



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington, DC 20210



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FIELD ASSISTANCE BULLETIN No. 2023-02

MEMORANDUM FOR: Regional Administrators  
District Directors

FROM: Jessica Looman  
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SUBJECT: Enforcement of Protections for Employees to Pump Breast Milk at Work

This bulletin provides guidance to Wage and Hour Division (WHD) field staff regarding enforcement of pump at work provisions of the Fair Labor Standards Act (FLSA). Under the FLSA, as amended by the Providing Urgent Maternal Protections for Nursing Mothers Act (the PUMP Act), most nursing employees have the right to reasonable break time and a place, other than a bathroom, that is shielded from view and free from intrusion to express breast milk while at work. This right is available for up to one year after the child's birth. This bulletin supplements WHD previously issued materials, including [Fact Sheet #73](#), [Frequently Asked Questions](#), and the public [Pump at Work Protections under the Fair Labor Standards Act](#) presentation.

## **I. Background**

The ability to pump breast milk at work benefits the health and economic security of nursing employees and is protected by the FLSA. In 2010, the FLSA was amended by the Patient Protection and Affordable Care Act, Public Law 111-148 (March 23, 2010) to first include break time and space requirements for nursing employees to pump breast milk at work.

On December 29, 2022, [the PUMP Act](#), Public Law 117-328, was signed into law, further amending the FLSA to extend the reasonable break time and space protections to pump breast milk at work to as many as 9 million more employees who were not previously covered. In addition, the PUMP Act extended available remedies for violation of any provision of the pump at work requirements.

## II. Break Time Requirements

The FLSA requires employers to provide nursing employees reasonable break time **each time** such employee has need to pump breast milk at work for one year after the child's birth. An employer may not deny a covered employee a needed break to pump. The frequency, duration, and timing of breaks needed will vary depending on factors related to the nursing employee and the child.

Factors such as the location of the space and the effort reasonably necessary to express breast milk, e.g., the pump setup, can also affect the duration of time an employee will need to express milk. An employee and employer may agree to a certain schedule based on the nursing employee's need to pump, but an employer cannot require an employee to adhere to a fixed schedule that does not meet the employee's need for break time each time the employee needs to pump. Additionally, any agreed-upon schedule may need to be adjusted over time if the nursing employee's pumping needs change.

Employees who telework are also eligible to take pump breaks under the FLSA on the same basis as if they were working on-site.

*Examples of Reasonable Break Time under the PUMP Act:*

- Irina, a shift manager at a fast-food restaurant, takes four 25-minute pump breaks each day when she first returns to work after the birth of her child. Irina's need to pump changes as her baby grows and, when the baby is six months old, she reduces her pump breaks to 25 minutes twice a day.
- Lauren, a department store delivery driver with a nine-month-old baby, needs two 30-minute pump breaks each day she works.
- Ashley starts a part-time job in commercial real estate when her nursing child is six-months old. Starting with her first week of work, she takes a 20-minute pump break every day.

## III. Compensation

The PUMP Act does not require that employees be compensated for break time needed to pump breast milk "unless otherwise required by Federal or State law or municipal ordinance."

Under the FLSA all hours worked must be compensated and break time to pump will be considered hours worked if an employee is not completely relieved from duty during the entirety of the break. Short breaks, usually 20 minutes or less, provided by the employer must be counted as hours worked. Further, if the employer provides paid break time, and the nursing employee chooses to use that time to pump, the employee must be compensated in the same way that other employees are compensated for break time.

To determine how an employee's break time to pump will impact the worker's pay, it is necessary to consider these principles in the context of the compensation requirements of the FLSA and/or other applicable laws.

## **A. Nonexempt Employees under the FLSA**

The FLSA requires that nonexempt employees be paid at least the federal minimum wage for all hours worked and overtime pay at not less than time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. The amount of pay employees are entitled to receive for a workweek cannot be determined without knowing the number of hours worked. In general, [hours worked under the FLSA](#) include all the time an employee must be on duty, or on the employer's premises, or at another place of work, including a telework location, from the beginning to the end of the employee's workday. As with other breaks under the FLSA, a nursing employee must be completely relieved from duty, or the time spent pumping must be counted as hours worked.

