

Labor Department Provides Guidance on FLSA Pump-at-Work Protections for School Employees

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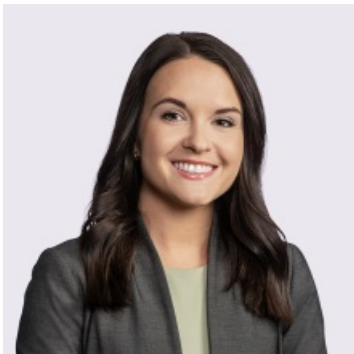
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The U.S. Department of Labor Wage and Hour Division (WHD) is in the process of publishing industry-specific guidance for compliance with the 2022 Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act). In addition to publishing a [Fact Sheet](#) that provides information to employers on protections for nursing employees under the Fair Labor Standards Act (FLSA), the WHD has published guidance for the education industry that includes a [recorded webinar and FAQs](#).

PUMP Act Amended FLSA

On Feb. 27, 2024, the WHD held a webinar that reviewed such protections and exemptions extended by the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), effective as of Dec. 29, 2022.

Prior to Dec. 29, 2022, FLSA provisions providing reasonable break time and access to appropriate space to express breast milk did not apply to employees exempt from overtime or minimum wage under the FLSA. The PUMP Act extends protections to nearly all FLSA-covered nursing employees, including those working at public and private schools and preschools.

PUMP Act Requirements

Under the PUMP Act, nursing employees may take reasonable break time and have access to an appropriate space to express breast milk for a nursing child up to one year after the child's birth.

Time for pump breaks may be unpaid unless otherwise required by federal, state, or local law. When an employee is using break time at work to express breast milk, they must be paid if they are not completely relieved from duty or when pumping during an otherwise paid break. In addition, if an employer provides paid breaks, the employer must also pay employees who choose to pump during their paid breaks.

Covered employees may take reasonable break time each time the employee has a need to express milk.

The location provided for nursing employees must be a place other than a bathroom and must be functional as a space to express breast milk that is shielded from view and free from intrusion from coworkers, students, and the public. A space may be temporarily created or converted into a space for expressing breast milk, as long as it is a functional, private space to express breast milk that is made available when a nursing employee needs it.

In addition, remote workers who telework must be free from observation by any employer-provided or required video system, which includes computer and security cameras and web or video conferencing platforms.

If employees use an empty classroom for a pump break and that classroom has a recording device or security camera, the employer should ensure the employee is shielded from view of the recording device or otherwise allow the nursing employee to block or turn off the recording device during the break.

Additional Considerations for Education Industry Employers

In addition to the PUMP Act requirements, employers in the education industry are required to provide lactation accommodations, absent undue hardship, under the federal Pregnant Workers Fairness Act (PWFA). In the Equal Employment Opportunity Commission's (EEOC's) [proposed regulations](#) to implement the PWFA, lactation (including breastfeeding, pumping, and medical conditions related to lactation) is among the conditions the EEOC says will generally be covered under the PWFA. For all employers, the EEOC views the PUMP Act requirements as potential reasonable accommodations under the PWFA. The EEOC has proposed additional reasonable accommodations related to lactation for employers covered under the PWFA. These include extending the period of time during which the employee will be provided breaks and access to a private space beyond what is required under the PUMP Act and providing a lactation area that is reasonably close to the employee's work area, has appropriate seating and electricity, and is reasonably close to a sink and refrigerator for storing milk. The EEOC is expected to release final regulations soon, which may provide additional clarification for employers.

On Feb. 27, 2024, a federal court in Texas ruled that [Congress improperly passed the Consolidated Appropriations Act of 2023](#), including the PWFA (*State of Texas v. Department of Justice et al.*, No. 5:23-cv-00034 (N.D. Texas 2024)). The [effect of this ruling](#) is that the court permanently enjoined the EEOC and the U.S. Department of Justice from enforcing the PWFA against the State of Texas and its agencies. The scope of the court's injunction is narrow. The EEOC and other federal agencies are enjoined only from enforcing the PWFA against the State of Texas. The injunction does not extend to any private employers or other governmental employers. Others are not prevented from making the same argument, however.

Employers in the education industry should also review and comply with relevant state and local wage and hour laws and pregnancy and lactation accommodation laws.

School-Specific FAQs

The WHD published [FAQs](#) about the PUMP Act's extended protections as of Dec. 29, 2022, that are specific to schools. Under the PUMP Act, an employer may not require that a teacher limit breaks to certain times of the day; however, an employee and employer may agree to a certain schedule based on the nursing employee's need to pump. The FLSA's prohibition on retaliation applies to the PUMP Act, including when employees file complaints pursuant to alleged violations of the law.

Schools and preschools with fewer than 50 employees nationwide are not subject to the break time and space requirements for nursing employees if compliance would impose an undue hardship. Undue hardship is determined by looking at the difficulty or expense of compliance in comparison to the size, financial resources, nature, and structure of the employer's business.

Please contact the Jackson Lewis Education Group with any questions.

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