

# KNOW YOUR RIGHTS



## WOMEN'S BUREAU

Advocating for working women

since 1920



WAGE AND HOUR DIVISION

# Know Your Rights: Nursing Workers & FMLA

Wednesday, August 31, 2022  
12:00 – 1:00 pm PT

Hosted By:

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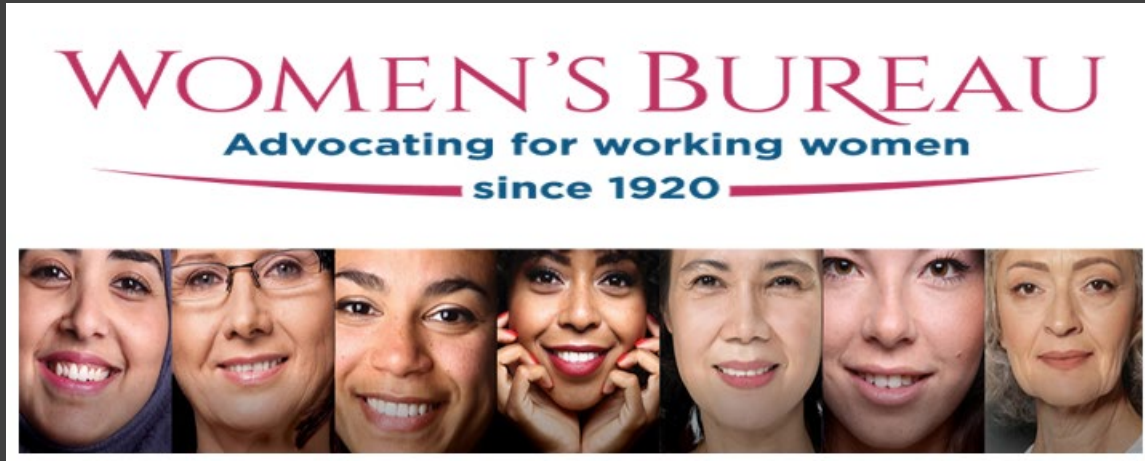
Rogelio Colón  
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U.S. Department of Labor – Wage and Hour  
Division

# Today's Agenda

- The Women's Bureau, Who We Are and What We Do
- New Information for Nursing and Pregnant Workers
- EEOC Discusses Nursing Workers in the Workplace
- WHD Reviews Breaks for Nursing Workers and FMLA
- Questions





## Mission

The Women's Bureau's mission is to develop policies and standards and conduct inquiries to safeguard the interests of working women; advocate for their equality and economic security for themselves and their families; and promote quality work environments.

# The Women's Bureau Priorities



Closing the gender and racial wage gap by disrupting occupational segregation and creating pathways for women to higher paying and nontraditional jobs, and raising wages in jobs where women are concentrated, including care jobs.



Eliminating the penalty women face as primary providers of unpaid care in their households, by building a care infrastructure that includes access to paid leave, child and elder care.

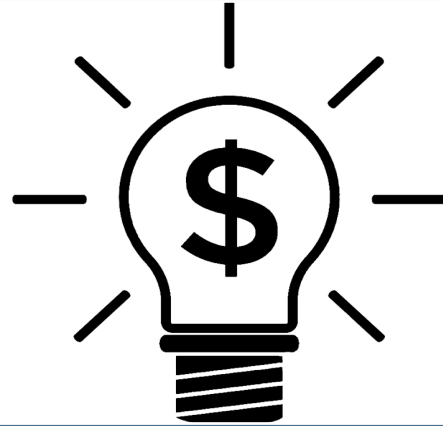


Addressing discrimination in the workplace based on gender, race, ethnicity, sexual orientation, gender identity, pregnancy or disability.

# The Women's Bureau Work in Action



Research  
and Policy  
Analysis



Grants



Stakeholder  
Engagements

# Our Grant Programs



Fostering Access,  
Rights, and  
Education (FARE)



Women in  
Apprenticeship and  
Non-traditional  
Occupations (WANTO)



# Bearing the Cost (Report): How Overrepresentation in Undervalued Jobs Disadvantaged Women During the Pandemic

- The COVID-19 Pandemic's Disproportionate Impact on Women
- Why the COVID-19 Pandemic More Severely Impacted Working Women
- The Causes of Occupational Segregation
- The Consequences of Occupational Segregation
- Earnings Facts
  - Black women lost \$39.3 billion, and Hispanic women lost \$46.7 billion, in wages compared to White men.