*Example of Compensation Requirement, Nonexempt Employee:*

- Julia is on a pump break when she receives a call on her work cell phone from a coworker who provides her with instructions regarding a work project. After she finishes the work call, Julia completes her pump break. Because Julia was not relieved from duty, the time she spent on the call must be counted as hours worked.

## **B. Exempt Employees under the FLSA**

Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. To be exempt, employees generally must meet certain tests regarding their job duties and be paid at least a minimum weekly amount on a salary basis.<sup>1</sup>

Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation that is not reduced because of variations in the quality or quantity of the employee's work. Subject to certain limited exceptions, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.<sup>2</sup> Therefore, when such salaried exempt employees take pump breaks, their salaries may not be reduced to reflect this break time.

For more information about the salary basis requirement generally, see [WHD Fact Sheet #17G](#).

Other workers that are exempt from minimum wage and overtime protections, such as agricultural and certain transportation workers, are also newly eligible for the FLSA's pump at work protections. To determine the impact of nursing employees' pump breaks on their compensation, the requirements of the FLSA's reasonable break time and space provisions must be read in conjunction with other applicable laws governing compensation.

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<sup>1</sup> The salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine.

<sup>2</sup> An exempt employee is not required to be paid the full salary in the initial or terminal week of employment, or for weeks in which the exempt employee takes unpaid leave under the Family and Medical Leave Act.

*Example of Compensation Requirement, Exempt Employee:*

- Callie is a salaried exempt administrative employee at an assisted living center. Callie has a four-month-old child and takes three pump breaks a day. Callie's employer cannot deduct the time used for pump breaks from her salary.

#### **IV. Space Requirements**

The FLSA requires that nursing employees have access to a place to pump breast milk at work that is:

1. shielded from view;
2. free from intrusion from coworkers and the public;
3. available each time it is needed by the employee; **and**
4. not a bathroom.

Under the FLSA, a bathroom is not a permissible location for pump breaks. Using a bathroom to pump breast milk raises health and safety concerns, which may include the risk of contracting bacteria in breast milk or breast pump equipment.

A space temporarily created or converted into a space for pumping or made available when needed by the nursing employee is sufficient provided that the space is shielded from view and free from any intrusion from coworkers and the public and is available each time the employee needs to pump.

##### **A. Privacy**

Employers must ensure the employee's privacy, for example, by displaying a sign when the space is in use or providing a lock for the door. Employees who are teleworking receive the same protections, including the right to take a pump break that is shielded from view. For example, an employee must be free from observation by an employer provided or required video system, including a computer camera, security camera, or web conferencing platform, when she is expressing breast milk, regardless of the location she is working from.<sup>3</sup>

##### **B. Functional Space**

The location must be functional as a space for pumping. A space must contain a place for the nursing employee to sit, and a flat surface, other than the floor, on which to place the pump. Employees must be able to safely store milk while at work, such as in an insulated food container, personal cooler, or refrigerator.

Ideally, spaces to pump breast milk should also include access to electricity, allowing a nursing employee to plug in an electric pump rather than use a pump with battery power, which may

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<sup>3</sup> Additionally, under the PUMP Act, a rail carrier employee on a pump break may temporarily obscure the field of view of an image recording device on a locomotive or rolling stock if the passenger train on which such device is installed is not in motion.

require more time for pumping. Access to sinks near to the space provided to pump so that an employee can wash her hands and clean pump attachments also improves the functionality of the space and may reduce the amount of time needed by nursing employees to pump breast milk at work.

### **C. Approaches May Vary**

Employers may address space requirements in different ways. For example, an employer may designate a vacant office or storage room with a door that closes and covered windows, if any, for use by employees to express breast milk, or the employer may create space using partitions, provided that the employee using the space is shielded from view and free from intrusion from coworkers and the public. In either situation, the employer must ensure the employee's privacy through means such as signage that designates when the space is in use, or a lock on the door.

Employers should take into consideration the number of nursing employees and their work schedules to determine whether more than one space should be designated or created. While the FLSA does not require that employers create permanent, dedicated spaces for employee pump breaks, some employers may choose to do so, for example, by providing a dedicated pumping room on each floor of a large facility. Other employers may choose to provide a large room with privacy screens between employees which may be used by multiple employees simultaneously to pump.

