Lactation Support

This document reflects the general principles outlined in Federal Code SEC. 4207
REASONABLE BREAK TIME FOR NURSING MOTHERS.

Effective Date: August 1, 2012

Goals

1. To maintain physical locations in various accessible locations throughout campus
   so that women have the ability to utilize lactation rooms.

2. To provide new mothers with private, safe and accessible locations across campus
   where they are able to express milk for nursing children.

3. To ensure that WVU employees and students have reasonable break-time and
   appropriate locations to express milk.

4. To ensure that the broader University community is aware of the needs of nursing
   mothers and their children, as well as the benefits of breastfeeding in general.

5. Facilities Management will require that all new buildings and complete
   renovations to existing structures must include consideration of a Lactation Room
   in each project. Although new construction projects and major renovations may
   not ultimately include a lactation room, advance consideration of the
   appropriateness for such rooms should be part of the planning process.

Time Away from Work

Supervisors should keep in mind that expressing breast milk may be a physical necessity
for some mothers. By law, supervisors must “provide a reasonable break time for an
employee to express breast milk for her nursing child for up to one year after the child’s
birth each time such employee has the need to express milk.” Mothers who need to
express breast milk must be permitted to visit lactation rooms when necessary and be
provided reasonable time to do so. The lactation time may run concurrently with break
times already provided, but supervisors should be flexible in allowing nursing mothers to
select appropriate times to utilize a lactation room on campus.

Information

A list of Lactation Rooms is available at
http://advance.wvu.edu/faculty_equity_initiatives/lactation_networks
The amenities available in each room will be identified.
Fact Sheet #73: Break Time for Nursing Mothers under the FLSA

This fact sheet provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act ("PPACA"), which took effect when the PPACA was signed into law on March 23, 2010 (P.L. 111-148). This law amended Section 7 of the Fair Labor Standards Act (FLSA).

General Requirements

Employers are required to provide “reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.” Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child’s birth).

Time and Location of Breaks

Employers are required to provide a reasonable amount break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother’s use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

Coverage and Compensation

Only employees who are not exempt from section 7, which includes the FLSA’s overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer’s business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for
break time. In addition, the FLSA’s general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies. See WHD Fact Sheet #22, Hours Worked under the FLSA.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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