

February 22, 2011

**VIA ELECTRONIC MAIL:** <http://www.regulations.gov>

Montaniel Navarro  
FLSA Branch Chief  
Wage and Hour Division  
U.S. Department of Labor  
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Room S-3502  
Washington, DC 20210

**RE: RIN 1235-ZA00 – Comments on the Request for Information from the Public on Reasonable Break Time for Nursing Mothers**

Dear Mr. Navarro:

Thank you for the opportunity to submit comments on the U.S. Department of Labor (the Department) Wage and Hour Division's request for information (RFI) pertaining to the Reasonable Break Time for Nursing Mothers provision in the "Patient Protection and Affordable Care Act." The break time provision amended section 7 of the Fair Labor Standards Act (FLSA) (Pub. L. 111-148, 124 Stat. 119, section 4207). We respectfully submit these comments on behalf of the College and University Professional Association for Human Resources (CUPA-HR).

#### STATEMENT OF INTEREST

CUPA-HR serves as the voice of human resources in higher education, representing more than 12,000 HR professionals at over 1,700 colleges and universities across the country, including 90 percent of all U.S. doctoral institutions, 70 percent of all master's institutions, more than half of all bachelor's institutions and 500 community colleges. Higher education employs 3.3 million workers nationwide, with colleges and universities in all 50 states.

Many of CUPA-HR's member institutions are at the forefront of this issue, having worked closely for years to accommodate the needs of nursing mothers in the workplace. Many of these institutions have come up with creative ways to provide the space and the flexibility to allow nursing mothers to express breast milk in their traditional work environment. Our comments below provide examples of what CUPA-HR member institutions have found to be successful, or unsuccessful, in making accommodations for nursing employees, including the results of a survey we conducted of our membership on their experiences.

#### COMMENTS ON THE REQUEST FOR INFORMATION

President Obama signed the "Patient Protection and Affordable Care Act" into law on March 23, 2010. One of the provisions in the law amended the FLSA requiring employers to provide a reasonable break time and a place for nursing mothers to express breast milk for one year after their child's birth.

We applaud the Department's decision in the RFI not to issue implementing regulations at this time. As the Department notes, a rigid approach including regulations may not be the most effective means of providing guidance at this time as there are a "wide variety of workplace environments, work schedules, and individual factors that will impact the number and length of breaks required by a nursing mother, as well as the manner in which an employer complies with [the] break time requirement." Many of CUPA-

HR member institutions have spent time and resources developing lactation space and policies, but often adjust different aspects on a case by case basis, based on what works best for the nursing mother, the supervisor and the available facilities. Thus, flexibility to adjust to the specific circumstances is essential and we agree that a one size fits all approach is not appropriate on this issue.

In order to provide the Department with ideas and meaningful feedback on the new requirement, we polled our membership to see how they are currently accommodating the needs of nursing mothers.

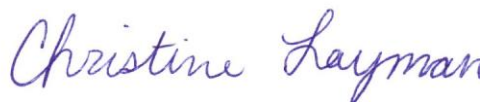
The survey data was collected from 227 human resource practitioners at colleges and universities across the country. Of the respondents, 42% were from public institutions, 54% were from private institutions and the rest were from institutions that are a combination thereof. Twenty four percent of the institutions were doctoral-granting, 24% had masters programs, 26% offered baccalaureate degrees and 15% were community college or 2-year intuitions. Additionally, 65.6% of the responding higher education institutions had fewer than 1,000 full time employees, 25.1% had 1,000 to 4,999 full time employees, 5.7% had 5,000 to 10,000 full time employees and 3.5% had more than 10,000 full time employees.

The survey results show a summary of the responses to six questions on what type of space higher education institutions are providing for nursing mothers, the challenges they have faced, how they structure the break time, whether or not their employees need to share the space, the impact they have seen from their state laws and their most effective practices.

