

A private place for nursing mothers: Legal requirement is easy to meet

Practice Management. By **VICTORIA STAGG ELLIOTT**, amednews staff. Posted May 16, 2011.

When the nurse practitioner at the solo pediatrics practice of Gerald Calnen, MD, needed space to pump milk for her baby, she went into an exam room, closing the door at times set aside for her.

"We put a little sign up indicating that the room was occupied, and people respected that," said Dr. Calnen, president of the Academy of Breastfeeding Medicine. "It was not a problem. Most medical practices have enough flexibility to set aside time for this during the course of the day. And making allowances for a woman to express her milk during the day can have an incredible impact on morale. Most are very appreciative."

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More women of childbearing age are in the work force, including physicians and other health care practitioners. According to the American Medical Association, women made up 11.6% of physicians in 1980. That grew to 29.6% in 2009.

Breastfeeding has become more common. Nearly 33% of infants in 1999 were breastfed during their first six months, according to the Centers for Disease Control and Prevention. The number increased to 43% in 2007.

The AMA recognizes that breastfeeding is the optimal form of nutrition for most infants. But setting aside time and space for women to express breast milk is not just a nice thing to do for a growing demographic of physicians and employees. It's now legally required for most businesses, including medical practices.

The Patient Protection and Affordable Care Act requires employers to provide reasonable break time for an employee to express milk for a nursing infant up to one year of age. The time does not have to be paid, but an employer must provide private space for this purpose. Because of hygiene concerns, the space cannot be a restroom. Many states have their own laws, with those providing greater protection to nursing mothers taking precedent.

Companies with fewer than 50 employees are exempt from the federal legislation if they can prove that complying would cause undue hardship. Legal experts say this should not be viewed as an opt-out for medical practices.

"An employer would have to show that they could not comply, and it's going to be a fairly high standard," said Whitney Pile, an attorney with the Lowenbaum Partnership in St. Louis.

The Dept. of Labor is processing 1,800 comments on how this law should be enforced. Guidance this year is expected to further define undue hardship and other aspects of the legislation.

Simple solutions

Solutions for accommodating nursing mothers will vary, but experts say they don't have to be expensive or

complicated. Exam rooms, break rooms, offices and conference rooms could temporarily accommodate a nursing mother. A full-time lactation room and additional paid breaks usually are unnecessary. Breast milk can stay at room temperature for several hours, so dedicated refrigerator space is not required.

"It doesn't have to be a fancy place," said Margaret Mason, a partner in the New Haven, Conn., office of the LeClairRyan law firm. "It could be a storeroom with a chair and an electrical outlet."

Violators of this provision of the law would face financial penalties. This would form the basis for a civil case against the practice.

"I believe it would be considered a type of discrimination," Mason said. "If an employer cannot accommodate a nursing mother, she would say that she has been constructively discharged and then bring a claim."

People who work with medical practices say the first step is to informally assess need.

"Take a look at what the needs are in the practice," said Cathy Carothers, president of the International Lactation Consultant Assn. "How many women are of childbearing age? What do the women want, and what would be helpful for them?"

The next step is to write a policy for the employee handbook designating the staffer to discuss the issue. Experts say the subject is usually talked about when a woman is requesting maternity leave or when a new mother is making arrangements to return, but there is no consensus on who should raise the subject. Some say employers should bring up the issue, while others say it should be the employee. But any discussion must be professional and tactful to avoid crossing the line into sexual harassment.

"It can feel uncomfortable, but a clear policy can make it less so," said Diana West, a lactation consultant in Long Valley, N.J., who has written books on breastfeeding.

Workplaces need to consider what space can be used for this purpose. The room does not have to be dedicated to this purpose, but must be private.

Experts say the more challenging issue is making the time. Physicians and others at medical practices may find it hard to take a break for any reason. People who counsel workplaces on the issue recommend setting aside nursing breaks.

"It's not that different from a woman who is diabetic and needs to take an insulin shot," West said. "There are all sorts of things workplaces have to accommodate."

Nursing breaks tend to be 10 to 30 minutes and coincide with employee or lunch breaks. Federal law states that the time needs to be "reasonable." This is not defined, but experts say this accommodation is unlikely to be abused.

"This is not necessarily a fun thing to do," said Bonnie Jones, a human resources consultant with the Municipal Technical Advisory Service at the University of Tennessee, who has written about how workplaces can accommodate nursing mothers. "Mothers want to express their milk, wash their hands and come back to work. And generally the amount of time will not be excessive."

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