BEARING  
THE **COST**

## Addressing occupational segregation means:

- Supporting women entering male-dominated jobs
- Improving the quality of women-dominated jobs
- Ensuring all jobs emphasize equity



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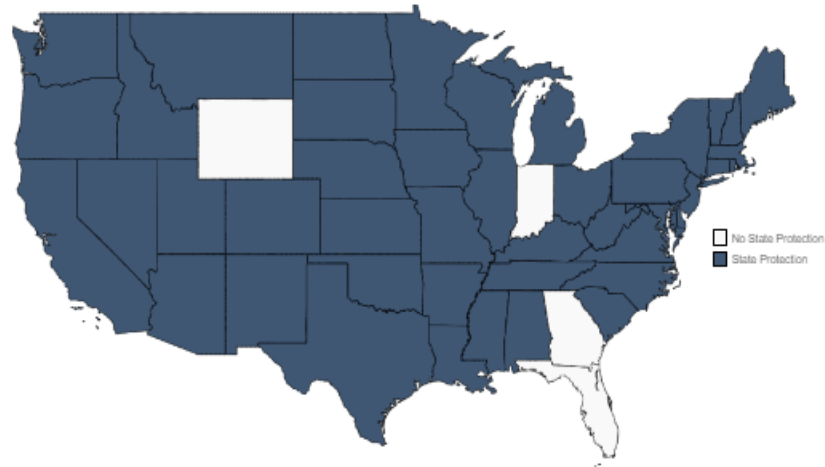
# Employment Protections for Workers Who Are Pregnant or Nursing

This map provides information on federal and state-level employment protections against pregnancy discrimination, provisions for pregnancy accommodation, and workplace breastfeeding rights. Information on American Samoa, Guam, the U.S. Virgin Islands, and federal provisions are listed in an accompanying table at the link below the map.

## Employment Protections for Workers Who Are Pregnant or Nursing

Hover over the map for information on available state protections.

- ☐ Protection against pregnancy discrimination
- ☒ Provisions for pregnancy accommodation
- ☐ Workplace breast feeding rights



Alaska

Hawaii

DC

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[View text version of the map data](#)

# Women's Bureau Data: Employment Protections for Workers Who Are Pregnant or Nursing



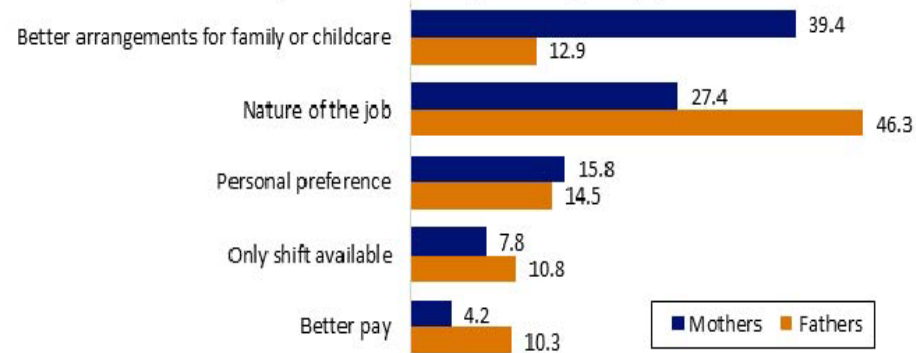


# Women's Bureau Blogs

## Working Moms Need Access to Leave and Job Flexibility

### Biggest share of moms working a non-day shift, did so to help with family and childcare

Top reasons for working a non-day shift (%)



Notes: Based on working civilian, non-institutionalized parents ages 16 and older with at least one child younger than 18 at home.

