

South Carolina Enacts Lactation Support Act

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South Carolina Governor Henry McMaster signed into law the [“South Carolina Lactation Support Act,”](#) requiring employers to provide employees reasonable unpaid break time, or paid break time or mealtime, each day to express breast milk.

The Act went into effect on June 25, 2020, and, by July 25, 2020, the South Carolina Human Affairs Commission (SCHAC) must post on its website information to educate employers, employees, and employment agencies about their rights under this Act. Employers then will have 30 days to comply with the Act.

Privacy; Undue Hardship

The Act requires that employers make reasonable efforts to provide a room or other location (other than a toilet stall) in close proximity to the work area for an employee to express milk in privacy.

The Act does not require an employer to provide break time if doing so would create an undue hardship on the operations of the employer.

The Act, however, does not require an employer to *construct* a permanent, dedicated space for expressing milk.

Anti-Discrimination

In accordance with the language in the [South Carolina Pregnancy Accommodation Act](#), the Lactation Support Act makes it unlawful for an employer to discriminate against an employee for choosing to express breast milk in the workplace. As such, an aggrieved employee may file a charge of discrimination with SCHAC in the event any adverse action is taken for requesting or using reasonable unpaid break time, or paid break time or mealtime, to express breast milk. However, an employer will not be held liable if it takes reasonable efforts to comply with the Lactation Support Act.

Comparison with Federal Law

The federal Patient Protection and Affordable Care Act amended the Fair Labor Standards Act (FLSA) to require employers to provide “reasonable break time for an employee to express breast milk for her nursing child for *one year* after the child’s birth.” However, the federal law only requires that employers provide breaks to non-exempt employees, as defined by the FLSA, to express milk; exempt employees are not entitled to such breaks. The South Carolina Lactation Support Act fills the gap between exempt and non-exempt employees, providing protection for all employees who seek to express breast milk while at work.

Next Steps for Employers

South Carolina employers should review their breast-feeding policies to ensure compliance with the new law. Employers should consider updating their policies and employee handbooks and train appropriate personnel (such as supervisors and managers) on how to manage requests. Under the Act, if possible, the break time must run

concurrently with any break time already provided and the employee must make reasonable efforts to minimize disruption to the employer's operations.

We will continue to monitor and report on developments related to the Act. Jackson Lewis attorneys are available to assist employers with questions about the new South Carolina law requirements and provide compliance assistance.

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