CLIENT ALERT: Fair Labor Standards Act Amendment Requires Employers to Provide Breaks to Nursing Mothers

Nestled in the recently enacted federal health care reform law is an amendment to the Fair Labor Standards Act ("FLSA") requiring employers to provide breaks for nursing mothers. Specifically, as set forth in Section 4207 of the Patient Protection and Affordable Care Act of 2010, employers must provide a "reasonable break time" for an employee to express breast milk for her nursing child for one year after the child's birth. In addition to providing reasonable breaks, the law requires that employers provide a place "other than a bathroom" that is "shielded from view and free from intrusion from coworkers and the public" where the employee can express breast milk. This law is being considered effective as of the date the new health care legislation was enacted, March 23, 2010.

Employers with fewer than 50 employees are exempted from providing breaks or a place to express breast milk, if the requirements would "impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business."

Notably, the law provides no guidance as to how many breaks or how long such breaks should be. The law also does not require the employer to pay for the breaks for nursing mothers. Note, however, that Department of Labor's regulations otherwise require that short rest breaks (5 to 20 minutes) be compensated.

To date, it is unclear whether or when regulations will issue clarifying some of the questions this amendment poses to employers seeking to comply. In the meantime, employers should note that state laws relating to breastfeeding in the workplace are not preempted by this new amendment; accordingly, employers should continue to comply with such state laws as applicable to their business locations. For example, in Massachusetts, state law was amended last year to make it lawful for a mother to breastfeed her child in any public place or establishment. M.G.L. c. 111, § 221. Additionally, in the

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absence of any regulatory guidance at this point, employers are advised to consult with legal counsel when implementing policies and procedures relative to this new amendment.

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