

## Meeting nursing-mother obligations under N.Y. and federal laws

In these trying economic times, new mothers seem to be returning to work sooner than ever. And many of those new moms want to heed pediatricians' advice to breastfeed their babies.

That may mean employers have to make adjustments to accommodate the needs of a returning mother who is still breastfeeding her new baby.

Gone are the days when women had to hide in the restroom to express milk. Today, nursing mothers have options protected by both federal and state laws. New York is at the forefront of the movement to allow mothers to feed their children nothing but breast milk up to the recommended six months.

### New York state law

Back in 2007, then-Gov. Eliot Spitzer signed a law requiring all employers to permit nursing mothers to express (or pump) breast milk in the workplace. New York joined 13 other states that have enacted similar laws (California, Connecticut, Georgia, Hawaii, Illinois, Minnesota, New Mexico, Oklahoma, Oregon, Rhode Island, Tennessee, Texas and Washington). The law, since codified as Labor Law Section 206-c, took effect on Aug. 15, 2007.

Labor Law Section 206-c requires employers to provide reasonable unpaid break time, or permit employees to use paid break time or mealtime, to express breast milk.

In addition, employers are required to make reasonable efforts to provide a private room or other location, in close proximity to the work area, to express milk. The law provides no definition as to what constitutes "reasonable time" or "reasonable efforts."

In addition, the law also specifies that:

- Mothers may take advantage of the right to express milk for their child until the child's third birthday.

- Mothers are protected from discrimination on account of their exercise of the right to express milk in the workplace.

### Expressing vs. breastfeeding

New York state law addresses only the expression of breast milk, and not the right to actually breastfeed a baby in the workplace.

However, employers should also be aware of another New York law dealing with breastfeeding. Civil Rights Law Section 79-e protects the right of a nursing mother to breastfeed her baby "in any location, public or private, where the mother is allowed to be."

The primary purpose of the statute was to prevent the application of public indecency laws to nursing mothers.

However, the language of the statute, by its reference to private locations, suggests that it could be construed to apply to the workplace at least under certain circumstances. Before denying a new mother access to her infant for breastfeeding, consult your attorney. So far, there is no case law addressing the issue.

### New federal rules

The Patient Protection and Affordable Health Care Act—the massive health care reform package enacted last year—includes several provisions aimed at helping Americans become healthier.

One of those provisions requires some employers to provide break time for nursing mothers. It took effect last year and amended the Fair Labor Standards Act (FLSA).

The U.S. Department of Labor enforces the law and has published a fact sheet that provides general information on the break time requirement for nursing mothers.

For New York employers, perhaps the most important observation contained in the fact sheet is that the

### Setting up a nursing room

If you haven't already set up a nursing-mother room, here are some factors to consider in the design:

- **Comfort:** The space selected should be as centrally located as possible and have adequate temperature control. Privacy is important. If more than one woman will use the room at the same time, consider some form of privacy shields, such as those commonly used in medical offices. Comfortable seating is also important.
- **Hygiene:** Provide a simple sink with hot and cold running water for rinsing out equipment.
- **Storage:** Mothers will need to store the milk they express until they can take it home. Provide a small refrigerator or ice chest in the room, plus a means to label the expressed milk.

FLSA requirement of break time for nursing mothers to express breast milk does not pre-empt state laws that provide greater protections to employees.

### State law is tougher

That's important because New York's protection of nursing mothers provides employees with a number of protections that exceed those provided under the new federal law. For example, New York law protects expression of breast milk up to three years following the birth of the child. Federal law is limited to one year. New York's law applies to all employers. The federal law only covers employers with 50 or more employees.

Given that New York's protection of nursing mothers provides greater protection than the recent FLSA amendments, employers complying with existing New York law will be in compliance with the new federal law as well.