

An Employer's Obligation to Breastfeeding Mothers

A majority of women return to full-time work during the year after childbirth. In 2010, the federal **Patient Protection and Affordable Care Act** was enacted. It contains a provision that amends the Fair Labor Standards Act (FLSA) and guarantees reasonable break times for breastfeeding mothers to express milk for their infants, as well as access to an employer-provided lactation break room. In 2015, Nebraska amended our state's Fair Employment Practice Act (LB 627) to further protect breastfeeding mothers. The amendment expands the federal protection to include both exempt (salaried) and non-exempt (hourly) workers and states that "reasonable accommodations" include "break time and appropriate facilities for breastfeeding or expressing breast milk." In addition, breastfeeding mothers are now a protected class similar to race and disability.



Infant nutrition has been identified by the US Surgeon General as a major factor in the health of our country. Wide spread efforts are in place to support mothers to breastfeed as a means of reducing acute and chronic illnesses and health care costs. **The most recent meta-analysis by the US Agency for Healthcare Research and Quality** (April 2007) reviewed 9,000 studies related to the impact of what infants are fed. Their conclusion is that feeding human babies human milk (instead of formula) results in:

- a 4 times lower risk of SIDS,
- a decreased risk of type I and type II diabetes, asthma, diarrhea, eczema, ear infections, childhood leukemia, hospitalizations for lower respiratory infections, necrotizing enterocolitis (in pre-term infants), and,
- a **lifetime** protection against obesity.

According to the Surgeon General's Vision for a Healthy and Fit Nation (US Department of Health and Human Services, 2010), **breastfeeding is the first intervention in preventing obesity**, which is epidemic in Nebraska. A July 2009 report published by Trust for America's Health reports that **31.5% of Nebraska children are obese or overweight**. Childhood obesity is considered to be one of the most significant factors contributing to the future growth of health care costs.

Must an employer provide a breastfeeding mother with a break to express milk?

Yes. The federal Fair Labor Standards Act (FLSA) and the Nebraska Fair Employment Practice Act (FEPA) both require employers to furnish "reasonable" breaks for mothers to express milk for their infants. The FLSA protects mothers of infants up to **one year of age**.

How many breaks will a mother need?

The law does not specify how many breaks, but does require employers to provide breaks each time the employee has the need to express milk. Frequency can vary depending upon baby's age and a mother's milk supply. Generally a mother needs to express milk every 2-4 hours.

How long will a break last?

The federal law does not specify an amount of time as there are a number of individual factors, including where the break will take place and whether a mother has to set up her own pump, or if one is provided for her. On average, an employee will need between 15 and 20 minutes for a break.

Where are breaks taken?

Federal law requires an employer to provide a place “shielded from view and free from intrusion from co-workers and the public.” Where practical, the law requires a separate room, however, if this is not possible, a non-permanent space can be created so long as it is private. The break room CANNOT be a bathroom.

Must an employer compensate an employee for these breaks?

No. An employer need not compensate break time for expressing milk, however, employers must continue to compensate employees for their FLSA mandatory break. If a breastfeeding mom’s nursing break exceeds the authorized paid break time, that excess time may be uncompensated. It should be remembered that if the employee is not completely relieved from work during her “pumping” break, the time must be compensated.

Must all employers provide breaks?

An employer is exempt from the FLSA if it has less than 2 employees, an annual dollar volume of sales or business of less than \$500,000, and is not involved in any interstate commerce. Further, the FLSA states that all employers with more than 50 employees must provide breaks and break rooms. Employers with less than 50 employees are not subject to the requirement if the employer can show that the requirements would impose an “undue hardship”.

Generally, most employers with 15 or more employees, state and local governments, and labor organizations must comply with the Nebraska FEPA.

What is involved in setting up a lactation pumping room?

An ideal room would contain a sink, small refrigerator, comfortable chair, a small side table, an electrical outlet and a hospital grade (multi-user) breast pump. Minimally, a pump room would be a private space with a chair, table and an electrical outlet.

Where may an employer obtain more information?

- For general information on breastfeeding and support services for mothers who are returning to work while breastfeeding, please contact MilkWorks in Lincoln (402-423-6402) or MilkWorks O in Omaha (402-502-0617) or visit their web site www.milkworks.org
- US Department of Health & Human Services www.womenshealth.gov/breastfeeding
- US Department of Labor www.dol.gov/whd/regs/compliance/whdfs73.htm
- <https://dol.nebraska.gov/webdocs/Resources/Items/BFeeding%20Worksite%20Flier.pdf>

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