

Perinatal Advocacy Network Video Conference Meeting July 31, 2014

	Fair Labor Standards Act (FLSA) (29 USC 207, Section 7(r))	Hawaii Revised Statutes (Chapter 378, Part VII, HRS)
<i>Who gets break time?</i>	Non-exempt breastfeeding employees	All breastfeeding employees
<i>What protections do nursing mothers get?</i>	Reasonable time in a protected place shielded from view other than a bathroom for the first year of birth.	Same as FLSA
<i>Can a small business refuse a nursing mother break time?</i>	Only if there are less than 50 employees and the employer can show undue hardship	Only if there are less than 20 employees and the employer can show undue hardship
<i>Are there other requirements for an employer?</i>	Confirm FLSA applies by either employees coverage or business coverage.	Post a notice .
<i>Where do I go for assistance?</i>	US DOL Ph: 808-541-1361	Private mediation; Hawaii State Bar Association Info. and Referral line 808-537-9140; appropriate court.
<i>What about remedies & penalties?</i>	If fired or discriminated against for filing a complaint, employee can sue for retaliation.	Employers will be fined \$500 for failure to comply. Employee can sue for damages including attorney fees.
<i>Other Resources</i>	http://www.dol.gov/whd/nursingmothers/	“Inside Hawaii Wage Standards and DLIR” blog Oct. 4, 2013

Compiled by the Hawaii Department of Labor and Industrial Relations, Wage Standards Division.

HAWAII REVISED STATUTES
Chapter 378, Employment Practices

PART I. DISCRIMINATORY PRACTICES (Hawaii Civil Rights Center)
PART II. LIE DETECTOR TESTS (Wage Standards Division)
PART III. UNLAWFUL SUSPENSION OR DISCHARGE (Wage Standards Division)
PART IV. FAIR REPRESENTATION (Private Right of Action)
PART V. WHISTLEBLOWERS' PROTECTION ACT (Private Right of Action)
PART VI. VICTIMS PROTECTIONS (Private Right of Action)

[PART VII.] OPPORTUNITY TO EXPRESS MILK

[§378-91] Definitions. As used in this part:

"Employee" means an individual who performs a service for wages or other remuneration under a contract for hire, written or oral, or expressed or implied. "Employee" includes an individual employed by the State or a political subdivision of the State.

"Employer" means a person who has one or more employees. "Employer" includes an agent of an employer or of the State or a political subdivision thereof, but does not include the United States. [L 2013, c 249, pt of §2]

[§378-92] Opportunity to express milk. (a) An employer shall provide:

- (1) Reasonable break time for an employee to express milk for the employee's nursing child for one year after the child's birth each time the employee has a need to express breast milk; and
- (2) A location, other than the restroom, that is shielded from view and free from intrusion from coworkers and the public that may be used by an employee to express breast milk.

(b) Every employer covered by this section shall post a notice in a conspicuous place accessible to employees and use other appropriate means to keep the employer's employees informed of the protections and obligations under this part.

(c) Subsection (a) shall not apply to any employer who has fewer than twenty employees if the employer can show that the requirements under subsection (a) would impose an undue hardship by causing the employer significant difficulty or expense in relation to the size, financial resources, nature, or structure of the employer's business. [L 2013, c 249, pt of §2]

[PART VII.] OPPORTUNITY TO EXPRESS MILK

[\$378-93] Civil actions for injunctive relief or damages. (a) An employee who alleges a violation of this part may bring a civil action for appropriate injunctive relief, actual damages, or both within two years after the occurrence of the alleged violation.

(b) A cause of action pursuant to subsection (a) may be brought in the appropriate court in the circuit where the alleged violation occurred, where the plaintiff resides, or where the defendant resides or has a [principal] place of business.

(c) A defendant who violates this part shall be fined \$500 for each violation. A civil fine that is ordered pursuant to this section shall be deposited with the director of finance to the credit of the state general fund.

