

Understanding Employer Obligations Under the PUMP Act ***Frequently Asked Questions: When Must Lactation Breaks be Paid?***

Under the federal PUMP for Nursing Mothers Act (PUMP Act),¹ almost all employers are required to provide reasonable break time and private, functional, non-bathroom space for their lactating employees each time they need to express milk within the first year of their child's life. This resource is designed to assist employers in understanding the situations when an employee must be paid for time spent on pumping breaks. For more information about the PUMP Act in general, please see Department of Labor [Fact Sheet #73](#).

Are employers required to compensate employees for time spent on pumping breaks?

In general, the PUMP Act does not require employers to pay hourly employees for the time spent on lactation breaks. However, there are several exceptions to this general rule. These exceptions are outlined below.

Although not required, many employers provide paid lactation breaks for all employees. Doing so is one way to support breastfeeding employees, which improves retention and productivity, reduces the use of sick days, and lowers health care and insurance costs.²

When does federal law require employers to pay employees for time spent on lactation breaks?

Employers must pay employees for time spent on lactation breaks in the following circumstances:

- **The Employee is performing work during their pumping break.** The U.S. Department of Labor has made clear that an employee who is working during their pumping break should not be taken off the clock, even if the work they are doing is different or less than what they would normally be doing. For example, if the employee is still answering calls or sending emails while they are pumping, they must be paid for that time.³ Caution: Under the PUMP Act, employers are required to relieve employees of all work duties during pumping breaks. Encouraging employees to work during their pumping breaks is illegal. However, if an individual employee independently decides to work during a pumping break, they must be paid for that time.⁴ Reducing an employee's pay in this situation may constitute unlawful retaliation and coercion under the PUMP Act, as well as under the Pregnant Workers Fairness Act.⁵ It may also violate federal and state minimum wage, overtime, and related wage and hour laws.⁶

¹ 29 U.S.C. § 218d(a)(1) and (2).

² U.S. Department of Health and Human Services, Office of Women's Health, "Business Case for Breastfeeding," available at, <https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work/business-case>.

³ U.S. Department of Labor, Wage and Hour Division, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, available at, <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers>.

⁴ *Id.*

⁵ See U.S. Department of Labor, Wage and Hour Division, Field Assistance Bulletin No. 2023-02: Enforcement of Protections for Employees to Pump Breast Milk at Work, available at, <https://www.dol.gov/sites/dolgov/files/WHD/fab/2023-2.pdf> and Final Rule and Interpretive Guidance for the Implementation of the Pregnant Workers Fairness Act, [89 F.R. 29096](#).

⁶ U.S. Department of Labor, Wage and Hour Division, Field Assistance Bulletin No. 2023-02: Enforcement of Protections for Employees to Pump Breast Milk at Work, available at, <https://www.dol.gov/sites/dolgov/files/WHD/fab/2023-2.pdf>.



- **The employee is pumping during their normally paid break.** If you provide, or state or local law⁷ requires you to provide, paid breaks, you must pay employees who choose to pump during their normally paid breaks the same way that other employees are paid for that break time.⁸ The U.S. Department of Labor provides an example:

Madison works on a farm. Madison's employer provides all employees with two paid 15-min rest breaks each day. Madison chooses to use both of the paid 15-minute rest breaks to pump breast milk for her 6-month old infant. If Madison needs additional breaks to pump, the additional break time does not have to be compensated as long as Madison does not perform any work during the breaks.

Keep in mind, under the PUMP Act, an employee must be allowed to take pumping breaks as needed. This means that employers are not allowed to require employees to use their normal or preexisting breaks for pumping, if doing so does not meet the employee's physical needs.

- **The employee is a white-collar employee who is exempt from overtime because they are "paid on a salary basis."** Employers cannot reduce the salaries of most overtime-exempt employees for the time they spend on breaks, including pumping breaks, if the employee's exempt status requires that they be paid on a salary basis. Such employees must receive their full salary for any week in which they perform any work, regardless of the number of days or hours worked.⁹ To learn more about the salary basis requirement for the exemption from overtime, view Department of Labor [Fact Sheet #17G](#).
- **The pay of other employees is not reduced for taking work breaks or working fewer hours.** Treating lactating employees worse than non-lactating employees may constitute illegal discrimination in violation of federal and state laws. Lactating employees must be afforded the same freedoms and privileges as non-lactating employees. If your employees are allowed to take similar breaks or time off without a reduction in pay, you must treat lactating employees the same by not reducing their pay for the time they spend pumping.
- **Employees have opted to use their paid time off to cover their pumping breaks.** If you provide, or state or local law requires you to provide, paid time off, such as vacation or sick leave, your employee may request to use it to be paid for time spent pumping. The Pregnant Workers Fairness Act (PWFA), which applies to employers with 15 or more employees, requires employers to provide employees with reasonable accommodations for pregnancy, childbirth, or related conditions, including lactation. Employers must provide an accommodation unless it would cause an undue hardship.¹⁰ When an employee requests to use PTO for lactation breaks, the PWFA requires that that the employee be allowed to do so, to the same extent as non-lactating employees are allowed. To learn more about your responsibilities under the Pregnant Workers Fairness Act, visit the U.S. Equal Employment

⁷ California, Colorado, Illinois, Kentucky, Minnesota, Nevada, Oregon, Vermont, and Washington have laws requiring that certain employees have a right to paid rest breaks. See U.S. Department of Labor, Wage and Hour Division, Minimum Paid Rest Period Requirements Under State Law for Adult Employees in Private Sector, available at, <https://www.dol.gov/agencies/whd/state/rest-periods>.

