

Legislating Lactation in the Workplace

By Erin E. Rhinehart

Amid the controversy surrounding the passage of President Obama's health care reform bill, it was clear that there would be many unintended consequences; however, few would have guessed that the reform bill would affect the day-to-day lives of working mothers who choose to continue to nurse their children after their return to the workplace. The recent health care reform is likely to alter the landscape of both federal and state pregnancy discrimination laws; therefore, employers should be prepared.

In particular, section 4207 of the Act amends the Fair Labor Standards Act of 1938 to require employers to provide reasonable, unpaid break time and a suitable place, other than a bathroom, for employees to express breast milk for nursing their children. Such accommodations must be provided for one year following the child's birth. Only employers with fewer than 50 employees may claim an undue hardship exception. The

new federal requirements do not preempt existing state laws that provide greater protections to working mothers and their infant children. For example, if a state currently requires employers to compensate their employees for such break time, such compensation must continue.

Although the law was effective immediately upon President Obama's signing of the Act, enforcement rules (as set forth by the U.S. Department of Labor) have yet to be put in place and no court has considered any challenges to the law; therefore, how the law will be implemented, enforced, and interpreted remains unclear.

Notwithstanding, employers should be cautioned that the recent health care reform law questions the continued validity of many state court decisions that favor employers' restrictive policies regarding nursing in the workplace. Further, in light of the clearly preferential treatment granted to nursing mothers under the health care reform law, both federal and state pregnancy discrimination laws

may be amended or interpreted to better protect pregnant and nursing women in the workplace. Accordingly, the future of both federal and state law is more likely to favor the rights of pregnant and nursing women in the workplace, and employers should take notice.

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