(d) For purposes of this section, "damages" means damages for injury or loss caused by each violation of this part, including reasonable attorney's fees. [L 2013, c 249, pt of §2]

Friday, October 4, 2013

Lactation breaks and posting requirements went into effect July 1, 2013

[Act 249, Regular Session 2013](#), was signed into law and became effective on July 1, 2013. The Act requires employers to provide a private place (other than a bathroom) and the time for mothers in the first year of their child's birth, to express breast milk. The law also requires employers to post a notice about nursing mother's rights. The DLIR has provided a suggested [poster](#) that can be found on the DLIR website.

Who's covered?

This law protects all employees who need to express milk while at work within the first year of their child's birth. This is a much broader application than a similar law under the Federal Labor Standards Act ("FLSA"). The [FLSA provision](#) applies only to those employees who are not exempt from the overtime law under FLSA. The FLSA also provides that any State law offering greater protection has priority. This means Act 249 is the standard in Hawaii for all employers.

All employers? YES!

The law does provide an opportunity for employers with less than 20 employees to prove that providing the space and time would impose an undue hardship. Notice it is the employer who has to show the undue hardship if they choose not to provide the space and time required under the law.

What kind of space and how much time?

Act 249 specifies employers need to provide "reasonable break time" which is not defined. As well, the place provided must be "shielded from view and free from intrusion." Employers who are struggling with how to provide this may reach out to proponents of the measure including [Breastfeeding Hawaii](#) who have various suggestions and alternatives to assist employers with compliance.

Private right of action and penalties

The DLIR does not enforce this law, it is enforced by court action, similar to [Hawaii's whistleblower law](#). Employers who fail to comply with [opportunity to express milk law](#) may be sued in an appropriate court and be subject to a civil fine of \$500 a day for violations. In addition, employers may be liable for damages to the employee or employees who bring the private right of action in court.

What to do if employer and employee can not agree

The law provides a legal remedy that allows a lawsuit in the appropriate court. The Hawaii State Bar Association has a referral and information line (808-537-9140) that will provide free referrals to several attorneys that are familiar with this issue that will help you find a resolution. *(continued on next page)*

(Continued from previous page: INSIDE HAWAII WAGE STANDARDS AND DLIR blog Friday, October 4, 2013)

Mediation may be the answer

Employees or employers may reach out for assistance in resolving the matter through mediation. Community mediation centers throughout the State provide professional workplace mediation. To find out more about how this can help, you can contact a local mediation center near you. Honolulu, Oahu - [Mediation Center of the Pacific](#) (808) 521-6767; Wailuku, Maui - [Maui Mediation](#) (808) 244-5744; Hilo Hawaii - [Ku'ikahi Mediation Center](#) (808) 935-7844; Kamuela, Hawaii - [West Hawaii Mediation Center](#) - (808) 885-5525; Kauai - [KEO Mediaton](#) (808) 245-4077 Ext: 229 or 237.

NOTICE TO EMPLOYEES

Under the HAWAII EMPLOYMENT PRACTICES LAW
[\(Act 249, 2013 Regular Session\)](#)

BREASTFEEDING IN THE WORKPLACE

effective July 1, 2013

You have the right to reasonable break time to express milk for your nursing child at the workplace in a location, other than the restroom, that is shielded from view and free from intrusion from coworkers and the public for one year after your child's birth.

Employers with fewer than twenty employees who can show that providing the time and place to express breast milk as required under Act 249 would impose an undue hardship by causing the employer significant difficulty or expense in relation to the size, financial resources, nature, or structure of the employer's business shall not be subject to the time and place requirements of Act 249.

Employers who fail to comply with the requirements of Act 249 shall be fined \$500 per violations and may be liable for damages suffered by the employee.

ENFORCEMENT: If you believe your employer has violated this law you may file a lawsuit in state court for appropriate injunctive relief, actual damages, or both, within two years after the occurrence of the alleged violation. Damages may include reasonable attorney's fees.

This notice provides general background information on Hawaii Employment Practices Law and is not intended to serve as a substitute for legal counsel. For specific legal advice on individual situations, please consult your attorney.

The law requires employers to post a notice in a conspicuous place accessible to employees providing information regarding this employment practice.