

Electronic Alert

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It's Twins!: Two Oregon Laws Provide New Protections for Pregnant & Nursing Mothers

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The Governor has signed into law two new employment laws protecting working mothers. The first requires reasonable accommodations for pregnancy and childbirth and the second expands on existing requirements to provide breaks for nursing mothers to express breast milk.

Reasonable Accommodations for Pregnancy and Childbirth

Oregon employers with at least 6 employees now have to provide reasonable accommodations to employees and applicants who have limitations in the workplace related to pregnancy or childbirth (including lactation needs). This law creates a new cause of action for employees who suffer an adverse employment action or who are refused a reasonable accommodation based on pregnancy, childbirth, or a related condition.

The new law specifies that acquisition of equipment, more frequent or longer rest breaks, assistance with manual labor, and modification of work schedules are all reasonable accommodations for pregnant women or mothers recovering from childbirth. Employers are also prohibited from requiring an employee who is limited by pregnancy or a childbirth-related condition to take OFLA or other leave if a reasonable accommodation is available.

In addition, employers must post notices informing employees of these employment protections and provide written notification about these rights to new employees at the time of hire, to existing employees by June 29, 2020, and to an employee who informs their employer that they are pregnant within 10 days. The Bureau of Labor and Industries will develop education materials that employers can use to comply with the notification requirements under this new law.

Nursing Mothers

In addition to accommodating nursing mothers, now every Oregon employer needs a policy for lactation breaks. Smaller employers with 10 or fewer employees may qualify for an exception under the new law if they can show undue hardship (the identical exception that applies to providing reasonable accommodations to employees with disabilities).

If you do not have a policy explaining when and where mothers can express breast milk, it is probably because you have fewer than 25 employees. With the passage of a new law this week, employers of every size in Oregon must provide mothers of new babies with unpaid lactation breaks during the workday. Oregon law continues to allow mothers to use their employer's lactation break policies up until their babies are 18 months old. The new law also adds requirements for the content of these policies, making Oregon law consistent with the more-generous federal law.

In particular, policies should include (1) how often they allow nursing mothers to break; (2) the timing of those breaks; and (3) the facilities provided for lactation breaks.

Frequency: The most significant change in the new law is allowing mothers to take lactation breaks as frequently as needed. Previously, new mothers got a set schedule of one 30-minute lactation break every 4 hours. Under the new law, mothers can break for a reasonable amount of time whenever they need to express milk. Typically, employers can expect a mother to request breaks every 1.5 to 4 hours depending on the age of the child. With this change, Oregon law is now in line with federal law, under which larger employers (50 or more) should already allow nursing mothers to take breaks “as needed.”

Timing and Pay: If a non-exempt employee takes a lactation break at the same time as a paid rest break, the break is paid. Otherwise, breast milk breaks are unpaid. Oregon law encourages employees to combine lactation breaks with meal periods or rest breaks to avoid further interruption. However, federal law continues to be more generous to employees, and does not require consolidation. Accordingly, employers with 50 or more employees should not dictate when mothers take breast milk breaks. Employers with fewer than 50 employees are likely exempt from this part of the federal rule, but should be prepared to show an undue hardship if they require mothers to express breast milk during other breaks.

Facilities: Even with the recent changes in Oregon, employers must still follow federal law in terms of providing privacy for mothers during lactation breaks. Nursing mothers must be provided a private place (other than a bathroom) in close proximity to the employee’s work area that is shielded from view and free from intrusion by coworkers and the public, where they can express breast milk. The space does not have to be dedicated to this use, but it must be available to nursing mothers.

Oregon employers will need to provide lactation breaks in accordance with the updated requirements above by the anticipated effective date October 1, 2019. For questions about updating your policies to account for these protections, contact Charlotte Hodde at chodde@barran.com or (503) 276-2102, or Amy Angel at aangel@barran.com or (503) 276-2195.