

# Illinois Amends Nursing Mothers in the Workplace Act to Expand Rights of Breastfeeding Mothers

## Labor & Employment Law Update

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Illinois employers should be aware of amendments to the Illinois Nursing Mothers in the Workplace Act that expand the rights of employees who need to express milk while they are at work. Both before and after the amendments, the Act requires employers to provide a private space, other than a toilet stall, for mothers to pump at work. The amendments, which went into effect immediately when Governor Bruce Rauner signed House Bill 1595 on August 21, 2018, make some key changes to the law, each discussed below:

- **Employers cannot require employees to pump during their break time.** Formerly, the Act provided that the employee's pumping break "must, if possible" run concurrently with other break times provided. The amendments now provide that the pumping break "may" coincide with other break times, but adds that employers must provide "reasonable breaks each time the employee has the need to express milk for one year after the child's birth." These amendments provide moms with greater control in scheduling pump breaks according to their needs, and confirm that an employer cannot require an employee to schedule pumping breaks around other previously scheduled breaks.
- **Employers cannot reduce pay for pumping breaks.** The prior version of the Act required employers to provide "unpaid" breaks for pumping mothers. The amendments remove the word "unpaid," and instead state that an "employer may not reduce an employee's compensation for the time used for the purpose of expressing milk." While the Act does not expressly provide that all pumping breaks must be paid, it does prohibit employers from reducing an employee's pay for pumping breaks. Under a fair reading of these amendments, employers should pay employees exactly as they would have if they were not taking pumping breaks. If an employee needs to pump during a regularly scheduled unpaid break, the employer does not need to pay her for that time. However, if an employee needs to pump during a time period that is regularly paid, the employer cannot reduce her pay for that time spent pumping.

- **Employers may only restrict employees from pumping if it causes an undue hardship.** The former act provided that an employer is not required to provide this break time if it would “unduly disrupt the employer’s operations.” Under the new amendments, an employer may only restrict mothers from pumping at work if it can satisfy the higher burden of showing an undue hardship, as defined by the Illinois Human Rights Act. This means an employer would need to show that a pumping break would be prohibitively expensive or disruptive given the employer’s size, financial resources, and operation, among other factors.

As before, this Act applies to employers who have more than five employees. The requirement that employers provide a private space to pumping mothers in close proximity to their work area remains unchanged. In light of these amendments, employers should review their workplace lactation policies and reach out to employment counsel with any questions.

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