As many of the questions posed by DOL in the RFI relate to specifics of the space designated by employers, we hope that the information and concrete solutions included in the survey responses will be useful to you as you look to provide additional guidance to employers.

Please let us know if you have any questions and if we can provide any additional information.

Sincerely,



**Christine Layman**

**Government Relations Manager**

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## **College and University Professional Association for Human Resources (CUPA-HR) Member Lactation Survey Results:**

### **1. What types of space do you provide for new mothers to express milk?**

Of 143 respondents, 37% indicated their institution had designated lactation rooms available for nursing mothers. Of these, many of the larger institutions indicated that they had multiple lactation rooms on their campus. The respondents specified that these private rooms offered a wide variety of amenities from a chair and an electrical outlet, in most cases, to a comfortable sitting area with an electrical outlet, lamps, pillows, a refrigerator, a sink, reading materials, relaxing music, lockers to store their supplies and a breast pump (mothers provide their own attachments).

Twenty nine percent of the respondents indicated that a private office space is made available to nursing mothers. At these institutions, if the nursing mother does not have a private office of her own to use one is made available as close to her workspace as possible. Twenty two percent of the respondents said they don't have a designated space but instead work with the mother on a case by case basis to find appropriate space that meets her needs.

Another 11% of those responding have designated shared spaces on their campuses that are made available to nursing mothers when they need it. Examples of these spaces given were unused classrooms that are private and can be locked, a file room, a wellness room, a small conference room, a meditation room and a quiet break room. Finally, 1% of the respondents were not familiar with the space made available at their school.

### **2. Has your institution faced any challenges in providing space? If yes, please explain.**

Of 146 respondents, 57% said their institutions have not had challenges in providing lactation space, but 43% said they have had challenges. The main challenge expressed by nearly every respondent was the difficulty in finding appropriate and private space. Several respondents shared that the new regulations are particularly difficult for colleges and universities to comply with because their campuses are made up of multiple buildings (often decades old) spread out over a large area. They indicated that with extremely tight budgets and buildings at capacity they do not have the funds or the space to set up a lactation room in every building on campus where one might be needed. A few responses specified that many of their buildings are old houses and the space that is the most private in many cases has been the bathroom, which would not meet the new requirements. Another individual expressed concern because the current space they make available for a lactation room is not handicap accessible.

Respondents said it is difficult to find space that is close and convenient to the nursing mothers work space, but at the same time they have heard from mothers that the mothers do not want to be too close to other offices because they are worried that nearby employees will hear pumping noises. Others reported challenges due to the lack of private spaces at clinical facilities and other locations on campus. Even respondents that currently have lactation rooms on their campuses said their biggest challenge was finding appropriate space because the space they have is inadequate to meet the needs of nursing mothers on other parts of campus that do not have a designated lactation room near them.

Some individuals expressed frustration that it is difficult or impossible to develop a plan for when and where you will need a room that meets the requirements because they felt it would be very inappropriate to ask every single pregnant employee if they planned to breastfeed their baby and if they would need lactation facilities.

Several respondents that use shared space to meet the needs of nursing mothers indicated that coordinating the use of the space had posed problems. One in particular has to ask an employee to vacate their private office so the nursing mother employee could use the space to express breast milk because that individual did not have a private office and there was no other appropriate space available. Finally, finding effective ways to notify employees that lactation space is available was cited as another challenge several schools are facing.

### **3. How do you structure break time for nursing mothers who use this space?**

Of 141 respondents, 53% indicated that nursing mothers may use the space at their discretion whenever they need it. The institutions of 27% of the respondents task individual supervisors or departments with developing a schedule for the mother to take breaks on a case by case basis that works for the mother and will not disrupt the activities of that department. Fifteen percent said nursing mothers use regular break times and lunch breaks to express breast milk. Finally, 5% of the respondents said that nursing mothers at their schools work out a schedule with the office or individual that oversees the lactation room, the office varied from the Human Resources Department to the Chaplain. Many of the responses indicated that the school policies are dependent on whether it is a non-exempt or exempt employee, and that non-exempt employees work with their manager to establish a schedule and use their standard break time and exempt employees, including faculty, do not need to adjust their time or take paid time off but can use the space as needed.

