U.S. General Services Administration

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MEMORANDUM FOR ALL FMSP DIRECTORS

FROM: DENISE FUNKHOUSER
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OFFICE OF FACILITIES MANAGEMENT AND SERVICES PROGRAMS

SUBJECT: NURSING MOTHER SPACE IN FEDERAL AND LEASED SPACE

1. BACKGROUND

This document provides guidance in support of Section 4207 of the Patient Protection and Affordable Care Act (Act), Public Law 111-148, which added a new subsection (r) to section 7 of the Fair Labor Standards Act of 1938 (FLSA) (codified as amended at 29 U.S.C. 207). This new section requires an employer to provide employees with (1) a reasonable break time to express breast milk for her nursing child for 1 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 intrusion from coworkers and the public which may be used by the employee to express breast milk.

The following two questions and answers taken from OPM's Nursing Mothers FAQ's outline the space requirements to comply with the regulation.

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

Answer: 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.

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

Answer: 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.

2. SPACE SOLUTION GUIDANCE

GSA offers the following solutions to help customer agencies comply with the space requirement of the new regulation.

Health Units
The first space to be considered should be a private exam or resting room in the building's health unit. Most health units support a Nursing Mother's Program and provide a space for lactating mothers to use. In the event that the health unit lactation space is only available during the health unit's regular hours of operation, an alternative space will have to be identified when use is needed outside those times.

Quiet Rooms/Conference Rooms
Quiet rooms and conference rooms are appropriate for nursing mothers provided that any windows can be covered by shades. The only challenge to offering these rooms as the lactation space is that the room must be available when a nursing mother needs it. Reasonable wait time is permitted while someone else is using the room but a mother should not be expected to wait longer than 30-minutes. If possible, a particular quiet room in the building should be designated as the lactation space and nursing mothers should have first priority in the room. In addition, if the space provided is a multi-purpose space (will be used for other meetings or purposes when not used for lactation purposes) it should have a lock.

Dedicated Lactation Room
Employers may wish to provide a permanent, dedicated lactation room to their employees. A tenant agency who wishes to provide a lactation room must pay rent for the space. The finishes and fixtures for the room are considered Tenant Improvements (TI). Refer to the 4th edition Pricing Desk Guide (Section 2.5 for leases and section 3.6 for Federal space) for an explanation of when a TI allowance is provided and lump-sum payment options. Personal property such as furniture, refrigerators, etc. can be funded through a Reimbursable Work Authorization (RWA), but not the TI allowance. Refer to the June 21, 2010 RWA National Policy Document (Section 3.2 Use of Funds) for an explanation of when the Public Buildings Service can accept funds via RWA for personal property.

Child Care Centers

Please note that federal child care centers are generally NOT set up to support the lactation space requirement. While they may make provisions for mothers to come nurse an infant that is enrolled in the center, they usually do not have a dedicated space for expressing milk that meets the requirements of the law.

3. RESOURCES

Office of Personnel Management's Guide to Establishing a Nursing Mother's Program
http://www.opm.gov/Employment_and_Benefits/WorkLife/OfficialDocuments/handbooksguides/Nursing/index.asp

Centers for Disease Control and Prevention Lactation Support Program
http://www.cdc.gov/nccdphp/dnpao/hwi/toolkits/lactation/index.htm
http://www.cdc.gov/breastfeeding/

4. POINT OF CONTACT

For questions or comments please contact Aimee Whiteman on 202-501-9106.

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