

How We Can Help

The attorneys at Kaufman Dolowich are available to assist employers in complying with the PUMP Act. For more information about the new legislation, or this alert, please contact Keith J. Gutstein or Libbi L. Vilher by email at KGutstein@kaufmandolowich.com, LVilher@kaufmandolowich.com or by phone at (516) 681-1100, or any member of Kaufman Dolowich's Labor & Employment Law Practice Group.

[1] The PUMP Act provides for limited exceptions for airline crew members, and rail carrier and motorcoach employees.

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