

Date: April 18, 2011

Code: TECHNICAL LETTER
HR/Salary 2011-05

To: Human Resources Officers
Associate Vice Presidents/Deans of Faculty
Payroll Managers

Reference: HR 2011-03

From: Evelyn Nazario
Assistant Vice Chancellor
Human Resources Management



Subject: New Break Time Regulation for Nursing Mothers

Overview

Audience: HR professionals responsible for communicating human resources policies and campus designees responsible for monitoring/supervising employee time and attendance requirements

Action Item: Implementation of a new Fair Labor Standards Act (FLSA) break time regulation for nursing mothers

Affected Employee Group(s)/Unit(s): Nursing mothers who express breast milk for their nursing child while at work

Summary

As communicated in [HR Letter 2011-03](#), on March 23, 2010, a new federal statute, the "Patient Protection and Affordable Care Act" (PPACA) was signed into law. One of the requirements in the Act is that employers provide break time to nursing mothers to express milk for their nursing child. This requirement amended Section 7 of the FLSA. Those in the audience listed above should review the remainder of this technical letter for more detailed information.

The purpose of this coded memo is to provide system-wide guidelines for campus administration of break times for nursing mothers who choose to express milk while at work.

Covered Employees

The PPAC Act provides for break times for this purpose for up to one year after the child's birth. Under federal law, the FLSA requirement of break time to express breast milk extends to nursing mothers who are not exempt from Section 7 of the FLSA, e.g., employees classified as "non-exempt."

Break Guidelines

Employers must provide a "reasonable break time" to express milk. The frequency and duration of the breaks will likely vary depending on a number of factors. The time necessary to express milk includes, among other things,

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the time walking to and from the nursing location, retrieving of and setting up a pump or other supplies, washing and cleaning the pump or other supplies and storing milk.

- The location for expressing breast milk must be private. A bathroom, even if private, is not a permissible location under the Act. Anterooms or lounges connected to a bathroom may be permitted provided that the space is shielded from view to satisfy the privacy requirement. The location provided must be functional as a space for expressing breast milk. This should include, at a minimum, a place to sit and a flat surface on which to place a pump. It is recommended that the location to express milk be in close proximity to a sink for washing and an area to store the milk. If the space is not dedicated to the nursing mother's use, it must be available when needed. A space temporarily created or converted into a space for expressing milk, or made available when needed, is sufficient provided that the space is shielded from view and free from intrusion from co-workers and the public. The location must not be so far from the employee's workspace as to make it impractical for the employees to take breaks.
- Department Managers should be reminded to take necessary steps (e.g., revising staff break schedules) to ensure that normal business operations are not seriously disrupted as a result of providing breaks to nursing mothers to express milk.

Compensation for Break Time

Under the FLSA, employers are not required to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, if employees have provisions for compensated breaks, a nursing mother who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In the event that a (non-exempt classified) nursing mother consistently requires additional time for this activity, (e.g., one-half hour each occurrence), whether within or in excess of the number of daily break times provided for by Collective Bargaining Agreement (CBA)/CSU policy, or the frequency of breaks needed to express milk is greater than what the CBA/policy provision provides, the employee may use vacation leave to supplement her time, otherwise, the excess time will be uncompensated and subject to dock. Under the FLSA's general requirement, the employee must be completely relieved from duty, or else the time must be compensated as work time applies.

Exempt-Classified Employees

As noted above, employees exempt from the overtime requirements of the FLSA are not governed by the new PPACA rules. Nevertheless, managers and supervisors are encouraged to provide periods of time for exempt-classified nursing mothers to express milk. It remains that they are expected to accomplish assigned work without regard for the number of hours worked, even if the employee needs to work extra hours in the business day.

Please direct questions regarding this technical letter as follows:

- Collective bargaining aspects Labor Relations at (562)951-4400
- All other questions Human Resources Management at (562)951-4411

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<https://www.calstate.edu/HRAdm/memos.shtml>

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