Data: Bureau of Labor Statistics, American Time Use Survey Leave Module 2017-2018

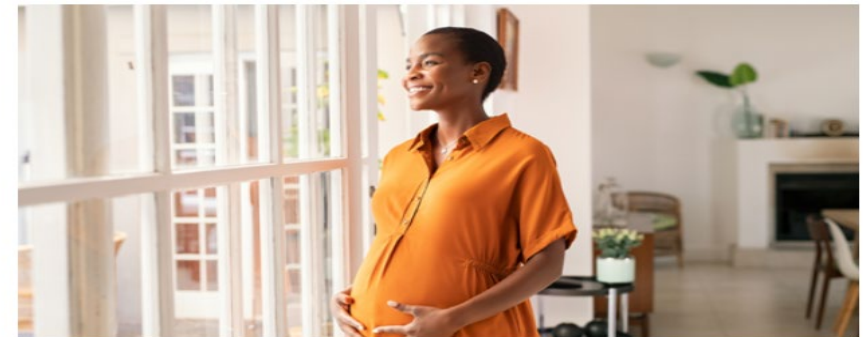
Graphic: U.S. Department of Labor, Women's Bureau



## What to Expect from Your Employer When You're Expecting: Maternal Health Series Offers New and Expectant Moms Vital Information

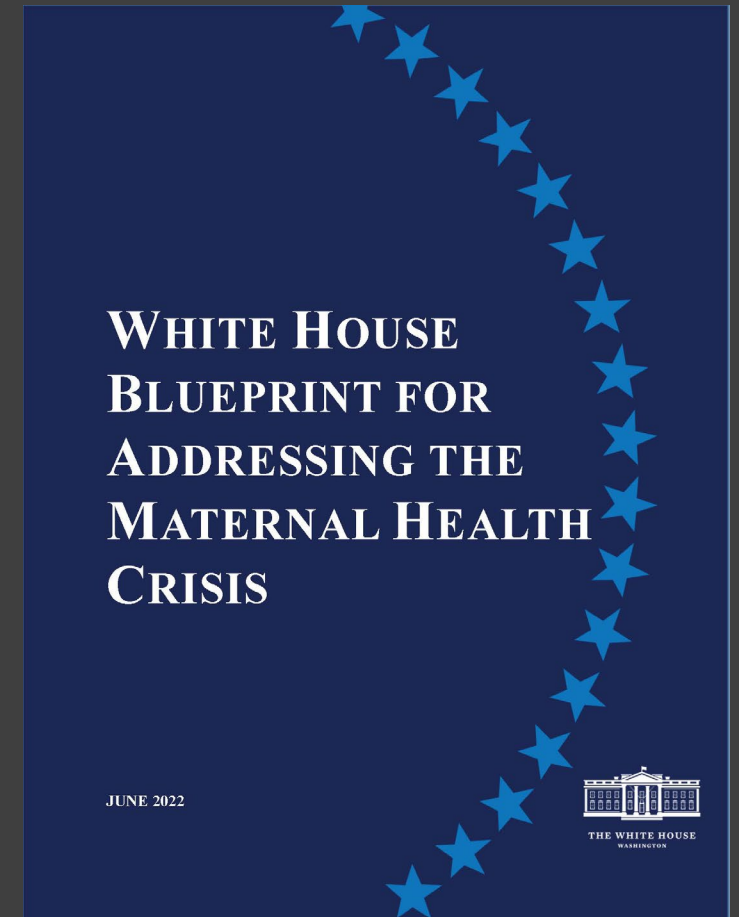
### What to Expect from Your Employer When You're Expecting: Maternal Health Series Offers New and Expectant Moms Vital Information

Filed in Women, Wage and Hour Issues • By: [Jessica Looman](#), [Wendy Chun-Hoon](#) • August 9, 2022



# Addressing the Maternal Health Crisis

- Goal 5: Strengthen Economic and Social Supports for People Before, During, and After Pregnancy
  - 5.3 – Increase awareness of workplace benefits and protections.
    - Many pregnant and postpartum workers are unaware of the protections and benefits they are entitled to in the workplace.
      - FMLA coverage
      - Federal anti-discrimination laws



# The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment

**Protect students and employees who are pregnant or have pregnancy-related conditions.**

- The proposed regulations would update existing protections for students, applicants, and employees against discrimination because of pregnancy or related conditions.
- The proposed regulations would strengthen requirements that schools provide reasonable modifications for pregnant students, reasonable break time for pregnant employees, and lactation space.



# NURSING MOTHERS

## WORKPLACE PROTECTIONS

### What rights do I have to take breaks to pump at work?

The Fair Labor Standards Act (FLSA) requires employers to provide eligible employees with **reasonable break time to pump** breast milk for her nursing child for one year after the child's birth. Under the law, employers are required to allow eligible employees reasonable break time to pump whenever needed. Employers are also required to provide eligible employees with a private place to pump—space that is shielded from view, free from intrusion, and NOT in a bathroom.

