

ED CLIPS!

Right to Express Breast Milk in the Workplace

Kevin Rhyne and Jay Youngblood

Finding the delicate balance between running a school campus efficiently and meeting the legitimate needs of employees can be quite challenging. One challenge is the balance between the needs of new mothers who return to their teaching duties and the needs of students in their classes. Often, new mothers will need to express breast milk during the workday. This can take teachers away from the classroom for significant amounts of instruction time. This gives rise to the following questions: (1) Must a school district accommodate nursing mothers by allowing them to leave the classroom to express milk; and (2) Who determines the time such breaks in the workday may occur? There are two statutes a school district must consider when this issue arises.

First, federal law was amended in 2010 to provide that employees who work for employers covered by the Fair Labor Standards Act and **are not exempt from the overtime requirements of the FLSA** are entitled to breaks to express milk. *See*, 29 U.S.C. §207(r)(1). Teachers are exempt from the overtime requirements of the FLSA and are not entitled to breaks to express milk under federal law. It should, however, be noted that those who are not exempt employees will be entitled to such breaks.

Second, and most important for Texas school districts, the Texas Legislature enacted Texas Government Code Chapter 619 in response to the exemptions in the federal law. Chapter 619 provides that public employees are “entitled to express breast milk at the employee’s workplace.” The statute makes it clear that this right extends to *all* school district employees, whether or not they are exempt employees.

Chapter 619 mandates public employers to develop a written policy that states the employer shall (1) support the practice of expressing breast milk; and (2) make reasonable accommodations for the needs of employees who express breast milk. Those “reasonable accommodations” are further defined by the statute in terms of the time and the place for the employee to express the milk.

As to the place, the statute requires school districts and other public employers to provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public.

Regarding the time, the school district is required to provide a reasonable amount of break time for an employee to express breast milk **each time the employee has need to express the milk**. The statute, by its very terms, puts the *time* of day for the break in the hands of the employee. The school district really has no say as to when the employee can take her break.

The school district does, however, have input as to what is a “reasonable” amount of time allowed for the break. We recommend a collaborative approach to determine the amount of time needed for the break. As everyone is different, there could very well be some variances in the break times allowed.

Each school district must carefully think through its policy on this issue and allow for enough flexibility to address the circumstances of each employee availing themselves of this right. We encourage districts facing this issue to contact their attorney to help navigate this delicate balance.