

LABOR AND EMPLOYMENT NOTES



NEW FLSA BREAK TIME REQUIREMENT

The recent enactment of the Patient Protection and Affordable Care Act, Public Law 111-148 (the "Act"), in late March, 2010, resulted in an amendment of the Fair Labor Standards Act that became effective upon the Act's passage. Section 4207 of the Act amended 29 U.S.C. § 207 to require most FLSA-covered employers to provide "a reasonable break time" and an appropriate place, "other than a bathroom," "for an employee to express milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." The place provided by the employer must be "shielded from view and free from intrusion from coworkers and the public." The new provision expressly provides that the employer need not compensate "an employee receiving reasonable break time . . . for any work time spent for such purpose." The law also provides a special exception for small employers, that is, those with less than 50 employees, who can show "an undue hardship by causing the employer significant difficulty or expense when

considered in relation to the size, financial resources, nature, or structure of the employer's business." 29 U.S.C. § 207(r)(3). The federal provision also provides that it does not preempt state laws with more generous requirements. § 207(r)(4).

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