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On August 15, 2007, Governor Spitzer signed into law a bill providing new workplace rights and protections for nursing mothers. The law, which amends the New York Labor Law, requires employers to provide "reasonable" break time so nursing mothers may express breast milk; to make "reasonable efforts" to provide a private place for doing so; and prohibits discrimination "in any way" against an employee who chooses to express breast milk in the workplace.

## East Coast Edition

*A Littler Mendelson East Coast-specific Newsletter*

### Nursing Mothers Now Protected Under New York's Labor Law

*By Gregory B. Reilly and Lisa M. Brauner*

Governor Spitzer has signed into law a bill that amends Labor Law section 206 to add Section 206-c, specifically requiring all employers, regardless of size, to provide their breastfeeding employees with reasonable unpaid break time or permit them to use paid break time or meal time each day to express breast milk for their nursing child, for up to three years following the child's birth. The law also requires employers to make reasonable efforts to provide a room or other location "in close proximity" to the work area where breastfeeding employees can express breast milk in privacy. Lastly, the law prohibits discrimination "in any way" against employees who choose to express breast milk in the workplace. The law took effect immediately upon the Governor's signing on August 15, 2007.

Section 206-c - which falls within the Labor Law's general provisions protecting employees' health and safety - does not contain any provision for remedies. Thus, the remedies are unclear at this time. Presumably, the New York State Department of Labor (NYSDOL) will be charged with enforcing this law.

Advocates of Labor Law section 206-c have cited the well-documented benefits of breastfeeding to the health and well-being of children and mothers, the minimal cost to most employers, and employers' long-term savings from reduced missed work days due to the illness of an employee's child and other reduced health-care costs.

Detractors suggest that this is another instance of government interference in the workplace to impose social policy and that the statute's vagueness as to what constitutes "reasonable efforts," "in close proximity" and expressing milk "in privacy" is likely to become fodder

for litigation. Notably, the State Assembly and Senate rejected certain proposed amendments to the law that would have required employers to provide for refrigerated storage of expressed breast milk and a space other than a toilet stall for expressing breast milk.

This law's passage came on the heels of World Breastfeeding Week (August 1-7, 2007) and New York City's recent ban of free baby formula samples in gift bags for new mothers at New York City public hospitals in recognition of breastfeeding's health benefits.

New York joins a growing number of states that have enacted laws protecting a nursing mother's right to express breast milk in the workplace. These states include California, Connecticut, Georgia, Hawaii, Illinois, Minnesota, Mississippi, New Mexico, Oklahoma, Oregon, Rhode Island, Tennessee, and Virginia. Additionally, Texas and Washington have laws providing for the designation of worksites that are supportive of breastfeeding as "mother-friendly" and "infant-friendly," respectively, despite not having laws requiring employers to permit nursing mothers to express breast milk in the workplace.

All New York employers, regardless of size, must comply with this new law. As a consequence, it is advisable that they amend their handbooks, policies and training to account for the new law's requirements.

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