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Lactation Support in the Workplace Required Beginning July 1, 2008

Executive Summary

Beginning July 1, 2008 most Indiana employers will be required to provide their employees who are nursing mothers a private place to express breast milk and a cold place to store it on the employer's premises. This law, Senate Enrolled Act 219, was signed by Governor Daniels on February 28, 2008 and contains slightly different requirements for governmental employers and private employers who have 25 or more employees. Covered employers should plan to meet the requirements of the law by the effective date by assuring that private locations are available, cold storage issues are addressed and break policies are reviewed and revised as necessary.

Reference: Senate Enrolled Act 219:

<http://www.in.gov.legislative/bills/2008/SE/SEO219.1.html>.

Detailed Analysis

Many employers have, for some time, voluntarily allowed nursing mothers breaks and private places in the workplace to express and store breast milk. Now beginning July 1, 2008, most employers in Indiana will be required to make reasonable efforts to accommodate nursing mothers. The provisions of Senate Enrolled Act 219 apply to governmental employers and private employers with 25 or more employees and contain different requirements for each.

Governmental employers

The section that applies to governmental employers adds a new section to the Indiana Code, IC 5-10-6-2, that provides that the state and political subdivisions of the state must provide "reasonable paid break time each day" to an employee who needs to express breast milk for the employee's infant child. The break time must, "if possible," run concurrently with any break time already provided to the employee. The governmental employer need not provide break time under this section if providing break time would "unduly disrupt the operations" of the governmental employer.

The governmental employer must "make reasonable efforts" to provide a room or other location, other than a toilet stall, in close proximity to the work area, where an employee can express the employee's breast milk in privacy. The governmental employer must "make reasonable efforts" to provide a refrigerator or other cold storage space for keeping milk that has been expressed.

The governmental employer will not be liable if it makes a reasonable effort to comply with the requirements of the law.

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Private employers with 25 or more employees

The section that applies to private employers adds a new chapter to the article on wages, hours and benefits of the Indiana Code, IC 22-2-14, entitled "Employee Breaks." This section covers persons or entities that employ 25 or more employees.

Covered employers, "to the extent reasonably possible," must provide a private location, other than a toilet stall, where an employee can express the employee's breast milk in privacy during any period away from the employee's assigned duties.

Further, "to the extent reasonably possible," a covered employer must provide a refrigerator or other cold storage space for keeping milk that has been expressed; or allow the employee to provide the employee's own portable cold storage device for keeping milk that has been expressed until the end of the employee's work day.

The section also provides that, except in cases of willful misconduct, gross negligence or bad faith, a covered employer will not be liable for any harm caused by or arising from either the expressing of an employee's breast milk or the storage of expressed milk that occurs on the covered employer's premises.

Employers should take this opportunity to review existing facilities and to make plans to comply with these new requirements. Policies regarding break time should also be reviewed and revised, if necessary, to address the issue of accommodating nursing mothers' needs in the workplace.

Should you have any questions, please contact your regular Hall Render attorney or Steve Lyman at Hall Render, Killian, Heath & Lyman, P.C. at 317/633-4884.

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