Expressing Breast Milk in the Work Place

The New York State Labor Law has been amended to add a new Section 206-c regarding the right of nursing mothers to express breast milk in the work place. This memorandum is a result of discussions with the Governor's Office of Employee Relations and provides guidance on the application of this new provision to classified service employees in the Executive branch. Labor Law Section 206-c provides as follows:

"206-c. Right of nursing mothers to express breast milk. An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

2. This act shall take effect immediately."

This legislation became effective August 15, 2007. It permits nursing mothers to express breast milk in the work place, but does not authorize breast feeding of the child at the work site. Furthermore, this benefit may only be used by eligible employees for up to three years following the birth of a child.

Time to Express Breast Milk

With respect to time during the workday to express breast milk, the legislation provides:

"An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child for up to three years following child birth."

Based on the above language, an agency is required to allow a nursing mother who wishes to express breast milk to use:

- Reasonable unpaid break time;
- Meal time, and/or;
- Paid break time currently provided by the employer.

Using Existing Meal Periods and Paid Rest Breaks

Agencies are required to permit nursing mothers to express breast milk during their meal period and/or paid rest breaks if the employee elects to utilize meal periods and/or paid rest breaks for this purpose. However, an employee cannot be required to use meal periods and/or paid rest breaks for this purpose and may elect to express breast milk at other reasonable times during the work shift.

The legislation does not authorize the granting of additional paid break time beyond that already provided by the employer. Accordingly, if an agency does not provide paid rest breaks now, there is no obligation to create paid rest breaks solely to permit an employee to express breast milk.

Using Unpaid Break Time

Employees may elect to use the unpaid break time authorized by Section 206-c instead of or in combination with meal periods and/or paid rest breaks. Consistent with State policy on use of leave credits, employees must be permitted to charge appropriate leave credits (credits other than sick leave) during the unpaid breaks authorized by Section 206-c.

While the statutory benefit is available to employees within their basic workweek as well as during any additional time worked, including overtime shifts, employees are not permitted to charge leave credits outside their basic workweek. Use of unpaid break time outside the basic workweek does not impact eligibility to earn biweekly leave credits.
Location to Express Breast Milk

With respect to a location to express breast milk, Section 206-c provides:
"The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy."

In accordance with this legislation, agencies must make "reasonable efforts" to identify a location that is both private and in close proximity to employee's work area. This may necessitate a balancing of the need for privacy and the proximity of the location to the work area. In some work environments it may be necessary for the designated location to be farther from the work area in order to ensure privacy.

Possible locations might include an office or conference room where steps can be taken to ensure that the employee can express milk in privacy. In many work locations, space is at a premium and is utilized for multiple purposes. In such cases scheduling a nursing mother's access to a particular location may be necessary in order to comply with both the legislation and agency work space needs.

Prohibition on Discrimination

The legislation specifically prohibits discrimination and provides as follows:
"No employer shall discriminate in any way against an employee who chooses to express breast milk in the workplace."

Employee Requests

An employee who wishes to avail herself of this benefit is expected to give her agency reasonable notice so that a schedule can be arranged and a location identified. Normally, this consultation will take place prior to a nursing mother's return to work from child care leave. It is also expected that an employee will provide her agency notice when time for expressing breast milk is no longer required. In no event is the benefit available beyond three years from the date of birth of the child.

Agencies should already have sufficient documentation in connection with an employee's leave request for childbirth or child care to establish eligibility for this benefit. If there are circumstances which cause an agency to question the need for additional documentation, the agency should consult with the Attendance and Leave Unit of this Department.