## **V. Exemptions**

In limited circumstances, certain employers may claim exemptions from compliance requirements of the pump at work requirements of the FLSA. The FLSA provides an exemption for small employers if compliance would require an undue hardship and includes exemptions that affect certain employees of air carriers, rail carriers, and motorcoach services operators.

### **A. Exemption for Small Employers if Compliance Requires an Undue Hardship**

Employers with fewer than 50 employees must demonstrate that compliance would impose an undue hardship to claim the small employer exemption from the pump time requirements of the FLSA. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Whether compliance would be an undue hardship is determined on an individual employee basis. The employer bears the burden of proof that compliance with the pump at work provisions would be an undue hardship in the particular circumstances. To assert the exemption, an employer must be able to demonstrate that the employee's specific needs for pumping at work is an undue hardship due to the difficulty or expense of compliance in light of the size, financial resources, nature, and structure of the employer's business.

The employer bears the burden of proving that compliance with these provisions would be an undue hardship in any instance in which a nursing employee has the right to pump at work. Because the law requires only space and time for unpaid breaks for one year after a child's birth,

and the employer must be able to demonstrate “significant” difficulty or expense, employers will be exempt only in limited circumstances. WHD will evaluate each claim of undue hardship by applying the statutory factors to the particular factual circumstances of a case.

### **B. Exemption for Crew Members of Air Carriers**

Crewmembers of air carriers are exempt from FLSA pump at work protections. “Crewmember” means a person assigned to perform duty in an aircraft during flight time including pilots and flight attendants. The break time and space protections for pumping at work apply as normal to other employees of air carriers.

### **C. Rail Carriers**

The PUMP Act delays coverage for certain employees of rail carriers. The delay applies to members of a train crew involved in the movement of a locomotive or rolling stock or employees who maintain the right of way of a rail carrier employer.

Beginning December 29, 2025, the break time and space requirements are applicable to these employees, unless compliance:

- Requires the employer to incur significant expense, such as through the addition of a member of a train crew in response to providing FLSA break time to pump, removal or retrofitting of seats, or the modification or retrofitting of a locomotive or rolling stock, or
- Results in unsafe conditions for an individual who is an employee who maintains the right of way.

As with the undue hardship exemption for small employers, these exemptions operate as an affirmative defense, for which the employer bears the burden of proof. It is not considered a significant expense to modify or retrofit a locomotive or rolling stock by installing a curtain or other screening protection.

The break time and space protections for pumping at work apply as normal to other employees of rail carriers and are not subject to the three-year delay.

### **D. Motorcoach Services Operators**

Similar to the PUMP Act’s provisions affecting rail carriers, a three-year delay in coverage applies to employees of motorcoach services operators involved in the movement of a motorcoach.<sup>4</sup>

Beginning December 29, 2025, the pump at work protections will apply to these motorcoach services employees unless compliance:

- Requires the employer to incur significant expense, such as through the removal or retrofitting of seats, the modification or retrofitting of the motorcoach, or unscheduled stops, or

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<sup>4</sup> The term “motorcoach services” is defined as it is under section 32702 of the Motorcoach Enhanced Safety Act of 2012, and is separate and distinct from the definition of “motor carrier” as defined under FLSA section 13(b)(1).

- Results in unsafe conditions for an employee or passenger.

The exceptions described above operate as an affirmative defense, for which the employer bears the burden of proof. It is not considered a significant expense to modify or retrofit a motorcoach by installing a curtain or other screening protection if an employee requests such a curtain or other screening protection or for an employee to use scheduled stop time to express breast milk.

The break time and space protections for pumping at work apply as normal to other employees of motorcoach services operators and are not subject to the three-year delay.

## **VI. Employee Protections**

An employer who violates an employee's right to reasonable break time and space to pump breast milk is liable for appropriate legal or equitable remedies under the FLSA. Remedies may include employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages, compensatory damages and make-whole relief, such as economic losses that resulted from violations, and punitive damages where appropriate. These remedies are available regardless of whether the employee has also experienced retaliation.

### **A. Prohibited Retaliation**

The FLSA provides protection for any employee "discharged or in any other manner discriminated against" because such employee "filed a complaint or instituted or caused to be instituted any proceeding" regarding the pump at work protections. Employees are protected regardless of whether they have made a complaint orally or in writing. Complaints made to WHD are protected, and most courts have ruled that internal complaints to an employer are also protected. Remedies for retaliation include employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages, compensatory damages and make-whole relief, such as economic losses that resulted from violations, and punitive damages where appropriate.

