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# Guidance on Nursing Mothers in the Federal Workplace

A Mandatory Reference for ADS Chapter 476

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"As the Nation's largest employer, the Federal Government strives to be a leader in the promotion of wellness programs and progressive workforce policies." This statement made on December 22, 2010, by John Berry, Director of U.S. Office of Personnel Management (OPM) underscores USAID's commitment to support innovations in the workplace that promote work/life effectiveness.

The U.S. Office of Personnel Management (OPM) issued guidance for executive branch employees on workplace accommodations for employees who are nursing mothers and have to express breast milk during the workday. USAID is pleased to announce that the OPM guidance applicable to Federal agencies is found at:

[www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=3281](http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=3281).

Employees of Participating Agencies under any type of interagency agreement (e.g., Participating Agency Service Agreements, 632(b) agreements, etc.) who regularly work in USAID space are covered by the guidance.

Although the OPM guidance does not specifically apply to the Agency's non-direct hire workforce, the Agency is adopting it as a matter of policy. All Personal Services Contractors, Cooperative Administrative Support Units (CASUs), Fellows, and employees of contractors or recipients who regularly work in USAID space may be accommodated under this policy, unless the terms of the contract or agreement under which they are employed or the partner's personnel policies expressly preclude it.

Contracting Officer Technical Representatives (COTRs), Agreement Officers Technical Representatives (AOTRs), or the managers of units in which these individuals work who have questions about how to apply the OPM guidance to non-direct hire workforce employees are to contact the responsible Contracting Officer or Agreement Officer for advice.

Missions must coordinate participation of overseas staff with the Chief of Mission. Local customs and labor law must also be considered in determining appropriate application to Foreign Service National (FSN) Personal Services Contractors and FSN Direct Hires.

#### a. Background

Section 4207 of the Patient Protection and Affordable Care Act (Pub. L. 111-148) added a new subsection (r) in Section 7 of the Fair Labor Standards Act (FLSA) (codified at 29 U.S.C. 207(r)). Section 7(r) provides nursing mothers who are not exempt from the requirements of Section 7 of the FLSA, which sets forth the FLSA's overtime pay requirements, with entitlement to reasonable break time and a space for expressing breast milk at work.

In accordance with the authority delegated to OPM by the President on December 20, 2010, and in order to ensure consistent treatment of all civilian employees who are nursing mothers within the Federal workforce, Federal agencies are

directed to apply the same benefits to all executive branch civilian employees who are exempt from Section 7 of the FLSA, so that all nursing mothers who are civilian employees working in executive branch agencies receive these benefits.

#### b. Requirements

The guidance requires an employer to provide employees with:

- (1) A reasonable break time to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express milk; and
- (2) A place, other than a bathroom, that is shielded from view and free from intrusions from coworkers and the public which may be used by the employee to express milk.

#### c. Lactation Rooms Available for Nursing Mothers

USAID has a longstanding practice of accommodating nursing mothers in the workplace. The Ronald Reagan Building is already equipped with a Lactation Room located on the second floor, in Room 2.6(c) by the 13 ½ Street elevators. An access code is required to enter the space. Please contact Ms. Christy Hanson, GH/HIDN/ID, on (202) 712-5429 for the access code to the Lactation Room in the RRB.

There is also a Lactation Room in SA-44 located on the second floor in Room 225. An access code is also required to enter the space. Please contact Mr. Gerard Torres of the Office of Security (SEC/ISP/DS) on (202) 567-4105 who will arrange an employee's entry into the room. Preparations are underway to relocate the Lactation Room to the fourth floor in Room 460.

At Potomac Yards, there is a dedicated Lactation Room located in Room 11120 which is labeled for no access other than for lactation. Please contact B.J. Boyden on (703) 666-5645 or Meredith Snee on (703) 666-1247.

To comply with this requirement, Mission management should consult with the embassy regarding the identification of a room or appropriate space to accommodate nursing mothers. The location provided must be functional as a space for expressing breast milk. At a bare minimum, all that is required is a room with an outlet, refrigerator, and chair. Additional information on establishing a Nursing Mothers Program is available on the OPM Web page located at [http://www.opm.gov/Employment\\_and\\_Benefits/WorkLife/OfficialDocuments/Handbooks/Guides/Nursing/index.asp](http://www.opm.gov/Employment_and_Benefits/WorkLife/OfficialDocuments/Handbooks/Guides/Nursing/index.asp).

Depending on the size of the Mission and available office space, it may not be feasible to establish a permanent, dedicated room. To comply with Section 4207 of the Act and OPM guidance, agencies are required to provide a space for a nursing employee "each time such employee has a need to express the milk." If a room or appropriate space is

not strictly devoted to a nursing mother's use, it must be made available. If there is no employee with a need to express breast milk, then agencies are not obligated to provide a space.

d. Reasonable Break Time for Nursing Mothers

Pursuant to the law and OPM guidance, supervisors must accommodate the needs of nursing mothers to express milk during the workday for up to one year after the child's birth. This normally requires one or two 15-minute periods a day. While USAID does not have formalized break times for employees, the Agency's longstanding practice has been to allow employees to leave their office for personal errands such as buying coffee or other refreshments, going to the credit union or post office, or taking smoking break(s) outside the building. Nursing mothers may choose to use such time for expressing milk. Nursing mothers who have more frequent needs that cannot be covered by two 15-minute breaks should consider alternatives - such as taking advantage of existing flexibilities in work schedules and leave.

