

# Illinois Requires Paid Break Time for Nursing Mothers

Matthew C. Luzadder

November 30, 2018

In August 2018, Illinois governor Bruce Rauner signed House Bill 1595 (“HB 1595”) amending the Illinois Nursing Mothers in the Workplace Act (the “Act”) to provide **paid** break time to nursing mothers “**as needed**” to express milk during work hours. The new requirement took effect immediately, and applies to all Illinois employers with more than five employees.

HB 1595 changes the Act in the following ways:

- Nursing breaks “may” still run concurrently with other breaks. The prior version of the Act stated that the break time “must, if possible” run concurrently with any break time already provided.
- Reasonable lactation breaks must be compensated. In light of the Act’s “as needed” language, and absent additional guidance from the State, employers should consider following the most expansive approach, i.e., granting nursing mothers paid break time when requested to express milk.
- In addition, the amendment specifies that the reasonable, now paid, breaks requirement runs only “for **one year** after the child’s birth.”
- Finally, the original Act excused employers from providing additional break time for nursing/expressing employees “if to do so would unduly disrupt the employer’s operation.” HB 1595 changed that affirmative defense language; now, in order to be excused from the additional paid breaks requirement, Illinois employers must establish “undue hardship,” a more demanding standard borrowed from the Americans with Disabilities Act and the Illinois Human Rights Act (“IHRA”). Under the IHRA, “undue hardship” is defined as an “action that is prohibitively expensive or disruptive” when considering its nature and cost, the overall financial resources of the facility, the overall financial resources of the employer, and the type of operation of the employer. The employer bears the burden of proving an undue hardship. Therefore, employers should take a considered approach when rejecting break time for expressing milk based on undue hardship to the employer.

Remember the Affordable Care Act (“ACA”) requires employers to provide “a place, **other than a bathroom**, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.” See 29 U.S.C. 207(r).

Since the amendment is now in effect, Illinois employers should review their current nursing policy to ensure it complies with the recent amendment. If not, employers should revise it as soon as possible.