

September 3, 2018

Nursing Breaks Are Now Paid In Illinois!



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On August 21, 2018 the State of Illinois amended the Nursing Mothers in the Workplace Act to prohibit an employer from reducing an employee's compensation for breaks for nursing mothers. Originally, employers were required to provide "reasonable unpaid break time each day" to express milk, which "must, if possible, run concurrently with any break time already provided to the employee." That meant that if nursing mothers needed additional time to express milk beyond existing breaks, then that time would be unpaid.

Now, all break time for the purpose of expressing breast milk must be paid. Also, the requirement that a nursing break "must" run concurrently with other break time has turned into a "may run concurrently" – meaning, we think – that employees will have more say into when such breaks take place.

Illinois has also ratcheted-up the standard for employers to justify any refusal to provide such reasonable break time. Before, employers had to show that breaks would "unduly disrupt" operations, which is a vague standard. Now, employers must show a break would create an "undue hardship" as defined under the Illinois Human Rights Act. "Under hardship" is a demanding standard that evaluates whether an action would be "prohibitively expensive or disruptive" based on a multi-factor test that essentially looks at all aspects of an employer's size, operations and finances. In short, employers rarely will be able to show an undue hardship in granting a nursing break.

These changes are already in effect so employers should review their policies and implement paid breaks immediately. For more information, the attorneys of Gould & Ratner's Human Resources and Employment group would be happy to discuss this topic or any of your employment law needs.