

labor and employment litigation

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New Law Requires Breaks for Nursing Mothers

On August 15, 2007, Governor Spitzer signed a bill that amended the New York Labor Law to provide additional rights to nursing mothers who return to work and who wish to continue to pump breast milk. The law requires that an employer allow a new mother to take unpaid breaks or to use paid break time to pump breast milk, for up to three years following the birth of a child. The law also requires the employer to take reasonable steps to provide a private area for the mother to express milk. The bill was passed unanimously by the Assembly and the Senate, and took effect immediately upon the signing by the Governor.

The new law, entitled the "Right of Nursing Mothers to Express Breast Milk," provides:

An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following the child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

Labor Law § 206-c.

The bill was introduced by an Assemblywoman in direct response to a situation in which a mother in her district was terminated for taking time to pump at work and was not able to find any protection under the then-current laws. This new law not only adds a cause of action for any working mother who thinks that her employer is not making efforts to allow her to continue to provide breast milk for her child, but it also places new affirmative obligations upon employers.

The law does not provide guidance on what constitutes a "reasonable effort" to provide a private room close to the work area. Reasonable efforts will likely vary depending on the type of working environment (e.g., office, factory, etc.). If the reasonableness test is interpreted in a manner that is similar to other laws requiring an accommodation, then a failure by an employer to engage in an interactive process with an employee could lead to legal liability.

For more information, contact any member of the Labor and Employment Group.

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