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LABOR & EMPLOYMENT DEPARTMENT

ALERT

NEW WORKPLACE RIGHTS FOR BREASTFEEDING MOTHERS

By Howard R. Flaxman

On March 30, 2010, President Obama signed the Patient Protection and Affordable Care Act. The Act is comprehensive and includes many provisions that are unrelated to health care reform. Among its many provisions, the Act amends Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C.A. § 207) (FLSA) to now require an employer to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has the need to express milk. The employer is not required to compensate an employee receiving reasonable break time for any work time spent for such purpose. The employer must also provide a place, other than a bathroom, for the employee to express breast milk. If these requirements impose undue hardship, an employer that employs less than 50 employees is not subject to these requirements.

It should be noted that the new law does not appear to apply to employees who are exempt from the

maximum hours requirements of the FLSA. The new Act amends Section 7 of the FLSA. The exemptions to the FLSA appear in Section 13, which exempts certain employees from many of the requirements of the FLSA including those imposed by Section 7. It appears that groups traditionally considered "exempt employees" (including those employed in bona fide executive, administrative or professional capacities) will not be protected by the new law.

Currently, many states, including California, Connecticut and New York, have similar protective laws. The requirements of this new federal law do not preempt a state law that provides greater protections to employees.

The new law does not specify an effective date.

For more information regarding this Alert, please contact Howard R. Flaxman at 215.299.2068 or hflaxman@foxrothschild.com or any member of the Labor & Employment Department.



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