

## Breaks for Nursing Mothers – Resource Guide

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### **APPLICATION:**

This Resource Guide applies to all nursing employees, including those not covered by the Virginia Personnel Act and those exempt from the FLSA.

### **BACKGROUND:**

The Fair Labor Standards Act (FLSA) was amended by the Patient Protection and Affordable Care Act in March, 2010. The amendment requires employers to provide reasonable break times for an employee to express breast milk for her nursing child for up to one year after the child's birth. Guidance related to this change in law was first published in the [October 2010 Agency Human Resource Services Periodical](#).

On March 8, 2019, the Virginia General Assembly passed HB 1916 to be effective July 1, 2019, directing the Department of Human Resource Management (DHRM) to establish a policy reiterating the requirements of the federal law related to required breaks for nursing mothers. This change is incorporated into Policy 1.25, Hours of Work.

The policy modification supports other family-friendly executive orders and policies in effect and codifies established practices in providing breaks and lactation spaces to nursing mothers (for the purpose of expressing breast milk) in state government agencies. It complements the parental leave policy implemented in June, 2018, in sending the message that the Commonwealth supports employees in their work-life balance needs and recognizes the value of family care-taking for our employees.

### **QUESTIONS AND ANSWERS<sup>1</sup>:**

#### **How often do nursing mothers need breaks to express their milk?**

- The frequency of breaks needed to express breast milk varies depending on factors such as:
  - the age and size of the baby,
  - the number of breast feedings in the baby's normal daily schedule, and
  - whether the baby is eating solid food.
- In the early months of life a baby may need as many as 8 to 12 feedings per day. This means that a nursing baby needs food every two to three hours. A nursing mother produces milk on a constant basis. If the baby does not take the milk directly from the mother, it must be removed by a pump about as frequently as the baby usually nurses.
- If a mother is unable to express breast milk while she is away from her baby, she may experience a drop in her milk supply which could result in her being unable to continue nursing her child. The inability to express milk may also lead to an infection.
- Depending on the nursing mother's work schedule, it may be that the frequency of breaks needed tracks regular breaks and lunch periods, but this will not always be the case. As the child grows and begins to consume solid foods, typically around six months of age, the frequency of nursing often decreases, and the need for a nursing mother to take breaks to express breast milk may also gradually diminish.
- Nursing mothers typically will need breaks to express milk two to three times during an eight hour shift. Longer shifts will require additional breaks to express milk.

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<sup>1</sup> SOURCES: Federal Register  
Dept. of Labor Wage & Hour Division Fact Sheet #73

## Breaks for Nursing Mothers – Resource Guide

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### How long should a break to express breast milk take?

- The length of time necessary to express milk also varies from woman to woman. The act of expressing breast milk alone typically takes about 15 to 20 minutes, but there are many other factors that will determine a reasonable break time.
- Employers should consider these factors when determining how they will provide both reasonable break time and space for nursing mothers. The following factors should be considered:
  - the location of the space and the amenities nearby (e.g., proximity to employee's work area, availability of sink for washing, location of refrigerator or personal storage for the milk, etc.) can affect the length of break an employee will need to express milk.
  - When determining what is a “reasonable” break, consider:
    - (i) The time it takes to walk to and from the lactation space and the wait, if any, to use the space;
    - (ii) Whether the employee has to retrieve her pump and other supplies from another location;
    - (iii) Whether the employee will need to unpack and set up her pump or if the pump is left in the lactation space securely;
    - (iv) The efficiency of the pump used to express milk (employees using different pumps may require more or less time);
    - (v) Whether there is a sink and running water nearby for the employee to use to wash her hands before pumping and to clean the pump attachments when she is done expressing milk, or what additional steps she will need to take to maintain the cleanliness of the pump attachments;
    - (vi) The time it takes for the employee to store her milk either in a refrigerator or personal cooler.

### How can we determine how many breaks are needed and how long these breaks need to be? What is considered “reasonable”?