**However, the FLSA break time requirements apply only to certain employees.**

### How do I know if I'm eligible to take breaks to pump at work?

The FLSA break time requirements apply only to employees who are eligible for **overtime pay**.

For example, **some salaried managers and office workers, school teachers, over-the-road truckers and helpers, airline employees, and farmworkers** may not be eligible.

Talk to your employer to find out if you are among the workers eligible for break time to pump at work.

If employees are not eligible to take breaks to pump under the FLSA, they may be able to take breaks under state laws providing protections to nursing mothers.

**Even if an employee is not eligible to take breaks to pump at work, an employer cannot retaliate against an employee for asking about their rights.**

### Where can I learn more?

If you need help determining whether you have the right to take breaks to pump at work, **contact the U.S. Department of Labor's Wage and Hour Division (WHD)** for more information.

**To contact your local WHD office call the WHD toll-free information and helpline at 1-866-4USWAGE (1-866-487-9243).**



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UNITED STATES DEPARTMENT OF LABOR



# New Factsheet: Nursing Mothers, Workplace Protections



# Madres que están lactancia maternal

## PROTECCIONES LABORALES

### ¿Qué derechos tengo para tomar descansos para extraer leche materna en el trabajo?

La Ley de Normas Justas de Trabajo (FLSA, por sus siglas en inglés) requiere que los empleadores le provean a las empleadas elegibles **un tiempo de descanso razonable para extraer leche materna** durante un año después del nacimiento de su hijo(a). Según la ley, los empleadores están obligados a permitir que las empleadas elegibles tengan un tiempo de descanso razonable para extraer la leche materna cada vez que sea necesario. Los empleadores también están obligados a proveer a las empleadas elegibles un lugar privado para extraer la leche, un espacio que esté protegido de la vista al público, libre de intrusiones y NO en un baño.

**Sin embargo, los requisitos de tiempo de descanso de la FLSA aplican solo a ciertas empleadas.**

### ¿Cómo sé si soy elegible para tomar descansos para extraer la leche materna en el trabajo?

Los requisitos de tiempo de descanso de la FLSA aplican solo a las empleadas que son elegibles para el **pago de sobretiempo**.

Por ejemplo, algunas **gerentes asalariadas y trabajadoras de oficina, maestras de escuelas, camioneras y ayudantes, empleadas de aerolíneas, y trabajadoras agrícolas** pueden ser no elegibles.

Hable con su empleador(a) para verificar si se encuentra entre las trabajadoras elegibles para el tiempo de descanso para extraer la leche materna en el trabajo.

Si las empleadas no son elegibles para tomar descanso para extraer la leche materna en el trabajo bajo la FLSA, es posible que puedan tomar descanso bajo las leyes estatales que brindan protecciones a las madres lactantes.

**Incluso si una empleada no es elegible para tomar descansos para extraer la leche materna en el trabajo, un empleador(a) no puede tomar represalias contra una empleada por preguntar sobre sus derechos.**

### ¿Dónde puedo aprender más?

Si necesita ayuda para determinar si tiene derecho a tomar descansos para extraer leche materna en el trabajo, **comuníquese con la División de Horas y Salarios (WHD) del Departamento de Trabajo de EE.UU.** para obtener más información.

**Para comunicarse con su oficina local de WHD, llame a la línea gratuita de información y ayuda de WHD al 1-866-4USWAGE (1-866-487-9243).**



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# New Factsheet: Nursing Mothers, Workplace Protections (Spanish)





# Where to Find Our Work



Data &  
Statistics



Newsletters



Events  
Calendar





# Know Your Rights: Nursing Persons in the Workplace

*ROGELIO A COLÓN*

*OUTREACH & EDUCATION  
COORDINATOR*

*LAS VEGAS LOCAL OFFICE*

*LOS ANGELES DISTRICT*

# Equal Employment Opportunity Commission ("EEOC")

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**The EEOC's Vision is:**

*Respectful and inclusive workplaces with equal employment opportunity for all.*

**The EEOC's Mission is to:**

*Prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.*





# Laws Enforced by EEOC

Title VII of the Civil Rights Act of 1964 (Title VII)

Equal Pay Act of 1963 (EPA)

Age Discrimination in Employment Act of 1967

Rehabilitation Act of 1973

Title I of the Civil Rights Act of 1991

Americans with Disabilities Act of 1990 (ADA)

ADA Amendments Act of 2008

Genetic Information Non-Discrimination Act of 2008 (GINA)

# **PREGNANCY DISCRIMINATION ACT (“PDA”)**

- Enacted in 1978 by U.S. Congress.
- Discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964.
- Congress sought to make clear that “pregnant women who are able to work must be permitted to work on the same conditions as other employees; and when they are not able to work for medical reasons, they must be accorded the same rights, leave privileges and other benefits, as other workers who are disabled from working.”



