



September 6, 2023

OFFICERS

SUBJECT: Guidance for Nursing Mothers in the Workplace

This memorandum provides guidance on provisions of the Fair Labor Standards Act (FLSA) that covers a nursing mother's right to express breast milk while at work.

Upon request, employers are required to provide reasonable break time to nursing mothers each time such employee has a need to pump breast milk at work for one year after the child's birth. Employers may not deny a covered employee a necessary break to pump. This requirement applies to all nursing employees, whether they are FLSA exempt or FLSA nonexempt. Such breaks are generally off-the-clock for FLSA nonexempt employees as long as they are fully relieved of duty during the entirety of the break. FLSA nonexempt employees may choose to use their normal paid breaks to pump, in which case they would be compensated for the break in the same way that other employees are compensated for the break.

In addition, employees are entitled to a functional space to pump breast milk at work, other than a bathroom, that is available as needed, shielded from view, and free from intrusion from co-workers and the public. This includes, providing access for employees who perform work away from postal sites.¹

The Postal Service prohibits retaliation against employees for exercising their rights (e.g., seeking to pump at work, filing complaints with the Department of Labor (DOL), cooperating with DOL investigations). Nursing mothers who feel they have not been afforded their full ability to pump breast milk at work can contact their Human Resources, Manager. They may also file a written or oral complaint with the DOL.

The DOL Wage and Hour Division (WHD) Publication 1088, *Employee Rights under the Fair Labor Standards Act*, dated April 2023, reflects current pump at work requirements. This publication must be posted and remain posted in all postal facilities in conspicuous places visible to employees.

Offices must discard and recycle all previous versions of Publication 1088 and display the April 2023 version by September 29, 2023. The updated version is attached.

¹ While this memo addresses Postal obligations under the FLSA, there is a separate duty to provide reasonable accommodation to nursing mothers under the Pregnant Workers Fairness Act. Requests for accommodation beyond the obligations discussed here, for example for breaks beyond one year, should be referred to the appropriate RAC. See USPS Policy on Accommodation of Pregnant Women and Nursing Mothers.

If you should need further guidance on these matters, please contact the Field Human Resources Director for your respective Area. Please share this memo throughout all levels of your management teams to ensure all supervisory and managerial employees are aware of the Postal Service's responsibilities for nursing mothers in the workplace.

A handwritten signature in black ink, appearing to read "Simon Storey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Simon Storey

Attachment

cc: Directors, Field Human Resources

EMPLOYEE RIGHTS

UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE

\$7.25

 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

OVERTIME PAY At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain work hours restrictions. Different rules apply in agricultural employment.

TIP CREDIT Employers of “tipped employees” who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee’s tips combined with the employer’s cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

PUMP AT WORK The FLSA requires employers to provide reasonable break time for a nursing employee to express breast milk for their nursing child for one year after the child’s birth each time the employee needs to express breast 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 the employee to express breast milk.

ENFORCEMENT The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA’s child labor provisions. Heightened civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions. Certain narrow exemptions also apply to the pump at work requirements.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some state laws provide greater employee protections; employers must comply with both.
- Some employers incorrectly classify workers as “independent contractors” when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA’s minimum wage and overtime pay protections and correctly classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

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www.dol.gov/agencies/whd

