

## Breastfeeding in Wisconsin and in the Workplace

By Jessica E. Schwie

Two new regulations have been enacted which offer new protections to working mothers and to mothers who breastfeed in public. First, on March 11, 2010, Wisconsin enacted a statute penalizing any individual who interferes with a mother breastfeeding in any public or private location where she is authorized to be. See 2009 Wis. Act 148 (2010); Wis. Stat. § 253.16. About one week later, federal employment laws were amended to require employers with more than 50 employees to provide reasonable break time to breastfeeding employees, in order to express milk, for a period of one year after the child's birth. See <http://www.ncsl.org/documents/health/HR3590Final.pdf>. p. 459-460 for the text of the new law.

**Q:** What has changed for Wisconsin employers?

**A:** Employers must allow breastfeeding mothers reasonable breaks in order to express milk and must provide a private room in which to do so. The room provided must be other than a bathroom and the room must be "free from intrusion" (i.e. have a lock on the door). Employers, however, are not required to pay for the break time.

**Q:** How many breaks must be given and for what length of time?

**A:** There is no law that defines what is "reasonable" break time (i.e. the number of breaks and length of time to be allotted). Wisconsin's Department of Health and Family Services suggests breaks at the rate of three times per eight hour shift, 20 minutes per break,

spread amongst the day, e.g. mid-morning, lunchtime, and mid-afternoon. See <http://dhs.wi.gov/health/Nutrition/Breastfeeding/BFFriendlyComm/BFSupportintheWorkplace.pdf>. The upshot is that the employer should engage the working mother in a conversation about what she needs and what the workplace can accommodate.

**Q:** I am a midsize employer. Are there any exceptions?

**A:** Accommodation is not required *if* the employer can establish undue hardship. Factors include: number of employees, financial resources, and nature and structure of the business. The United States Breastfeeding Committee has materials available to assist employers. See <http://www.usbreastfeeding.org/Workplace/WorkplaceSupport/tabid/105/Default.aspx>. As a general rule, some type of accommodation should be made. Therefore, before any request is denied, an employer should consult with an attorney.

If you have any employment questions, please contact us.



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