

Illinois Expands Workplace Protections for Breastfeeding Employees

Law and the Workplace Blog on August 27, 2018

Governor Bruce Rauner has [signed into law a bill](#) that expands protections for employees needing to express breast milk in the workplace. The law amends the preexisting Nursing Mothers in the Workplace Act (the “Act”) in several significant ways—most notably that break time provided for the expression of milk “may not reduce an employee’s compensation” regardless of the length of the break. The amendments took effect immediately upon enactment on August 21, 2018.

The Act previously required employers to provide “reasonable unpaid break time each day” to an employee needing to express milk in the workplace. This meant that, under the prior version of the Act, employees could use existing compensated breaks (generally those of 20 minutes or less, pursuant to the federal Fair Labor Standards Act) for lactation purposes, but any time beyond such already-provided compensated breaks could be unpaid. Under the amendments, the word “unpaid” has been removed and now break time provided for the expression of milk “may not reduce an employee’s compensation,” regardless of the length of the break being taken.

The amendments further revise the Act to state that break time being provided for lactation purposes “may” run concurrently with any break time already provided to the employee, whereas previously the law stated that lactation breaks “must, if possible” run concurrently with other break time. In addition, the amendments now require employers to provide breaks for expression of milk for a minimum of one year after the child’s birth. The original version of the Act did not include a timeframe.

Finally, the amendments modify the circumstances under which employers may be exempted from having to provide lactation breaks. Under the prior version of the Act, employers were not required to provide break time for expression of milk if doing so would “unduly disrupt the employer’s operations”—a phrase that was not defined under the law.

Now, under the amendments, employers are required to provide reasonable break time unless they can demonstrate that doing so would “create an undue hardship,” as defined under the Illinois Human Rights Act. That is, lactation breaks are required unless the employer can satisfy the burden of showing that providing the breaks would be “prohibitively expensive or disruptive” based on the following factors:

- the nature and cost of the accommodation needed;
- the overall financial resources of, and number of people employed at, the facility involved in providing the reasonable accommodation, the effect on expenses and resources, or the impact otherwise of the accommodation upon the operation of the facility;
- the overall financial resources and size of the employer, including the number of employees and the number, type, and location of its facilities; and
- the nature of the operations of the employer, including the composition, structure, and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility in question to the employer.

In light of these changes to the Act, employers with operations in Illinois should review and update their current lactation break policies and procedures to ensure compliance with the new amendments, particularly with regard to compensation of break time.

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