

## Blog Post

# New Protections for Working Mothers: The PUMP Act

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By [Emily C. Ayvazian](#)

Nursing mothers now have pumped up rights at work. Congress recently passed the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act which went into effect on December 29, 2022, and expands the employment protections previously afforded to nursing employees through the Break Time for Nursing Mothers Law (Break Time Law).

Despite American Academy of Pediatrics guidance and the known benefits to breastfeeding, studies consistently show that only a minority of babies are still exclusively breastfed at six months. The recent formula shortage crisis has only revived conversations around family and breastfeeding support, especially for low-income workers who are more likely to work in jobs without parental leave or spaces to safely pump and store breastmilk. In fact, according to the U.S. Breastfeeding Committee, nearly one in four women of childbearing age were not covered by the previous Break Time Law. The PUMP Act has not only closed this legal loophole but also expanded employment protections to millions of working moms.

## Who Does it Apply To?

The PUMP Act applies to employers of all sizes covered by the Fair Labor Standards Act (FLSA) and covers all employees, including exempt and non-

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exempt workers, except airline flight crewmembers (flight attendants and pilots) and certain railroad and motorcoach employees.

While the PUMP Act covers small employers, which are defined as employers with fewer than 50 employees, such employers may be excused from compliance with the PUMP Act if they can demonstrate that compliance would impose an undue hardship by causing the employer “significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.”

### What Does it Require?

The PUMP Act requires employers to provide nursing mothers two things:

1. a reasonable amount of break time to express breast milk as frequently as needed for up to one year following the birth of the employee’s child; and
2. a space to express breast milk that is shielded from view and free from intrusion from coworkers and the public and is not a bathroom.

The lactation space can be a temporary or converted space and does not need to be dedicated to nursing mothers only, so long as the space is available when needed by them. While employers may choose to create a permanent or dedicated lactation space, they are not required to do so. Employers also do not have to provide a lactation space if they do not have any nursing employees.

Employers are not required to pay their employees for lactation breaks under the PUMP Act so long as the employee is completely relieved of duties during the entire break. If the employee is interrupted at any time during the lactation break, then the employee is not “completely relieved of duties” and must be paid for the entire break. Moreover, if an employer already provides compensated breaks, an

employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for the break time. Likewise, exempt employees should be paid their full weekly salary as required by federal, state, and local law, regardless of whether they take breaks to express breast milk.

## What is New?

If any of the above sounds familiar, it is probably because most of these protections were afforded by the previous Break Time Law. However, there are some key differences.

The biggest change between these two laws is who is protected by them. Due to a legal loophole, the Break Time Law only applied to employees who were not exempt from the FLSA's overtime pay requirement, so salaried, exempt employees were not covered. Because the PUMP Act applies to both exempt and non-exempt employees, it expanded these protections to nearly nine million more employees, including teachers and nurses.

Although this enforcement provision does not go into effect until April 28, 2023, another major difference is the PUMP Act creates a private right of action for employees to sue their employer for violations of the Act. Such violations can include refusing to provide adequate space or break time or for terminating an employee for requesting the breaks or space. While most lawsuits can be filed immediately, if an employer has not provided adequate space to express breast milk, before filing a lawsuit, the employee must first give notice to their employer of its failure to comply and allow ten calendar days for the employer to come into compliance. Employees can also continue to file a complaint with the U.S. Department of Labor, Wage and Hour Division.

## What Should Employers Do?

All employers should locate and designate adequate space for their employees to express breast milk. Depending on the size of the employer and the number of nursing employees it has, more than one space may need to be designated. Even employers with no current nursing employees should still plan for the space they would provide if an employee were to become eligible.

Employers should ensure that their break and timekeeping policies and practices comply with the PUMP Act or are updated as needed. Employers may also consider implementing a lactation policy if they did not already have one. Employers should also ensure their Human Resources department and/or direct supervisors are trained on the PUMP Act's requirements and any policy updates.

It is also important to note that the PUMP Act is not preemptive of state or local laws that may provide greater protections for employees. Depending on where your employees are located, modifications may be needed for lactation policies and practices.

For further information or specific guidance regarding your company's obligations under the PUMP Act, contact your Akerman labor and employment attorney.

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