



Pump at Work Protections under the Fair Labor Standards Act in Retail and Restaurant Industries



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

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1-866-4-US-WAGE

Presentation Topics



- Covered Employees
- Break Time Requirements
- Space Requirements
- Exemptions
- Retaliation
- Enforcement
- Resources

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FLSA Pump at Work Protections

The FLSA requires employers to provide reasonable break time and a private place other than a bathroom for an employee to pump breast milk for their nursing child for one year after the child's birth each time such employee has need to pump at work.



The PUMP Act

- On December 29, 2022, the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP for Nursing Mothers Act or PUMP Act) became law, extending right to pump protections to millions of workers and allowing for additional remedies for violations.
- Extended coverage effective as of December 29, 2022.
- Additional remedies available for violations occurring on or after April 28, 2023.

Eligible Employees



- Nearly all employees covered by the FLSA are eligible to pump at work.
- Employees are eligible to pump at work for one year after their child's birth.
- Narrow exemptions may apply for certain employees of small companies and certain transportation employees.

Enterprise Coverage

All employees of an enterprise are covered under the FLSA if the employer is:

- Engaged in interstate commerce, has at least two employees, and does at least \$500,000 a year in business, or
- Engaged in the operation of a hospital, residential medical or nursing care facilities, schools, preschools, or a public agency.



Individual Coverage



- Individual employees may be covered and entitled to FLSA protections to pump at work if they are engaged in interstate commerce even if the employer is not a covered enterprise.
- Domestic service workers, such as housekeepers, full-time babysitters, and cooks, are normally covered by the law.

Example – Covered Employee

- Raven is an area manager for a multi-state chain of fast-food restaurants who is exempt from receiving overtime pay under the FLSA.
- Beginning on December 29, 2022, even though Raven is exempt from overtime, they are entitled to break time and space to pump at work for one year after the birth of their child.



Reasonable Break Time

The FLSA requires employers to provide nursing employees:

- Reasonable break time
- Each time such employee has need to pump at work
- For one year after the child's birth

The frequency of breaks needed to pump at work, as well as the duration of each break, will likely vary.

Examples - Reasonable Break Time

- Irina, a cashier and sales associate at a pet store, takes four 25-minute pump breaks each day when she first returns to work after the birth of her child.
- Leslie is a pet care provider at the pet store where Irina works. Leslie has a nine-month-old child and needs two 30-minute pump breaks each day she works.

Compensation for Break Time

- As with other breaks under the FLSA, the nursing employee must be completely relieved from duty or the time spent pumping must be counted as hours worked for the purposes of minimum wage and overtime requirements.
- If an employer already provides paid break time and if an employee chooses to use that time to pump, they must be compensated in the same way that other employees are compensated for break time.
- An employer must also pay for pump breaks if required by Federal or State law or municipal ordinance.

Example – Compensation for Break Time

- Lauren is a cook at a restaurant who is paid by the hour.
- During her shift, Lauren takes a pump break in her manager's office during a 3 p.m. staff meeting to discuss upcoming menu specials and promotions.
- Lauren must be paid for the time spent pumping because she worked by attending the meeting while pumping.

Space Requirements

Nursing employees must be provided a space that is:

- Shielded from view,
- Free from intrusion from coworkers and the public, and
- May be used to pump breast milk.

The space cannot be a bathroom!



Shielded from View / Free from Intrusion



- Employers must ensure the employee's privacy, for example, by displaying a sign when the space is in use or providing a lock on the door.
- Workers who telework must also be free from observation by any employer-provided or required video system, including computer camera, security camera, or web conferencing platform.
- Employees working on passenger trains may temporarily obscure the view of recording devices when the train is not moving.

Functional Space

- The location must be functional as a space for pumping milk.
- An employer may temporarily designate a space or make a space available when needed by the employee.
- 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.

Space – Example 1

- Imani is a sales manager at a furniture store who has an eight-month-old nursing child. Imani's employer designates a screened off portion of a storage room for Imani to express breast milk and adds a table and chair for Imani to use while pumping.
- To ensure Imani's privacy, the employer provides signage that designates when entry to the space is restricted. The space is monitored by a camera, but Imani is permitted to cover or unplug the camera when she uses the area.

Space – Example 2

- Frankie has a three-month-old nursing child and works at a fast-food restaurant in a shopping mall. Frankie's employer and other employers in the mall provide their employees with shared space to take pump breaks that is near the food court.
- Nursing employees receive a code to access the shared pump break room, and pump in private areas of the room divided by partitions. The room is equipped with tables, chairs, a cooler, and sinks with running water.

Undue Hardship Exemption

- An employer with fewer than 50 employees is not required to provide break time and space if the employer can demonstrate it would impose undue hardship.
- The employer must demonstrate that compliance requires significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.
- Not available to employers with 50 or more employees.
- All employees who work for the employer, regardless of work site, are counted.

Other Exemptions

- Certain employees of airlines, railroads, and motorcoach carriers are exempt from nursing employee protections under the FLSA.
- Employees who are exempted may be entitled to break and/or space protections under State or local laws.





