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CHAPTER 839

BUREAU OF LABOR AND INDUSTRIES

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FILING CAPTION: Updates rule relating to expression of milk in the workplace.

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AMEND: 839-020-0051

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RULE SUMMARY: Amends rule relating to obligation of employers to provide rest period for employees to express milk.

CHANGES TO RULE:

839-020-0051

Rest Periods for Expression of Milk ¶

(1) ORS 653.077 requires employers to provide reasonable rest periods to accommodate an employee who needs to express milk for the employee's child 18 months of age or younger.¶

(a) If feasible, the employee will take the rest periods to express milk at the same time as the rest periods or meal periods that are otherwise provided to the employee. If not feasible, the employee is entitled to take an unpaid rest period each time the employee has a need to express milk.¶

(b) If the employer is required by law or contract to provide the employee with paid rest periods, the employer will treat the rest periods used by the employee for expressing milk as paid rest periods, up to the amount of time the employer is required to provide as paid rest periods.¶

(c) If an employee takes unpaid rest periods, the employer may, but is not required to, allow the employee to work before or after the employee's normal shift to make up the amount of time used during the unpaid rest periods. If the employee does not work to make up the amount of time used during the unpaid rest periods, the employer is not required to compensate the employee for that time.¶

(d) An employer may not require an employee, including an employee who is FLSA exempt, to substitute paid leave time for unpaid rest periods provided in compliance with these rules.¶

(e) As used in ORS 653.077 and this rule, "expression of milk" means the initiation of lactation by manual or mechanical means and does not include breastfeeding. However, any employer may accommodate breastfeeding pursuant to its own policies or by agreement or contract with employees.¶

(2) An employer will make a reasonable effort to provide the employee with a private location within close proximity to the employee's work area to express milk.¶

(a) As used in ORS 653.077 and this rule, a "private location" is a place, other than a ~~public restroom or toilet stall~~ toilet stall or public restroom, in close proximity to the employee's work area for the employee to express milk concealed from view and without intrusion by other employees or the public and includes, but is not limited to:¶

(A) The employee's work area if the work area permits the employee to express milk concealed from view and without intrusion by other employees or the public.¶

(B) A room connected to a public restroom, such as a lounge, if the room allows the employee to express milk

concealed from view and without intrusion by other employees or the public.¶¶

(C) A child care facility where the employee can express milk concealed from view and without intrusion by other employees or the public.¶¶

(D) An empty or unused office, conference room, or a storage space, so long as there is a door that closes and any windows can be covered, and there is a sign that can be placed on the door or handle of the door indicating that the room is in use.¶¶

(b) As used in ORS 653.077 and this rule, a "public restroom" is a restroom freely available for use by employees or the general public that does not include an attached lounge or room that allows an employee to express milk concealed from view and without intrusion by other employees or the public. A "toilet stall" includes a restroom that contains one toilet, whether or not in plain view, and whether or not the restroom locks from the inside.¶¶

(c) As used in ORS 653.077 and this rule, "close proximity" means within walking distance from the employee's work area that does not appreciably shorten the rest or meal period.¶¶

(d) If a private location is not within close proximity to the employee's work area, the employer may not include the time taken to travel to and from the location as part of the break period.¶¶

(3) An employer with ten (10) or fewer employees is not required to provide rest periods under this section if to do so would impose an undue hardship on the operation of the employer's business. As defined in ORS 653.077, "undue hardship" means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business. For the purpose of determining whether providing rest periods for expression of milk requires significant difficulty or expense, the following factors will be considered:¶¶

(a) The nature and the cost of complying with the requirement to provide a reasonable rest period for the expression of milk.¶¶

(b) The overall financial resources of the employer's facility or facilities involved in complying with the requirement to provide a reasonable rest period for the expression of milk, the number of persons employed at the facility and the effect on expenses and resources or other effects on the operation of the facility caused by the necessity for compliance with the requirement to provide a reasonable rest period in a private location.¶¶

(c) The overall financial resources of the employer, the overall size of the employer's business with respect to the number of its employees and the number, type and location of the employer's facilities.¶¶

(d) The type of operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.¶¶

(4) An employer is required provide a reasonable accommodation to an employee's or applicant's limitations related to the expression of milk in accordance with ~~OLCH 139, 2019~~ ORS 659A.146 to ORS 659A.148.¶¶

(5) When possible, an employee who intends to express milk during work hours must give the employer reasonable oral or written notice of the employee's intention to allow the employer time to make the preparations necessary for compliance with ORS 653.077 and these rules. Failure to give notice is not grounds for discipline.¶¶

(6) An employer must notify all employees, through its policies or other means, of the person or entity to whom an employee should give notice of intent to express milk. If the employer does not provide such notification, the employee's oral or written notice to a supervisor, manager, or human resource or personnel department or their staff will be presumed sufficient.¶¶

(7) After receiving notice from the employee, the employer may take a reasonable time to make necessary preparations for compliance with ORS 653.077 and this rule. A "reasonable time" must not interfere with the rights provided by 653.077 and this rule, taking into consideration the immediacy of the employee's need to express milk, and that the rights under 653.077 and this rule apply only until the employee's child is 18 months of age. For example, an employer in the process of creating a private location for expressing milk must provide the most adequate space already available for an employee who gives notice of an immediate need.¶¶

(8) An employee invoking the provisions of ORS 653.077 and this rule is responsible for storing the employee's expressed milk. The employer must allow the employee to bring a cooler or other insulated food container to work for storing the expressed milk and ensure there is adequate space in the workplace to accommodate the employee's cooler or insulated food container. If the employer allows employees access to refrigeration for personal use, the employer may allow, but cannot require, an employee who expresses milk during work hours to use the available refrigeration to store the expressed milk.¶¶

~~(9) ORS 653.077 and this rule apply to individuals engaged in administrative, executive or professional work as described in ORS 653.020(3).¶¶~~

~~(10) The provisions of this rule may be modified by the terms of a collective bargaining agreement if the collective bargaining agreement entered into by the employee includes provisions that prescribe rules pertaining to reasonable rest periods for the expression of milk.¶¶~~

~~(11) Each school district board must adopt a policy to accommodate an employee who needs to express milk for the employee's child.¶¶~~

~~(12) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed~~

\$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.¶

~~(13) The commissioner of the Bureau of Labor and Industries will appoint an advisory committee to facilitate compliance with ORS 653.077 and these rules. Upon request by a particular industry or profession, the advisory committee will determine when the ordinary course of such industry or profession makes compliance difficult for an employer in that industry or profession, and submit to the commissioner recommendations for rules to address compliance difficulties in that industry or profession.~~

Statutory/Other Authority: ORS 653.077~~(14)~~

Statutes/Other Implemented: ORS 653.077, ~~OL CH. 118, 2019~~RS 659A.146 - 659A.148