### **4. Do employees sometimes need to share the space with other employees? If yes, does this pose scheduling challenges?**

Of 138 respondents, 71% indicated that nursing mothers at their institutions do not need to share space and 29% said they do sometimes need to share the space. Overall, the respondents indicated that sharing the space has not been much of an issue, though not all employees appreciate sharing. The institutions represented in the survey that have had issues with multiple employees needing the space at a time have either asked all of the nursing mothers using the space to work together and set up a schedule, or they have used tools like Google calendar or posted a simple room reservation signup sheet on the door. If the space allows for more than one nursing mother to use the space at a time, some institutions have put in privacy curtains or dividers so they can accommodate everyone. One challenge raised by a few respondents, pertaining to spaces that also serves another purpose, such as a conference room or a storage room, is when an unanticipated issue arises in which the space needs to be accessed for its primary purpose while it is in use as a lactation room. This has put the mother and the person needing access to the room in an awkward position.

**5. If you live in a state with state lactation laws (AR, CA, CO, CT, GA, HI, IL, IN, ME, MN, MS, MT, NM, NY, ND, OK, OR, RI, TN, TX, VT, VA, WA, WY), how has your state law impacted your policies/practices?**

On this question, we received responses from individuals in 12 different states. Thirty eight percent of them created specific lactation policies and designated or identified lactation spaces in order to comply with or exceed the requirements of their state lactation law. Another 41% were already providing the flexibility and access to space before their state passed any legislative requirements. Finally, 9% of the respondents in a state with a workplace lactation law indicated that they do not have any formal lactation policies but that they have made their employees aware of their rights and accommodate nursing mothers on a case by case basis.

**6. Please provide any additional information or effective practices you'd like to share.**

The survey respondents provided a variety of responses to this question. Below is a sampling of the most interesting responses, grouped by subject matter, that we believe will be the most helpful to the Department.

**Need for Flexibility:**

- We would work with our employees on an individual basis to accommodate their needs.
- I think if the law becomes too specific it hurts those of us who have different building requirements, and who have to have creative solutions because of the space and time that we have employees work...I think as long as employer accommodate mothers in good faith, there has to be some level of flexibility that we are afforded.

**Interest in Additional Guidance:**

- We have already had a first request for space and based on the information we have received thus far on the law are accommodating that request. We did happen to have what appears to be appropriate space near the employee's regular location. However, that was just chance/luck. There is little or no space available to carve out areas around the rest of the campus for breast milk expression so we are looking for better information and guidance as we move forward.
- In talking with nursing moms, most of them pump in the bathroom in their own homes so if the space is private that is more important than whether it is a bathroom or not.
- Sharing of practices and ongoing discussion/communication would help all campuses improve current practices.

**What has Worked Well:**

- We have a combination lock on the door that's given to the mothers. They work out scheduling themselves.
- We are also looking into the possibility of starting a Lactation Support Program/Group. One of the rooms is within our Women's Center, which has worked out very well.
- Our Lactation Room has been located centrally on campus in our Learning Resource Center which houses our library. To ensure privacy for moms, the key is available for checkout at the Circulation Desk. The room has been tastefully decorated with comfortable home-like furnishings including chair, table, floor lamps, and decorative accents but also includes a sink

and mirror. Moms must furnish their own portable pump and manage their own refrigeration at this time.

- Access provided to faculty and staff for the purpose of expressing milk is also extended to the student population. In addition, the University is currently discussing opportunities to address the need for this, as well as other family-centered space, within the areas of construction on campus and in future renovation plans.
- HR provides complimentary insulated cases with ice packs that mothers can place expressed milk in if there's no refrigerator near her work space.

