

April 20, 2010

HEALTH CARE LAW REQUIRES BREAKS FOR BREAST FEEDING MOTHERS AND AFFORDS WHISTLEBLOWER PROTECTION TO EMPLOYEES

The recently enacted Patient Protection and Affordable Care Act amends the Fair Labor Standards Act (FLSA) to require employers to furnish “reasonable” breaks to mothers to express milk for their infants who are up to one year old. Employers are required to furnish a private space, other than a restroom, which is shielded from view and free from intrusion by co-employees and the public, for mothers to express milk.

The new law provides that such time can be unpaid, subject to the legal requirements of individual states. Note that this unpaid time runs contrary to FLSA requirements that employers pay employees for breaks lasting less than twenty (20) minutes. Additionally, the provision does not apply to employers with fewer than fifty (50) employees if its requirements would “impose an undue hardship by causing the employer significant difficulty or expense” as compared to the employer’s size, resources and the structure of its business. Although the Department of Labor has not yet issued regulations or guidelines, this law currently is in effect, and employers should, at a minimum, begin complying immediately by providing employees with the private space referenced above.

In addition, the new health care law amends the FLSA to allow extremely broad whistleblower protection for workers who report or help federal or state authorities investigate possible violations of the new health care law, including the amendment discussed above. Workers who report or participate in the investigation of violations are protected if they reasonably believe a violation has occurred. Although the nuances of the new amendments will be more fully developed over time, the “reasonably believes” standard appears to provide workers with protection even if the worker does not voice objections to the employer. The whistleblower amendments provide workers with a right to a jury trial, which likely will increase opportunities for employees to bring employment discrimination and/or retaliation claims. This new whistleblower protection applies to employers of any size.

Please contact a McMahon Berger attorney with questions about these or any other issues.

DISCLAIMER: This Client Alert is offered as a service to clients and friends of McMahon Berger, P.C., and is intended for information purposes only and not legal advice. This information is not intended to create and receipt of it does not constitute an attorney-client relationship. Readers should not act upon this information without seeking professional counsel.

McMAHON BERGER, P.C.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
(314) 567-7350
www.mcmahonberger.com