# **Fundamental PDA Requirements**

**An employer may not discriminate against an employee on the basis of pregnancy, childbirth, or related medical conditions; and**

**Women affected by pregnancy, childbirth, or related medical conditions must be treated the same as other persons not so affected but similar in their ability or inability to work.**



# Extent of PDA Coverage

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**Current Pregnancy**

**Past Pregnancy**

**Potential or  
Intended  
Pregnancy**

**Medical  
Conditions Related  
to Pregnancy or  
Childbirth**





# Medical Conditions Related to Pregnancy or Childbirth

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## In General

**Title VII prohibits discrimination based on pregnancy, childbirth, or a related medical condition. Thus, an employer may not discriminate against an employee with a medical condition relating to pregnancy or childbirth and must treat them the same as others who are similar in their ability or inability to work but are not affected by pregnancy, childbirth, or related medical conditions.**

**Title VII also requires that an employer provide the same benefits for pregnancy-related medical conditions as it provides for other medical conditions. Courts have held that Title VII's prohibition of discrimination based on sex and pregnancy does not apply to employment decisions based on costs associated with the medical care of employees' offspring.**

# **Discrimination Based On Lactation and Breastfeeding**

- **There are various circumstances in which discrimination against a an employee who is lactating or breastfeeding can implicate Title VII.**
- **Lactation, the postpartum production of milk, is a physiological process triggered by hormones. Because it is a pregnancy-related medical condition, less favorable treatment of a lactating employee may raise an inference of unlawful discrimination.**

# **Discrimination Based On Lactation and Breastfeeding (cont.)**

- **To continue producing an adequate milk supply and to avoid painful complications with delays in expressing milk, a nursing person will typically need to breastfeed or express breast milk two or three times over the duration of a typical eight-hour workday.**
- **An employee must have the same freedom to address such lactation-related needs that they and other co-workers would have to address other similarly limiting conditions.**

# **Discrimination Based On Lactation and Breastfeeding (cont.)**

- **Because only individuals secreting specific hormones lactate, a practice that singles out lactation or breastfeeding for less favorable treatment is facially sex-based.**
- **For example, it would violate Title VII for an employer to freely permit employees to use break time for personal reasons except to express breast milk.**



# General Best Practices

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01

Develop, disseminate, and enforce a strong policy based on the requirements of the PDA, ADA, & Title VII

02

Train managers and employees regularly about their rights and responsibilities related to pregnancy, childbirth, and related medical conditions.

03

Conduct employee surveys and review employment policies and practices regularly

04

Respond to pregnancy discrimination complaints effectively and efficiently.

05

Protect applicant and employees from retaliation.

# Contact Information & Resources

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**U.S. Equal Employment Opportunity Commission**

**Toll-free: 1-800-669-4000**

**TTY: 1-800-669-6820**

**Training/Questions?**

**Rogelio A Colón**

**[rogelio.colon@eeoc.gov](mailto:rogelio.colon@eeoc.gov)**

**[www.eeoc.gov](http://www.eeoc.gov)**





THE FAMILY MEDICAL LEAVE  
ACT  
and  
BREAK TIME  
FOR NURSING MOTHERS  
UNDER THE FAIR LABOR STANDARDS  
ACT



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/agencies/whd](https://dol.gov/agencies/whd)  
1-866-487-9243

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# Introduction to the FMLA

## Purpose:

- Balance work and family life
- Promote economic security of families and serve national interest in preserving family integrity

## Shared Responsibilities:

- Communication is key



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# Employer Coverage

- Private sector employers with 50 or more employees
- Public Agencies
- Public and private elementary and secondary schools



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# Employee Eligibility

- Employed by covered employer
- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins
- Employed at a work site with 50 employees within 75 miles



