

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 306  
Appropriations

(Delegate Krimm, *et al.*)

Finance

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State Personnel - Rights and Protections for Nursing Mothers

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This bill requires the State, through its appropriate officers and employees, to provide a reasonable break time for an employee to express breast milk for her nursing child after the child's birth each time the employee needs to do so. The State must provide, on notice, a private place other than a bathroom for the employee to express breast milk. The State may not be required to compensate an employee for any time spent expressing breast milk at work.

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Fiscal Summary

**State Effect:** None. The bill codifies existing practice, as discussed below.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** Under Section 7 of the 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.

**Background:** 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 two to three 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 two to three times during an eight-hour shift. Longer shifts 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 many other factors determine a reasonable break time.

**State Expenditures:** While Section 7 of FLSA applies only to employees who are not exempt from FLSA overtime pay provisions, State agencies provide break times and locations as required under federal law to all nursing mothers regardless of whether or not the employees are exempt from Section 7 of FLSA.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Transportation; U.S. Department of Labor; Department of Legislative Services

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Analysis by: Heather N. Ruby

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510