#### Feedback to the Changes:

- It's been a very good move for us in respect to staff faculty relations.
- We set this room up about 2 years ago and it has been very well received. Several employees have noted it in their evaluation comments that they appreciate the consideration we have given their needs.
- We adopted this 20 years ago. It seems a necessary part of work.

#### Promotion and Communication to Employees:

- Share information regarding breastfeeding during our wellness fair to students, faculty, staff and the community.
- We have recently convened a committee, representing various departments around campus, to establish standards for nursing rooms, to guarantee that supervisors are aware of this amendment, and to educate our campus on the importance of breastfeeding.
- The College announced the new law on its website and advised employees to work directly with their supervisors in scheduling lactation breaks. This appears to have worked well so far, since at present, we have not had any complaints filed with the Human Resources or EA/EO offices.
- Notification is provided about our lactation accommodations to employees during new employee orientation and as part of our family leave communication packet. Key access to the lactation room is available through HR.

#### Sample Announcements and Policies:

- Here is our complete announcement:  
"Lactation Rooms for Staff and Faculty Nursing Mothers  
In response to the needs of new mothers, and in accordance with [state] law, [our institution] will provide reasonable unpaid break time each day to female employees who need to utilize a lactation room. The break time must, if possible, run concurrently with any break time already provided to the employee. An employer is not required to provide break time if to do so would unduly disrupt the operations of the employer.  
"Employment Services and Facilities Services have identified lactation spaces in [locations] for mothers who are nursing and need a location during work hours. Please contact [name and contact information] to make specific arrangements for use of the rooms. Please understand that the location of the lactation rooms may vary with time depending on space needs and schedules."  
• Here is the remainder of the guidelines we developed under the state regulations:  
"Employees at work sites that do not have a designated lactation area should contact their supervisor or manager to arrange a suitable location. A suitable location may include, but is not limited to any of the following if the area allows the employee privacy in which to express milk:  
-The employee's work area;

- A lounge or other room connected to a public restroom; or
- A childcare facility.

"In the event that the designated lactation area is not within close walking distance of an employee's work area, the employee should contact her supervisor to discuss allowing a reasonable amount of time for the employee to walk to and from the lactation area. The agreed upon amount of time will not be included as part of the lactation break period.

An employee covered under this policy may store her expressed milk in a refrigerator made available to employees. If a refrigerator is not available, the employee should contact her supervisor to arrange another alternative, such as a cooler or insulated food container.

"An employee storing milk in a refrigerator or storage container provided by [our institution], or provided for use by other employees, will ensure that the milk is in a container clearly labeled with the employee's name and the date."

- Here are the key sections of our policy.

#### Section 1 Purpose

The purpose of this policy is to strongly support and encourage the practice of breastfeeding by striving to accommodate the needs of employees, and by ensuring that employees are provided with adequate facilities for breastfeeding, or the expressing of milk for their children, in conformance with California law.

#### Section 2 Scope

The provisions of this policy apply to the employees of [this institution].

#### Section 3 Policy

It is the policy of [this institution] to strongly support and encourage the practice of breastfeeding and to provide adequate facilities for breastfeeding, or the expressing of breast milk, in conformance with [state] law.

#### Section 4 Procedures

4.1 [this institution] will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid.

4.2 Employees taking advantage of this policy will provide their supervisors with a projected schedule for expressing breast milk at work and will apply due diligence to maintain their obligation to supply the [institution] with work for their wages. Exhibit A contains a model schedule.

4.3 [this institution] will make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this policy.

#### Section 5 Point of Contact

General questions related to the interpretation and daily administration of this policy will be directed to the Executive Vice President [phone number].

#### Section 6 Exhibit

Sample Schedule for Expressing Breast milk at Work (from California WICS: Women, Infants, and Children Supplemental Nutrition Program)"