

Oregon versus Federal Law Ensuring Workplace Breastfeeding Support

The Patient Protection and Affordable Care Act (“PPACA”), amended [section 7 of the Fair Labor Standards Act](#) (“FLSA”) to require employers to provide break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees. **The provision of federal or state law providing greater protection is highlighted in green.**

Topic	Oregon Law	Federal Law
Date law became effective	January 1, 2008. ORS 653.077 for Oregon House Bill 2372, Rest Periods for Expression of Breast Milk was signed into law May 8, 2007. It is in Wage and Hour rules 839-020-0051 , Rest Periods for Expression of Milk	March 23, 2010, The Patient Protection and Affordable Care Act (“PPACA”), was signed into law. (P.L. 111-148), amended Section 7 of the FLSA , to provide a break time requirement for nursing mothers.
Date amendment to law became effective	September 29, 2019 Oregon House Bill 2593 . Bureau of Labor and Industries (BOLI), Wage and Hour Division published a Technical Assistance document for employers.	N/A
Who enforces the law	<p>Bureau of Labor and Industries (BOLI), Wage and Hour Division</p> <p>Eugene 1400 Executive Pkwy 541-686-7623 Suite 200 Eugene, OR 97401</p> <p>Portland 800 NE Oregon St 971-673-0761 Suite 1045 Portland, OR 97232</p> <p>Salem 3865 Wolverine St NE 503-378-3292 Building E, Suite 1 Salem, OR 97305-1268</p>	<p>US Department of Labor (DOL), Wage and Hour Division</p> <p>Portland District Office (503) 326-3057 Wage and Hour or 620 SW Main Street 1-866-487-9243 Room 423 Portland, OR 97205</p>
Protection State versus federal law	N/A	<i>“Nothing in this subsection shall preempt a State law that provides greater protections to employees than the</i>

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		<i>protections provided for under this subsection. “</i>
Sanctions for non-compliance	There is a \$1,000 fine per incident for non-compliance that can be imposed by the Oregon BOLI.	<i>“If employee is discharged or in any manner discriminated against because she has filed a complaint, the employee may file a retaliation complaint with the US DOL.... If employer does not comply, the DOL could file suit to seek injunctive relief...”</i>
Employers covered by law	Applies to all employers. Employers with 10 or fewer employees are not required to provide rest periods if to do so would provide undue hardship to business operations. The employer must apply to BOLI to request an exemption.	Applies to all employers covered under FLSA. All employees who work for the covered employer, regardless of work site, are counted. An employee includes full-time, part-time, and any other individual who meets the FLSA definition of employee. Only employers with fewer than 50 employees can ask to be exempt because of undue hardship (see federal definition).
Type of Employee	Includes employees engaged in administrative, executive or professional work (all employees covered, regardless of overtime status).	Employees who work for employers covered by the FLSA and are not exempt from section 7, which sets forth the FLSA’s overtime pay requirements, are entitled to breaks to express milk.
Schools as Employer	<i>“Each school district board shall adopt a policy regarding breast-feeding in the workplace to accommodate an employee who needs to express milk for her child.</i> <i>Each policy must, at a minimum, designate a location at the school facility, other than a public restroom or toilet stall, in close proximity to the employees work area for the employee to express milk in private.</i> <i>A policy adopted under this subsection, including the designated locations where an employee may express milk, must be published in an employee handbook. In</i>	Federal law is silent on this issue.

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	<p><i>addition, a list of the designated locations must be readily available, upon request, in the central office of each school facility and in the central administrative office for each school district."</i></p>	
Age of child	Child up to 18 months.	Child up to 12 months
Time for expressing milk	Employer provides a reasonable rest period to express milk each time the employee has a need to express the milk.	Requires reasonable break time for an employee to express breast milk for her nursing child ... each time the employee has the need to express the milk.
Space for expressing milk	The location must be in close proximity to the employee's work area, and cannot be a toilet stall or restroom. Businesses would not necessarily have to have a dedicated lactation room. A vacant office or conference room could suffice, so long as it is private. A cubicle is not considered private.	<p><i>"Employers are required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.</i></p> <p><i>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.</i></p> <p><i>A space temporarily created or converted into a space or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from intrusion from co-workers and the public."</i></p>
Eligibility for health insurance	Employers must count pumping time for the purpose of determining eligibility for health insurance.	Federal law is silent on this issue
Job Duties	An employer may allow an employee to temporarily change job duties if the employee's regular job duties do not allow her to express milk.	Federal law is silent on this issue
Requirements for employees	When possible , an employee shall provide reasonable notice to the employer that employee intends to express	Not required

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	<p>milk upon returning to work after the child's birth.</p> <p>Failure to give notice is not grounds for discipline.</p>	
<p>Additional information</p>		<ul style="list-style-type: none"> • WHD Fact Sheet #73, Break Time for Nursing Mothers under the FLSA Break Time for Nursing Mothers FAQs • Break Time for Nursing Mothers Employee Rights Card • FLSA Handy Reference Guide