Flextime and Flexible 5/4-9 work schedules have flexible hours that allow employees to vary their arrival and departure times subject to supervisory approval. Employees may also use their 45-minute lunch period for this purpose, and if needed, extend their lunch break up to an additional 1¼ hours between the 11:30 a.m. and 1:30 p.m. flexible hours by up the time or by taking leave. (See working later in the afternoon to make ADS 479, Hours of Duty, for additional information regarding work schedules.) Additionally, employees may request annual leave or use accrued compensatory time off for additional time off during the workday.

Missions should coordinate with the embassy on how to implement break times for nursing mothers. This guidance may be adapted, if otherwise appropriate.

e. Additional Information

Many resources are available on the establishment of lactation programs and equipping lactation rooms. Multiple benefits of breastfeeding for both babies and mothers have been well documented and are discussed in the resources referenced below.

OPM has a Web page on lactation programs applicable to Federal agencies at [http://www.opm.gov/Employment\\_and\\_Benefits/WorkLife](http://www.opm.gov/Employment_and_Benefits/WorkLife)

The Centers for Disease Control and Prevention (CDC) have extensive information on this subject at <http://www.cdc.gov/breastfeeding/resources/guide.htm>.

## Fact Sheet: Break Time for Nursing Mothers

### Description

Consistent with the requirements of section 4207 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, which added a new subsection (r) in section 7 of the Fair Labor Standards Act (FLSA) (codified in 29 U.S.C. 207(r)), Federal agencies are required to (1) provide a reasonable break time for a civilian employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and (2) make arrangements to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, for a civilian employee to express breast milk. This provision is an entitlement for employees who are not exempt from the requirements of section 7 of the FLSA which includes the FLSA's overtime pay requirements.

### Coverage

The entitlement to nursing mother breaks was established in section 7(r) of the FLSA. Section 7(r) applies only to employees who are not exempt from the requirements of section 7 of the FLSA which includes the FLSA's overtime pay requirements. In accordance with the authority delegated to the U.S. Office of Personnel Management (OPM) by the President on December 20, 2010, and in order to ensure consistent treatment of all civilian employees who are nursing mothers within the Federal workforce, agencies should apply the same benefits to executive branch employees who are exempt from the requirements of section 7 of the FLSA.

### Reasonable Amount of Time Off

Although employing agencies are not required to compensate civilian employees who are nursing mothers for breaks taken for the purpose of expressing milk, agencies may already provide compensated breaks (for example, 15 minutes in the morning and 15 minutes in the afternoon) that employees can use for any purpose. Where agencies already provide such compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time.

**Consistent with the requirements of section 7(r) of the FLSA, Federal agencies should** provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary **according to the needs of the individual mother.**

### Available Workforce Flexibilities

In addition to permitting the use of existing compensated breaks as discussed above, Federal agencies should develop an agency policy which permits employees to use

current workforce flexibilities. To the extent possible, agencies are encouraged to permit nursing mothers to choose from among the workforce flexibilities listed below. Agencies should review any applicable regulations or policies and collective bargaining agreements and revise their policies, as appropriate. The following workforce flexibilities should be considered when developing your agency's policy.

**Alternative Work Schedules (AWS)** - Flexible or compressed work schedules may be established for a nursing mother who needs time off to express milk during normal working hours. Agencies should review their internal AWS policies and practices and collective bargaining agreements to determine how additional AWS flexibilities may be implemented for this purpose. Departments and agencies should also consult subchapter II of chapter 61 of title 5, United States Code; the regulations in 5 CFR, part 610, subpart D, Flexible and Compressed Work Schedules; and the Handbook on Alternative Work Schedules (<http://www.opm.gov/oca/aws/index.htm>) and OPM's Labor-Management Relations Guidance Bulletin: [Negotiating Flexible and Compressed Work Schedules](#).

**Leave and Other Paid Time Off** - An employee may also be allowed to use annual leave, leave without pay, compensatory time off, or credit hours, as discussed below.

