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Labor and Employment Alert: Illinois Now Requires Paid Lactation Breaks

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Illinois recently amended its Nursing Mothers in the Workplace Act to require employers to provide **paid** breaks for nursing mothers to express breastmilk. The amendment took effect on August 21, 2018.

Under the prior law, employers were required to provide “reasonable unpaid break time” for nursing mothers or mothers expressing breastmilk. These breaks were to run concurrently with any break time that was already provided to the employee.

Now, an employer must provide reasonable break time to an employee who needs to express breast milk for her nursing infant child “each time the employee has the need to express milk.” Further, these breaks must be provided for one year after the child's birth. The break time may run concurrently with any break time already provided to the employee. An employer is prohibited from reducing an employee's compensation for time used for the purpose of expressing milk or nursing a baby.

Previously, an employer did not have to provide such break time if doing so would “unduly disrupt” its operations. Now, however, an employer must provide reasonable break time as needed by the employee unless doing so would create an “undue hardship.” This is a higher standard that requires an employer to show that providing the breaks would be “prohibitively expensive or disruptive.” Similar to undue hardship analysis for providing disability-related accommodations, the break analysis considers the following factors:

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources, or the impact otherwise of the accommodation upon the operation of the facility;
- the overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its

employees, and the number, type, and location of its facilities; and

- the type of operation or operations of the employer, including the composition, structure, and functions of the workforce of the employer, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

Illinois employers should review their policies and procedures to ensure that their break policies comply with these new nursing mother requirements. Contact your Vorys lawyer if you have questions about employee break and accommodation policies.