

## Breastfeeding in the Minnesota Workplace

By Jessica E. Schwie

For years, Minnesota has been in the nationwide forefront in terms of offering protections to working mothers who breastfeed. Now federal regulations have also been adopted. On March 23, 2010, the Fair Labor Standards Act was amended to require employers to provide reasonable breaks 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. Employers are not required to compensate employees for the break time, but must provide a private place other than a bathroom.

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

**A:** Not much. Minnesota's law, which is found at Minn. Stat. § 181.939, has a broader reach in that it applies to nearly every employer in Minnesota (those employing more than one person). Therefore, Minnesota employers must continue to allow breastfeeding mothers reasonable breaks in order to express milk and must provide a private room in which to do so. The difference is that now employers must afford a private room other than a bathroom and the room must be "free from intrusion" (i.e. have a lock on the door).

**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). Further, the various Minnesota state departments regulating employers have not adopted any guidelines. For a mother working full-time, Washington County suggests that the working mother express milk every 3-4 hours while at work. See [http://www.co.washington.mn.us/info\\_for\\_residents/public\\_health/family\\_health/breastfeeding/](http://www.co.washington.mn.us/info_for_residents/public_health/family_health/breastfeeding/). The same is suggested by the United States Breastfeeding Committee. See <http://usbreastfeeding.org/Portals/0/>

[Publications/Workplace-2002-USBC.pdf](#). However, others suggest breaks at the rate of three times per eight-hour shift, 20 minutes per break, and allowing the breaks to be spread amongst the day, e.g. mid-morning, lunchtime, and mid-afternoon. See <http://dhs.wi.gov/health/Nutrition/Breastfeeding/BFFriendlyComm/BFSupportintheWorkplace.pdf> and <http://www.lli.org/FAQ/pumpfreq.html>. 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 small employer. Are there any exceptions?

**A:** Yes. Under both state and federal law, accommodation is not required *if* the employer can establish that the requested accommodation poses an undue hardship to the employer. Factors to be considered include: the number of employees, financial resources, nature and structure of the business, and the request made by the employee. The United States Breastfeeding Committee has materials available to assist employers in making the undue hardship determination and the development of policies in the workplace. 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 questions regarding this new law and its application in your workplace or if you have other employment questions, please contact us.



Jessica Schwie provides litigation and day-to-day advice to employers. After majoring and working in management, she graduated from Hamline University School of Law. She joined JLO after clerking for Minnesota Court of Appeals' Chief Judge Edward Toussaint, and has been recently named by *Minnesota Lawyer* as an Up & Coming Attorney.