- **Annual Leave** - When an employee requests annual leave to express milk, agencies should be as accommodating as possible in reviewing and approving such requests, consistent with the regulations in 5 CFR part 630, subpart C, Annual Leave, and applicable collective bargaining agreements.
- **Leave Without Pay** - At the discretion of the agency, leave without pay (LWOP) may be granted to an employee who requests breaks to express milk during normal working hours. As with annual leave, OPM encourages agencies, whenever possible, to act favorably upon requests by employees for LWOP to express milk. Agencies should review their internal policies on LWOP and applicable collective bargaining agreements.
- **Compensatory Time Off** - Agencies may approve requests to use compensatory time off that an employee has earned in exchange for performing an equal amount of time in irregular or occasional overtime work. For employees under flexible work schedules, agencies may approve employee requests to earn compensatory time off for both regularly scheduled and irregular or occasional overtime work.
- **Credit Hours** - Credit hours are those hours within a flexible work schedule that an employee elects to work in excess of his or her basic work requirement (e.g., 80 hours in a pay period for a full-time employee) so as to vary the length of a workweek or workday. A nursing mother may be allowed to use accumulated credit hours to fulfill her basic work requirement, thereby gaining time off from work to express milk. If an agency authorizes credit hours under its flexible work

schedules program, the maximum amount of credit hours that may be carried over from one pay period to another is 24 hours.

### **Place for Mothers to Express Milk**

Consistent with the requirements of section 7(r) of the FLSA, Federal agencies should make arrangements to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, for mothers to express breast milk. Agencies are instructed to consult with the General Services Administration and internal collective bargaining agreements for establishing procedures for this portion of the law.

### **References**

29 U.S.C. 207 (amended by P.L.111-148)

### **Frequently Asked Questions: Break Time and Space for Nursing Mothers**

Q. Who is entitled to reasonable break time and a space for expressing breast milk at work?

A. Section 4207 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, added a new subsection (r) in section 7 of the Fair Labor Standards Act (FLSA) (codified at 29 U.S.C. 207(r)). Section 7(r) provides nursing mothers who are not exempt from the requirements of section 7 of the FLSA, which sets forth the FLSA's overtime pay requirements, with entitlement to reasonable break time and a space for expressing breast milk at work. In accordance with the authority delegated to the U.S. Office of Personnel Management (OPM) by the President on December 20, 2010, and in order to ensure consistent treatment of all civilian employees who are nursing mothers within the Federal workforce, agencies should apply the same benefits to all executive branch civilian employees who are exempt from section 7 of the FLSA, so that all nursing mothers who are civilian employees working in executive branch agencies receive these benefits.

Q. What must an agency provide to employees who want to express breast milk in the workplace?

A. Consistent with the requirements of section 7(r) of the FLSA, Federal agencies should provide a reasonable amount of break time and a space to express milk as frequently as needed by the nursing mother, for up to 1 year following the birth of the employee's child. The frequency of breaks needed to express breast milk as well as the duration of each break will likely vary. The space provided by the agency cannot be a bathroom, and it must be shielded from view and free from intrusion by coworkers or the public.

Q. How long must an agency allow a nursing mother to be granted break times for expressing milk?

A. An agency should provide a nursing mother employee reasonable break time and a space to express milk for one year following the birth of the employee's child. An agency can also extend the time beyond 1 year based on internal agency policy and collective bargaining agreements, or in accordance with relevant state laws that provide the right for greater than one year after the child's birth.

Q. How often can a mother be permitted to express milk?

A. Agencies should provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary depending on the individual mother's needs. Managers will be required to use their best judgment on what is considered reasonable.

Q. Is the break time for nursing mothers paid or unpaid time?

A. Section 7(r) of the FLSA (29 U.S.C. 207(r)) and OPM guidance does not require agencies to compensate employees who are granted reasonable break time for expressing milk. However, many agencies already provide employees with compensated breaks (for example, 15 minutes in the morning and 15 minutes in the afternoon) that may be used for any purpose. If an agency already provides such compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time.

Q. What workplace flexibilities are available for Federal employees?

A. Federal agencies should provide a reasonable break time for a civilian employee to express breast milk for her nursing child for one year after the child's birth each time the employee has a need to express the milk. Section 7(r) of the FLSA (29 U.S.C. 207(r)) does not require agencies to compensate the employee who is granted the reasonable break time for the specific reason of expressing milk. As a result, Federal agencies are encouraged to develop policies for the use of current workplace flexibilities to provide reasonable breaks. Agencies should review any applicable regulations or policies and collective bargaining agreements before making determinations on these matters. The following workplace flexibilities should be considered when developing your agency's policy: Alternative Work Schedule (AWS) flexibilities, annual leave, leave without pay, compensatory time off, and credit hours.

Q. Do agencies need to create a permanent, dedicated space for use by nursing mother employees?

A. No. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient, provided that the



space is shielded from view and free from any intrusion from co-workers and the public. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the requirement in the law and OPM guidance. Of course, agencies may choose to create permanent, dedicated space if they determine that is the best way to meet this requirement.

Q. Do agencies have to provide a lactation space even if they don't have any nursing mother employees?

A. No. The statute requires agencies to provide a space for a nursing employee "each time such employee has a need to express the milk." If there is no employee with a need to express breast milk, then the agency would not have an obligation to provide a space.

Q. If the only space available at a work site is a bathroom; can agencies require employees to express breast milk there?

A. No. A bathroom, even if private, is not permissible under the section 7(r) of the FLSA (29 U.S.C. 207(r)).

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