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# Qualifying Leave Reasons

- **Eligible employees may take FMLA leave:**
  - For the birth or placement of a child for adoption or foster care
  - To care for a spouse, son, daughter, or parent with a serious health condition
  - For their own serious health condition
- Because of a qualifying reason arising out of the covered active duty status of a military member who is the employee's spouse, son, daughter, or parent (**qualifying exigency leave**)
- To care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (**military caregiver leave**)

**Military  
Family  
Leave**



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## Qualifying Leave Reasons – For the Birth or Placement of a Child

- Both the mother and father are entitled to FMLA leave for the birth or placement of the child and/or to be with the healthy child after the birth or placement (bonding time)
- Employees may take FMLA leave before the actual birth, placement or adoption
- Leave must be completed by the end of the 12-month period beginning on the date of the birth or placement



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# Employer Responsibilities

- Provide notice
- Maintain group health insurance
- Restore the employee to same or equivalent job and benefits
- Maintain records



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# Prohibited Employment Actions

- Employers cannot:
  - interfere with, restrain or deny employees' FMLA rights
  - discriminate or retaliate against an employee for having exercised FMLA rights
  - discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
  - use the taking of FMLA leave as a negative factor in employment actions



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# BREAK TIME FOR NURSING MOTHERS

Section 7 of the FLSA was amended by the Affordable Care Act to provide nursing employees with:

- Reasonable break time to express breast milk
- A place, other than a bathroom, that may be used to express milk
- For up to 1 year after the child's birth



Effective March 23, 2010



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# ELIGIBLE EMPLOYEES



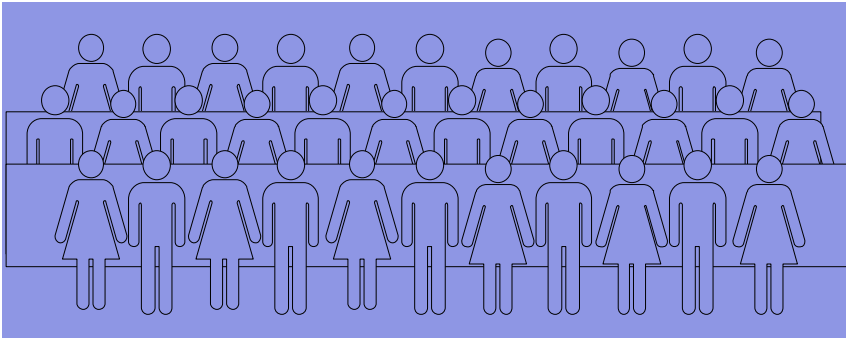
- Employees who work for a covered employer
- Employees who are covered on an individual basis
- Employees who are covered by Section 7 of the FLSA (generally, employees entitled to overtime pay)



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# EMPLOYER COVERAGE



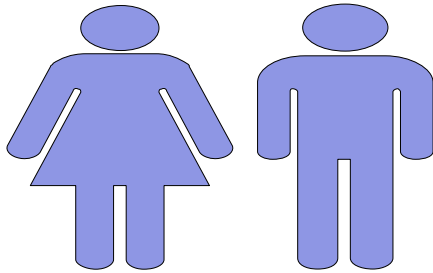
- Enterprise coverage:
  - At least two (2) employees
  - At least \$500,000 a year in business
- If an employer is covered, all the employees of the employer are entitled to FLSA protections, unless the employee falls within one of the FLSA's exemptions



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# INDIVIDUAL COVERAGE



Even if the employer is not a covered enterprise, individual employees may be covered and entitled to FLSA protections if they are engaged in interstate commerce

Activities that constitute engaging in interstate commerce may include making telephone calls to other states; typing letters to send to other states; processing credit card transactions; or traveling to other states



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# EXEMPTIONS FROM BREAK TIME FOR NURSING MOTHERS REQUIREMENTS



The most common of the overtime pay exemptions that apply to the nursing mothers break time requirement is the “white collar” exemption, which applies to certain:

- Executive Employees
- Administrative Employees
- Professional Employees



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# REASONABLE BREAK TIME



Section 7(r) of the FLSA  
requires employers to  
provide:

“Reasonable break time”

“Each time such employee has need to  
express the milk”

For one year after the child’s birth



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# COMPENSATION FOR BREAK TIME



- Employers are not required to provide compensated break time.
- As with other breaks under the FLSA, the employee must be completely relieved from duty, or the break time must be compensated as work time
- If an employer already provides paid break time and if an employee chooses to use that time to express breast milk, she must be compensated for that time just as other employees would be compensated for break time



