



# Labor and Employment Law Information Memo

September 2007

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## NEW YORK ENACTS LAW PROTECTING RIGHTS OF NURSING MOTHERS IN THE WORKPLACE

New York Governor Eliot Spitzer recently signed a law requiring all employers to permit nursing mothers to express breast milk in the workplace. New York joins thirteen other states that have enacted similar laws (California, Connecticut, Georgia, Hawaii, Illinois, Minnesota, New Mexico, Oklahoma, Oregon, Rhode Island, Tennessee, Texas and Washington). The law, which will be codified as Labor Law Section 206-c, took effect on August 15, 2007.

Labor Law Section 206-c requires employers to provide reasonable unpaid break time, or permit employees to use paid break time or meal time, to express breast milk. In addition, employers are required to make reasonable efforts to provide a private room or other location, in close proximity to the work area, to express milk. The law provides no definition as to what constitutes "reasonable time" or "reasonable efforts." These protections apply for up to three years following the birth of the child. Employers are also prohibited from discriminating against any employee who chooses to express milk in the workplace.

This new law addresses only the expression of breast milk, and not the right to breastfeed a baby in the workplace. However, employers should also be aware of another New York law dealing with breastfeeding. Civil Rights Law Section 79-e protects the right of a nursing mother to breastfeed her baby "in any location, public or private, where the mother is allowed to be." While there is no case law addressing the issue, and while the primary purpose of this statute was to prevent the application of public indecency laws to nursing mothers, the language of the statute, by its reference to private locations, suggests that it could be construed to apply to the workplace at least under certain circumstances.

In short, the law with respect to nursing mothers in the workplace is in a dynamic state, and, although the new law provides employers with some guidance, it does not provide clear benchmarks for compliance. As a result, employers will have to make critical judgments, such as how much time a particular employee will be provided to express milk and the physical location designated for that purpose. For the time being, employers should proceed cautiously when dealing with an employee's request to accommodate nursing in the workplace and, if in doubt, seek further legal guidance.

If you have any questions regarding your obligations to accommodate nursing mothers in the workplace, please contact any of the following:

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