



FIRE & EMS BULLETIN

LACTATION ACCOMMODATIONS

The Fair Labor Standards Act (FLSA) requires employers to provide lactating employees with reasonable break time each day following the birth of a child, allowing them to express breast milk. The law was enacted in December 2022 and is fully enforceable as of April 28, 2023. The law requires employers of all sizes to provide reasonable break time for an employee to express human milk for their nursing child for up to one year after the birth of the child, unless the employer can demonstrate that a specific accommodation would be an undue hardship.

The lactation room must be a clean and private space that is not a bathroom. The room must have a door that can lock, a place to sit, a flat surface, access to running water, and an electrical outlet to plug in an electric pump. The room must be accessible to people with disabilities, including people who use wheelchairs.

Section 207(r) does not specify what the area provided for expressing breast milk has to consist of beyond stating that it cannot be a bathroom, and must be “shielded from view and free from intrusion from coworkers and the public.” U.S. Department of Labor guidance suggests that the area need not be a permanent or dedicated room, and that even a temporary location available on an as-needed basis will suffice. For fire stations that already provide individual sleeping quarters for each employee, the requirement to accommodate breastfeeding employees should have minimal impact. Stations that have dormitory-style sleeping quarters or semi-private rooms will need to identify suitable private locations as required.

All new fire stations should be designed with the nursing mother’s laws in mind. Given that the fire service, including workplaces, is decentralized throughout the community, a best practice is that each fire station should be able to accommodate a nursing mother.

Under §207(r), a nursing mother is entitled to such time off each day as she needs to express breast milk. The employee has the option to remain on duty or go off duty. If the nursing mother chooses to remain on duty and is available to provide emergency response in the event of a run, the time would be compensable.

In terms of the frequency of breaks, the Act is quite explicit that the breaks must be granted “each time such employee needs to express the milk.” In one case, a fire department argued that expressing milk every two to three hours was “excessive.” According to the Labor Department, “In the early months of life, a baby may need as many as eight to 12 feedings per day. This means that a nursing baby needs food every two to three hours. A nursing mother produces milk on a constant basis. If the baby does not take the milk directly from the mother, it must be removed by a pump about as frequently as the baby usually nurses.” (Wage and Hour Division RIN 1235-ZA00, dated December 21, 2010.)

Given the unpredictability of the “typical” workday in the fire service, this can be challenging. While emergency incidents may present the most obvious challenge, the Safety Director recommends fire departments not overlook the impact of making reasonable accommodations for nursing mothers at training sessions, district inspections, and other types of non-emergency activities.

Agencies should to consult with their labor attorney to develop a written policy and make any necessary adjustments to their stations.