

Congress Enacts New Protections for Nursing Employees

Labor & Employment Workforce Watch

WRITTEN BY

[Akilah F. Craig](#)

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On December 29, 2022, President Biden signed the Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”), which was included within the Omnibus Appropriations Bill for fiscal year 2023. Enforcement began on April 28, 2023.

Prior to the passage of the PUMP Act, the Affordable Care Act required certain employers to provide to non-exempt employees who are nursing reasonable break times and a private location to express breast milk. The PUMP Act amends the Fair Labor Standards Act and extends these protections to all employees covered by the FLSA, regardless of their exempt or non-exempt status.

Under the PUMP Act, employers are required to provide employees with reasonable break time to express breast milk for up to one year following the birth of the child each time such a break is needed. Employers are also required to provide a private place, other than a bathroom, that is shielded from view and protected from intrusion for employees to express breast milk. Breaks are not required to be compensated, unless the employee is not completely relieved of all duties during the entirety of the break. Importantly, however, the PUMP Act does not preempt state law—if state law provides for compensated breaks, or allows breaks beyond the one year mark, the state law protections would apply.

Small employers with fewer than 50 employees may be exempt from coverage if they can establish that complying with the requirements of the PUMP Act would cause an undue hardship. The Department of Labor issued [guidance](#) on the requirements of the PUMP Act, including how an employer may be able to meet the “undue hardship” standard. The guidance indicated that factors to be considered include the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer’s business. Additionally, coverage for certain employees of rail carriers and motorcoach service operators will not begin until December 29, 2025; however, employers in these industries may be exempt from coverage if the requirements will require the employer to incur a significant expense or result in unsafe conditions. Airline crewmembers are exempt from coverage.

An employee may bring an action against an employer to enforce their rights under the PUMP Act but must first provide the employer with ten days’ notice and an opportunity to cure. However, notice is not required if the employer has indicated that it does not intend to provide the required nursing space or has discharged the

employee for either requesting a nursing break or space or opposing the employer's conduct regarding same. Damages for PUMP Act violations include unpaid wages, unpaid overtime compensation, liquidated damages, and attorney's fees, as well as equitable relief such as reinstatement or injunction.

Employers should review their break and lactation policies to ensure compliance with the PUMP Act and any applicable state laws. Additionally, employers should proactively assess their workspaces and facilities to identify the location for lactation breaks before an employee's need for such space arises.

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