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# SPACE REQUIREMENTS



An employer shall provide:

- A place, other than a bathroom
- Shielded from view
- Free from intrusion from coworkers and the public
- That may be used by an employee to express breast milk

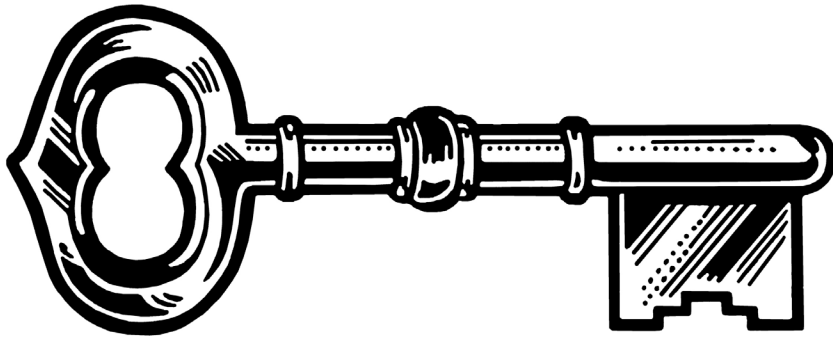
An employer may temporarily designate a space or make a space available when needed by the employee; the location must be functional as a space for expressing milk



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# ADDITIONAL ISSUES TO CONSIDER



- Securing space from intrusion
- Space adjacent to restrooms
- Dual use rooms
- Storage of milk and pumps
- Notice



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# UNDUE HARDSHIP DEFENSE

- An employer that employs fewer than 50 employees is not required to provide break time and **space if it would pose an undue hardship**
- Number of employees is determined by counting employees at all worksites, regardless of location or part-time status
- Undue hardship is defined as “causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business”



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# INTERACTION WITH STATE LAWS

- The federal provision explicitly states that it does not preempt a state law that provides “greater protections” to employees than those provided by the federal law.
- Over 20 states have laws related to breastfeeding or expressing milk in the workplace



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# ENFORCEMENT POLICY



- If employee is discharged or in any manner discriminated against because she has filed a complaint, the employee may file a retaliation complaint with the Department or may file a private action under the FLSA for retaliation seeking reinstatement, lost wages, and other appropriate remedies
- If employer does not comply, the Department could file suit to seek injunctive relief under the FLSA, including reinstatement and lost wages if appropriate



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# RESOURCES AND TOOLKITS

National Conference of State Legislatures Compilation of State Breastfeeding Laws:

<https://www.ncsl.org/research/health/breastfeeding-state-laws.aspx>

Surgeon General's Call to Action to Support Breastfeeding:

<https://www.cdc.gov/breastfeeding/resources/calltoaction>

Guide for Establishing a Federal Nursing Mother's Program:

<https://www.opm.gov/policy-data-oversight/worklife/reference-materials/nursing-mother-guide.pdf>



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# ADDITIONAL RESOURCES AND TOOLKITS

Employer Solutions:

<https://www.womenshealth.gov/supporting-nursing-moms-work>

CDC Workplace Lactation Support Program Toolkit:

<https://www.cdc.gov/breastfeeding/index.htm>

EEOC Enforcement Guidance on Disparate Treatment:

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-unlawful-disparate-treatment-workers-caregiving-responsibilities>  
[Disparate Treatment of Workers' Caregiving Responsibilities](#)



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# ADDITIONAL RESOURCES

United States Breastfeeding Committee *(federal and non-federal partners maintains a state directory of organizations):*

<http://www.usbreastfeeding.org/>

International Lactation Consultant Association *(maintains a workplace lactation directory to find local consultants to help set up workplace lactation programs)*

<https://ilca.org/>

*Note: These resources provide general guidance on workplace lactation and do not address the FLSA requirement to provide breaks for nursing mothers. WHD does not endorse these organizations or guarantee the accuracy of the information they provide.*



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1-866-487-9243

# ENFORCEMENT RESOURCES

- The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) administers and enforces the FLSA
- Information on Break Time for Nursing Mothers can be found online at:
- <https://www.dol.gov/agencies/whd/nursing-mothers>

Voice Phone:  
1-866-487-9243

(1-866-4US-WAGE)  
\*TDD Phone:  
1-877-889-5627



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# Questions

# Contact Information

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Women's Bureau

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- <https://www.dol.gov/wb>

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