- Nursing employees are encouraged to discuss with their employers what they expect they will need in terms of frequency and timing of breaks to express milk.
- Employers are encouraged to discuss with nursing employees the location and availability of space for expressing milk as that will affect the time required for the breaks.
- These discussions will help employers and employees to develop shared expectations and an understanding of what will constitute “a reasonable break time” and how to incorporate the breaks into the work period.
- In assessing the reasonableness of break time provided to a nursing employee, the Department of Labor considers all the steps reasonably necessary to express breast milk, not merely the time required to express the milk itself.

### Our agency doesn't have the resources to set up a special room to dedicate to lactation needs. What must we provide?

- The employer is not obligated to maintain a permanent, dedicated space for nursing mothers. A space temporarily created or converted into a space for expressing milk or made available when needed by a nursing mother is sufficient provided that the space is shielded from view, and free from intrusion from coworkers and the public.

## Breaks for Nursing Mothers – Resource Guide

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- Where it is not practicable for an employer to provide a room, the requirement can be met by creating a space with partitions or curtains. Any windows in the designated room or space should be covered to ensure the space is “shielded from view.”
- With any space provided for expressing milk, the employer must ensure the employee's privacy through means such as signs that designate when the space is in use, or a lock on the door.
- While bathrooms provide privacy, they are not considered to be sanitary areas where one can set up equipment and maintain its cleanliness.

### **Are there specific requirements related to the size of the space or furnishings or amenities?**

- A space must contain a place for the nursing mother to sit, and a flat surface, other than the floor, on which to place the pump. Ideally, the space will have access to electricity, so that a nursing mother can plug in an electric pump rather than use a pump with battery power.
- There are a range of additional features that some employers have included when providing spaces for their employees to use to express breast milk, such as sinks within or nearby the room for washing hands and cleaning pump attachments, and refrigerators within or nearby the room for storing expressed milk.
- While such additional features are not required, providing such spaces may decrease the amount of break time needed by nursing employees to express milk.

### **What if there are multiple employees needing to take breaks at the same time?**

- Employers should consider the number of nursing mothers employed and their work schedules to determine the location and number of spaces to designate or create. As described above, the amount of time that is reasonable for a nursing employee to express milk is dependent in part on her ability to access a suitable space.
- In order to accommodate significant numbers of nursing mothers, some large employers may choose to include nursing mothers' rooms in their floor plans and provide a room on multiple floors of their facility or in an on-site health facility.
- Other employers may provide a large room with privacy screens so that the room may be used simultaneously by several nursing employees.
- Where the designated space is so far from the employee's work area as to make it impractical for the employee to take breaks to express milk, or where the number of nursing employees needing to use the space either prevents an employee from taking breaks to express milk or necessitates prolonged waiting time, the Department of Labor will not consider the employer to be in compliance with the requirement to provide reasonable break time.

### **Are we required to provide a refrigerator or other equipment?**

- While employers are not required to provide refrigeration options for nursing mothers for the purpose of storing expressed milk, they must allow a nursing mother to bring a pump and insulated food container to work for expressing and storing the milk and ensure there is a place where she can store the pump and insulated food container while she is at work. (This is similar to providing employees with a place to store lunch or meals that they bring to work in insulated food containers.)
- In many workplaces the nursing mother will be able to keep the pump and insulated container near her work space, but in some settings it may be necessary to have a separate place for her to stow the pump and insulated food container (e.g., a locker, closet, cabinet, or other space where the pump and container will not be disturbed or contaminated).

### **Is the nursing mother who is provided lactation breaks compensated during that time?**

- The cited laws require only that reasonable breaks be permitted and that appropriate space be designated for the expression of breast milk.

## Breaks for Nursing Mothers – Resource Guide

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- Neither federal nor state laws require that an employee be compensated for such breaks unless the breaks coincide with routine break time that is counted as hours worked. If the breaks taken by a nursing mother coincide with other breaks considered to be work hours and last for 20 minutes or less, that time is compensable.
- If an employee must use significant additional time, the employer should permit the employee to adjust her schedule to make up the time, charge appropriate leave time as necessary, or to be docked for that additional time.
- A nursing employee in a wage position (non-exempt) is entitled to such breaks but the breaks are not compensable.