Retaliation occurs when an employer, through a manager, supervisor, administrator or directly, fires an employee or takes any other type of adverse action against an employee for engaging in protected activity. Examples of protected activity include:

- Making a complaint to a manager, employer, or WHD,
- Requesting payment of wages,
- Consulting with WHD staff or cooperating with a WHD investigation,
- Exercising rights or attempting to exercise rights, such as requesting break time or space to pump, and
- Testifying at trial.

An adverse action is an action that would dissuade a reasonable employee from raising a concern about possible violation of engaging in other related protected activity. Retaliation can have a negative impact on overall employee morale.

*Examples of Prohibited Retaliation:*

- Alisha is a new parent who works at a call center. She uses her lunch break to express breast milk and needs additional time to finish pumping before she is able to return calls at her workstation. When she is late returning from lunch, her boss tells her that she cannot use any more time for “personal stuff.” When Alisha asks for another break for pumping later that day, her boss sends her home for the rest of her shift without pay.

In this example, Alisha was sent home for attempting to exercise her FLSA rights, which is retaliation by her employer and an FLSA violation.

- Camille works in retail sales and is nursing her 8-month-old child. On Friday, her store manager tells her she must work an additional 3 hours on Saturday to be able to meet the employer’s sales quotas for the week due to the time she spent taking pump breaks during the week.

Camille cannot be required to make up the time she took pump breaks because adding work time to her normal schedule could be considered an adverse action made in retaliation for exercising her pump at work rights. Additionally, her employer cannot hold the time she took for pump breaks against her when determining whether she met the sales quota.

For more information about prohibited retaliation, *see* WHD [Field Assistance Bulletin No. 2022-02](#).

## **B. Enforcement of the FLSA Pump at Work Requirements**

To enforce the pump at work or retaliation provisions of the FLSA, an employee may file a complaint with WHD or may file a private cause of action seeking appropriate remedies.

**There is no waiting time or special procedure** for an employee or other party to:

- (1) File a complaint with WHD about violations of any PUMP Act protections, or
- (2) Bring a private suit to enforce the reasonable break **time** requirement.

An employee may can file a private suit regarding an employer’s failure to provide a **space** to pump, if the employee has notified the employer of the need for space and has allowed 10 days for the employer to come into compliance. The employee is **not** required to provide this notice:

- If the worker has been fired for requesting reasonable break time or space;
- If the worker has been fired for opposing employer conduct related to FLSA pump at work rights; or
- Where the employer has expressed a refusal to comply.

## **VII. Posting Requirements**

An employer employing any employees subject to the FLSA’s minimum wage, overtime, or pump at work provisions is required to post and keep posted a notice explaining the FLSA in conspicuous places in every establishment where such employees are employed. *See* 29 CFR § 516.4. WHD considers an electronic posting to be sufficient to meet the posting requirement if (1) all of the employer’s employees exclusively work remotely, (2) all employees customarily receive



information from the employer by electronic means, and (3) all employees have readily available access to electronic posting at all times. See [Field Assistance Bulletin No. 2020-7](#).

WHD has published an updated [FLSA poster](#) (April 2023) that reflects current pump at work requirements. This poster may be used to meet the FLSA posting requirement and is available for download at no cost. Employers should ensure that they are posting the current version of the poster.

## VIII. Conclusion

WHD is committed to enforcement of the FLSA pump at work provisions and continues to update employees, employers, and the public on the requirements of law. WHD's determination of an employer's compliance with the requirements of the PUMP Act will depend on the specific facts and circumstances of a given case.

Most current information about the pump at work provisions can be found on [our website](#) at [www.dol.gov/agencies/whd/pump-at-work](http://www.dol.gov/agencies/whd/pump-at-work). WHD also shares resources from other agencies on its **pump at work** portal page online, such as the Office on Women's Health's [Supporting Nursing Moms at Work: Employer Solutions](#), to help employers implement sound lactation policies.

Please address any questions regarding this Field Assistance Bulletin to the WHD National Office, Office of Policy, through appropriate channels. For local assistance, please [contact the nearest WHD District Office](#). All services are free to individuals seeking assistance regardless of immigration status.