Interaction with State Laws

- The FLSA's pump at work protections do not preempt a State law or municipal ordinance that provides greater protections to employees than those provided by the FLSA.
- Many states have laws related to pumping milk at work.

Prohibited Retaliation

- It is also a violation of the FLSA to “discharge or in any other manner discriminate against” any employee because, for instance, they filed a complaint to assert their pump at work rights or cooperated in an investigation regarding these protections.
- Employees are protected regardless of whether the complaint is made orally or in writing.
- Most courts have ruled that internal complaints to an employer are also protected under the FLSA's prohibition on retaliation.

Example – Prohibited Retaliation

- Charlie has an eleven-month-old nursing child and works in shoe sales at a department store.
- On Friday, the store manager tells Charlie to work an additional 3 hours the next day to meet the employer's sales quotas for the week and make up the time Charlie spent taking pump breaks during the week.
- In this example, Charlie has experienced unlawful retaliation under the FLSA.

Remedies

- Employers are liable for appropriate legal or equitable remedies under the FLSA.
- Effective April 28, 2023, remedies for violations of the reasonable break time and space requirements may include employment, reinstatement, promotion, and the payment of wages lost and an 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 legal and equitable remedies are already available for violations of the anti-retaliation prohibition.

Enforcement

- An employee may file a complaint with WHD or may file a private cause of action seeking appropriate remedies.
- An employee or other party can file a complaint with WHD at any time within a two-year statute of limitations.
- Special notification procedures may apply to filing a private action where an employer has failed to provide an employee with an appropriate space to pump.
- These special procedures do not apply before an employee or other party can file a complaint with WHD.

Special Notification Procedures

Before an employee can file a private suit regarding an employer's failure to provide a space to pump, the employee must notify the employer of the failure and allow 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 PUMP Act rights, or
- Where the employer has expressed a refusal to comply.

WHD Information

The Wage and Hour Division (WHD) of the U.S. Department of Labor administers and enforces the FLSA, including the pumping at work protections.

How to [contact WHD](#):

- Call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE(1-866-487-9243)
- Visit www.dol.gov/agencies/whd/contact

Other Federal Protections

- The **Pregnant Workers Fairness Act** requires covered employers to provide reasonable accommodations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.
- **Title VII of the Civil Rights Act** prohibits discrimination and harassment based on pregnancy, childbirth, or related medical conditions in any aspect of employment.
- These protections also apply to pumping workers.
- These laws are enforced by the [Equal Employment Opportunity Commission](https://www.eeoc.gov/pregnancy-discrimination) (EEOC): <https://www.eeoc.gov/pregnancy-discrimination>.

WHD Resources

Additional information about the [FLSA Protections to Pump at Work](https://www.dol.gov/pump-at-work) can be found at <https://www.dol.gov/pump-at-work>

This includes:

- Fact Sheet #73: FLSA Protections to Pump Breast Milk at Work
- FAQs: FLSA Protections to Pump Breast Milk at Work
- What to Expect from Your Employer When You're Expecting



Additional [retail and restaurant industry resources](https://www.dol.gov/agencies/whd/industry-resources) can be found at <https://www.dol.gov/agencies/whd/industry-resources>

Additional Resources

- [Supporting Nursing Moms at Work: Employer Solutions](https://www.womenshealth.gov/supporting-nursing-moms-work/what-law-says-about-breastfeeding-and-work/what-employers-need-know)
www.womenshealth.gov/supporting-nursing-moms-work/what-law-says-about-breastfeeding-and-work/what-employers-need-know
- [National Conference of State Legislatures Compilation of State Breastfeeding Laws](http://www.ncsl.org/health/breastfeeding-state-laws)
www.ncsl.org/health/breastfeeding-state-laws
- [Surgeon General's Call to Action to Support Breastfeeding](http://www.cdc.gov/breastfeeding/resources/calltoaction.htm)
www.cdc.gov/breastfeeding/resources/calltoaction.htm
- [EEOC Enforcement Guidance on Disparate Treatment](http://www.eeoc.gov/laws/guidance/enforcement-guidance-unlawful-disparate-treatment-workers-caregiving-responsibilities)
www.eeoc.gov/laws/guidance/enforcement-guidance-unlawful-disparate-treatment-workers-caregiving-responsibilities

Additional Resources - continued

- [OPM Guidance on Nursing Mothers in the Federal Workforce](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/NMothersFederalEmployment.pdf)
www.dol.gov/sites/dolgov/files/WHD/legacy/files/NMothersFederalEmployment.pdf
- [Guide for Establishing a Federal Nursing Mother's Program](https://www.opm.gov/policy-data-oversight/worklife/reference-materials/nursing-mother-guide.pdf)
www.opm.gov/policy-data-oversight/worklife/reference-materials/nursing-mother-guide.pdf.
- [CDC Workplace Lactation Support Program Toolkit](https://www.cdc.gov/breastfeeding/index.htm)
<https://www.cdc.gov/breastfeeding/index.htm>

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Questions?