



WORKSITE WELLNESS AND NURSING MOTHERS

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MINNESOTA employers who establish worksite wellness programs must comply with certain legal requirements. Important legal issues to consider are the HIPAA nondiscrimination regulations, the HIPAA Privacy Rule, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), the Minnesota Consumable Products Act, federal and state nursing mothers laws and federal income tax law. Please refer to the corresponding fact sheet for a description of each legal requirement. This fact sheet provides an overview of federal and state laws that support nursing mothers in the workplace. When setting up a worksite wellness program, it is important to consult with an attorney to make sure that the program meets all legal requirements.

Q Does the federal law provide any protection for nursing mothers in the workplace?

A Yes. The Patient Protection and Affordable Care Act¹ requires employers to provide:

- » Reasonable unpaid breaks for one year after the birth of a child whenever the mother needs to express milk; and
- » Private space other than a bathroom for this purpose.

“The law that provides greater benefits to the nursing mother applies.”

Q Are there any exceptions to these requirements?

A Yes.

- » If a state law is stronger, the law that provides greater benefits to the nursing mother applies.
- » The law does not apply to employers with fewer than 50 employees *if* the employer can show that complying with the law will cause undue hardship, meaning that the employer can show significant difficulty or expense.

Q Which employees are covered under the federal law?

A The Fair Labor Standards Act (FLSA)² identifies who is covered. Only employees who are covered by the overtime pay requirements of the FLSA receive federal protection for nursing mothers. Most salaried workers who make more than \$23,600 a year are not covered by the overtime pay requirements.

Q Does Minnesota law provide any protections for nursing mothers in the workplace different from those provided by the federal law?

A The Minnesota law covering nursing mothers in the workplace³ is similar to the federal law. But it differs in a few important ways:

- » It covers all employers and all employees.
- » If possible, break times to express milk should be at the same time as other breaks provided to the employee.
- » The employer must make a reasonable effort to provide a private space for expressing milk close to the employee's work area, other than a toilet stall.
- » An employer is not required to provide break time for nursing mothers if it is too disruptive to the employer's operations.

Q How do I know whether the federal law or the state law applies?

A Where federal and state laws are different, the law that provides greater protection to the nursing mother will apply. For example:

- » The Minnesota law provides much broader coverage than the federal law. In most cases, salaried employees who make more than \$23,600 a year are not covered by the federal law but are covered by the Minnesota law.

- » The federal law allows more generous break time than Minnesota law, so the federal law will apply in deciding the number and frequency of breaks the employer must provide.
- » Minnesota law requires employers to make a reasonable effort to provide the nursing mother with a space to express milk close to her work area, so the state law will apply in deciding the location of the space.



Q What questions should I discuss with my lawyer if I have nursing mothers in my workplace?

- A
- » Are my employees covered by the federal law?
 - » Am I allowing nursing mothers sufficient break time for expressing milk?
 - » Are the facilities private and appropriate?
 - » What evidence will I need to show if I believe that meeting the requirements of the federal or state law will cause undue hardship or is too disruptive to my business?



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¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, §4207 (to be codified at 29 U.S.C. § 207); Fact Sheet # 73: Break Time for Nursing Mothers under the FLSA (U.S. Department of Labor, Wage and Hour Division July 2010) available at <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>.

² 29 U.S.C. §§ 202(a), 203(s)(1), 206(a), 207(a) and 75 Fed. Reg. 80074.

³ MINN. STAT. § 181.939.