⁸ U.S. Department of Labor, Wage and Hour Division, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, available at, <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers>.

⁹ U.S. Department of Labor, Wage and Hour Division, Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA), available at, <https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary>.

¹⁰ 42 U.S.C. § 2000gg.



Opportunity Commission's "[What you Should Know About the Pregnant Workers Fairness Act.](#)"

Are there any state or local laws that require employers to provide paid lactation breaks?

Yes, currently Georgia, Illinois, Minnesota, New York and San Francisco have laws that require employers to provide paid lactation breaks. Employers must comply with both the federal and state or local law requirements. Below is a summary of what these laws require:

- **Georgia:** Georgia law requires that lactation breaks “be paid at the employees’ regular rate of compensation.”¹¹ It also requires that “[i]f the employee is paid on a salary basis, the employer shall neither require the salaried employee to use paid leave during any break time nor reduce the employee’s salary as a result of the salaried employee taking a break to express milk.”¹² The law covers all employers, but employers with fewer than 50 employees do not have to provide paid breaks if they can demonstrate that it would create an undue hardship.¹³
- **Illinois:** Under Illinois law, “[a]n employer may not reduce an employee’s compensation for time used for the purpose of expressing milk or nursing a baby.”¹⁴ Break time may run concurrently with any break time already provided to the employee.
- **Minnesota:** Under Minnesota law, “[a]n employer may not reduce an employee’s compensation for time used for the purpose of expressing milk or nursing a baby.”¹⁵ The state agency responsible for enforcing the law has made clear that this means an employer cannot reduce an employee’s compensation, including paid leave benefits, such as vacation, sick days, or paid time off, for pumping breaks, nor can they require the employee to make up the time they used to express milk.¹⁶
- **New York:** Starting June 19, 2024, employers in New York must provide “paid break time for thirty minutes, and permit an employee to use existing paid break time or meal time for time in excess of thirty minutes, to allow an employee to express breast milk for such employee’s nursing child each time such employee has reasonable need to express breast milk for up to three years following child birth.”¹⁷ This means an employer must provide 30 minutes of paid break time for pumping each time the employee has a reasonable need to express breast milk.
- **San Francisco:** San Francisco’s Lactation in the Workplace Ordinance prohibits employers from reducing an employee’s pay for the time they spend traveling between their workstation and the employer’s designated pumping space, as well as to and from the refrigerator for storing milk or the sink with running water to clean their pump.¹⁸

¹¹ Ga. Code Ann § 34-1-6.

¹² *Id.*

¹³ *Id.*

¹⁴ 820 Ill. Comp. Stat. 260/10.

¹⁵ Minn. Stat. Ann. § 181.939.

¹⁶ Minnesota Department of Labor and Industry homepage for pregnant workers and new parents, <https://www.dli.mn.gov/newparents>.

¹⁷ New York Labor Law § 206-c. For more information on the recently implemented law, go to <https://dol.ny.gov/expressing-breast-milk-workplace>.

¹⁸ City and County of San Francisco, Office of Labor Standards Enforcement, Rules Implementing the Lactation in the Workplace Ordinance, Rule 1.2, available at, https://www.sf.gov/sites/default/files/2024-03/Lactation%20Rules_Final.pdf.



Can I require my employee to make up the missed time they spend pumping?

No. Whether the break is paid or unpaid, employers cannot require employees to make up the time they take for their legally required pumping breaks. If feasible, an employee can choose to make up the work, but you cannot require them to do so. The U.S. Department of Labor has said that employers are required to adjust assignments, quotas, and productivity metrics to account for time an employee spends on a pumping break.¹⁹ Similarly, the interpretive guidance to the Pregnant Workers Fairness Act regulations states that production standards have to be adjusted when an employee takes lactation breaks to avoid penalizing the employee.²⁰ An employer who does not make these adjustments or who requires employees to make up time spent pumping could face legal liability.

Questions?

Find more information and free tools for supporting pregnant, postpartum, and lactating employees on [Pregnant@Work](#) the UC Law SF Center for WorkLife Law's resource hub.

¹⁹ U.S. Department of Labor, Wage and Hour Division, Field Assistance Bulletin No. 2023-02: Enforcement of Protections for Employees to Pump Breast Milk at Work, available at, <https://www.dol.gov/sites/dolgov/files/WHD/fab/2023-2.pdf>; see also U.S. Department of Labor's Retail and Restaurant Industry FAQs, available at, <https://www.dol.gov/sites/dolgov/files/WHD/flsa/PUMP-retail-restaurant-faq.pdf>.

²⁰ Final Rule and Interpretive Guidance for the Implementation of the Pregnant Workers Fairness Act, [89 F.R. 29096](#).