

## Nursing Mothers in the Workplace

This August, Governor Eliot Spitzer signed the Nursing Mothers in the Workplace Law, which requires all New York employers to allow employees who are nursing mothers to express breast milk during break periods. The law mandates that opportunities to express milk must be given during either paid or unpaid breaks, but does not require the creation of paid break periods. If existing breaks, including meal time, are insufficient to meet the reasonable needs of an employee wishing to express milk, the employer must offer additional time but need not compensate the employee for that time. The law affords this protection for a three-year period following the birth of an employee's child.

In addition, the law calls upon employers to make "reasonable efforts" to provide private spaces suitable for these activities near the workplace, and forbids employers from taking any adverse action against employees for availing themselves of this option. The term "reasonable efforts" is not defined.

The Nursing Mothers in the Workplace Law is effective immediately. The statute does not create a private right of action; an employee may not sue her employer in state court to enforce the provisions of this law, but must instead file a complaint with the appropriate state administrative body. The New York State Department of Labor is responsible for enforcing this provision of the Labor Law, and it is expected to construe its provisions liberally in favor of employees. Consequently, employers are encouraged to adjust their policies and handbooks accordingly and to make every reasonable effort to designate an appropriate private space in their workplace.

New York joins thirteen other states, including California, Illinois and Connecticut, that have statutes calling for employers to accommodate breastfeeding mothers.

### *Text of the Nursing Mothers in the Workplace Law*

"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 childbirth. 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 workplace."

If you have any questions about this legislation, please call Alan M. Koral (212-407-7750), Neal I. Korval (212-407-7780), or any other Vedder Price attorney with whom you have worked.

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