

New York's "Nursing Mothers in the Workplace Act"

September 24, 2007

Last month, New York Governor Eliot Spitzer signed a new law protecting the rights of nursing mothers in the workplace. Signifying the bipartisan support for this measure, the new law, titled the "Nursing Mothers in the Workplace Act" (the Act), was unanimously approved by the New York State Assembly and Senate.

New York joins a group of other states¹ that have passed laws to provide job protections for nursing mothers. The Act requires employers to "provide a reasonable amount of paid or unpaid break time during each work day to permit an employee to express breast milk for her nursing infant for at least two years following child birth." The law further bars employers from discriminating in any way against mothers who choose to express milk in the workplace and requires employers to "provide a private accommodation suitable for the purpose of expressing breast milk, located in close proximity to the work area." This accommodation may not include a bathroom stall or a storage area.

The law does not provide nursing mothers with an absolute right to these protections. If employers can demonstrate that providing nursing mothers with break time would "seriously disrupt the operations of the employer," they will not be required to provide such break time. While the term "seriously disrupt" is not defined, the standard, on its face, appears to be a difficult one for employers to meet.

The law leaves undefined such terms as "reasonable amount" and "close proximity." Furthermore, the law does not address other key issues such as who has standing to bring claims under this Act and what remedies are available to aggrieved employees. As a result, courts will likely be called upon to resolve these issues.

The Act defines an "employer" as "an individual, corporation, partnership, limited liability company, labor organization, unincorporated association or any agency or political subdivision of the state." Therefore, all employers, without regard to size, are encouraged to adjust their employment policies and to make break times and a reasonable accommodation available to nursing mothers.

¹ The following states have enacted laws similar to the Nursing Mothers in the Workplace Act, requiring employers to provide unpaid break time and accommodations to nursing mothers: California, Connecticut, Illinois, Minnesota, New Mexico, Oregon, and Tennessee. Other states have passed laws encouraging employers to provide protections to nursing mothers. Those states include: Georgia, Oklahoma, Rhode Island, Texas, Virginia, Washington, and Wyoming. Additionally, Hawaii and Mississippi have passed laws that bar the employer from prohibiting the employee from expressing milk during any break time required by law and/or provided by the employer.

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