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FISCAL AND POLICY NOTE
First Reader

House Bill 1293
Economic Matters

(Delegate Miele, *et al.*)

Labor and Employment - Break Time for Expression of Breast Milk by
Employees - Requirement

This bill requires an employer to provide to an employee a reasonable break time for an employee to express breast milk for a nursing child each time the employee needs to do so in a private place, other than a bathroom, unless providing such a place will cause undue hardship to the employer. An employer must provide the reasonable break time and place to do so for one year after the child's birth. If an employer is required to provide nonworking shift breaks, the employer may require an employee to use the nonworking shift breaks, to the extent practicable, to express breast milk. An employer is only required to compensate an employee for a break to express breast milk under specified circumstances. An employer that employs fewer than 50 employees does not have to comply with the bill's provisions if doing so 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.

Fiscal Summary

State Effect: The Commissioner of Labor and Industry may investigate whether the bill's provisions have been violated and provide information to employers to engender compliance with existing resources. The bill has no effect on the State as an employer because State agencies already comply with the bill's requirements. Revenues are not affected.

Local Effect: The bill does not materially impact local governments, as discussed below.

Small Business Effect: Minimal. If it causes undue hardship, a small business is not required to provide to an employee a reasonable break time and place for an employee to express breast milk.

Analysis

Current Law: Under Section 7 of the federal Fair Labor Standards Act (FLSA), employers are required to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time she has the need to express the milk. Employers must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide 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 break time. In addition, the employee must be completely relieved from duty or else the time must be compensated as work time.

Only covered employees who are not exempt from FLSA's overtime pay requirements are entitled to breaks to express milk. Employees who are exempt from FLSA's overtime pay requirements include executive, administrative, professional, computer, and outside sales employees, among others.

Under State law, employers that operate certain "retail establishments" must offer nonworking shift breaks to their employees. The law applies to retail businesses in the State that employ 50 or more retail employees during each working day for 20 or more weeks in the preceding or current year. The employees may be located in one location or in multiple franchised locations that operate under the same trade name. The shift break requirement does not apply to wholesale establishments or restaurants or to units of State, county, or municipal governments.

Background: According to the National Conference of State Legislatures, 27 states and the District of Columbia have laws related to breastfeeding in the workplace.

When FLSA was amended in 2010 to require employers to provide reasonable break time and a place for nursing mothers to express breast milk, the U.S. Department of

Labor (DOL) consulted with public health officials from the U.S. Department of Health and Human Services, including the Centers for Disease Control and Prevention and the Health Resources and Services Administration. DOL found that the frequency of breaks needed to express breast milk varies depending on factors such as the age of the baby, the number of breast feedings in the baby's normal daily schedule, whether the baby is eating solid food, and other factors. In the early months of life, a baby may need as many as 8 to 12 feedings per day. This means that a nursing baby needs food every 2 to 3 hours.

A nursing mother produces milk on a constant basis. If the baby does not take the milk directly from the mother, it must be removed by a pump about as frequently as the baby usually nurses. If a mother is unable to express breast milk while she is away from her baby, she may experience a drop in her milk supply, which could result in her being unable to continue nursing her child. The inability to express milk may also lead to an infection. Depending on the nursing mother's work schedule, it may be that the frequency of breaks needed tracks regular breaks and lunch periods, but this is not always the case. As the child grows and begins to consume solid foods, typically around six months of age, the frequency of nursing often decreases, and the need for a nursing mother to take breaks to express breast milk may also gradually diminish.

DOL expects that nursing mothers typically will need breaks to express milk 2 to 3 times during an 8-hour shift. Longer shifts will require additional breaks to express milk. The length of time necessary to express milk also varies from woman to woman. The act of expressing breast milk alone typically takes about 15 to 20 minutes, but there are many other factors that will determine a reasonable break time.

State Fiscal Effect: The Commissioner of Labor and Industry may investigate whether the bill's provisions have been violated and provide education and outreach efforts with existing resources. The bill has no enforcement mechanisms, so the Department of Labor, Licensing, and Regulation can only provide information to noncompliant employers to engender compliance. Revenues are not affected as there are no penalty provisions.

The bill has no effect on the State as an employer because State agencies already comply with FLSA.

Local Fiscal Effect: The bill does not materially affect local governments because local governments employees not exempt from overtime rules are already entitled to the bill's provisions under FLSA. Providing break time and a place for a nursing mother to those employees not currently covered under FLSA is not expected to materially affect local governments as local governments that employs fewer than 50 employees do not have to comply with the bill's provisions if doing so would impose an undue hardship.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; U.S. Department of Labor; National Conference of State Legislatures; Department of Legislative Services

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