

Failure to Provide Employee With Adequate Pumping Breaks and Accommodations Led to \$1.5 Million Verdict

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In March 2010, as part of the passage of the Affordable Care Act, the Fair Labor Standards Act (FLSA) was amended to require most employers to provide nonexempt employees:

- “reasonable break time for an 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
- “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.”

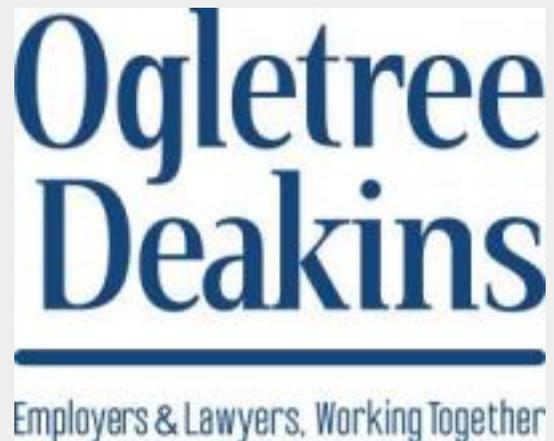
As a result, nursing mothers have legal protections to enable them to express breast milk in the workplace, and employers must comply or face potential consequences. As a recent jury verdict in Delaware demonstrates, these consequences may include liability under Title VII of the Civil Rights Act of 1964.

Autumn Lampkins was an assistant restaurant manager for a KFC franchise in Camden, Delaware. Following the birth of her son, she needed to express breast milk. The employer initially required her to pump in the single-stall bathroom at the restaurant. After a few weeks of tying up the restroom, she alleged the employer required her to pump in the manager’s office, which was equipped with a camera and was accessible to coworkers, who frequently entered the office while she pumped. Despite requesting pumping breaks every two hours, Lampkins alleged her supervisor permitted her to pump only once during her 10-hour shift. After coworkers complained about her pumping breaks, her employer demoted her and transferred her to another store, where she alleges her employer forced her to pump in an office with a camera and window where other employees could observe her pumping. She alleged her supervisor cut her hours, explaining it was so she could have more time to pump. Additionally, she alleged coworkers and her supervisor complained about her need to pump. Lampkins quit when she heard her employer was about to be fire her due to an allegation that she stole a customer’s jacket.

Lampkins brought a lawsuit in the U.S. District Court for the District of Delaware for gender discrimination and hostile work environment under Title VII, as well as failure to provide accommodations and opportunities to express breast milk in violation of the FLSA. The employer moved for summary judgment, which was granted in part and denied in part. The case proceeded to trial, where the jury found in her favor and awarded her \$25,000 in compensatory damages and \$1.5 million in punitive damages.

Key Takeaways

This decision is a cautionary tale for employers that may not be prepared to accommodate nursing mothers. Employers covered by the FLSA are required to



Article By
[Christine Bestor Townsend](#)
[Ogletree, Deakins, Nash, Smoak & Stewart, P.C.](#)
[Our Insights](#) [Labor & Employment](#)
[Litigation / Trial Practice](#)
[3rd Circuit \(incl. bankruptcy\)](#)
[Delaware](#)

- Make arrangements for a private location to pump preferably prior to the employee returning to work.
- Provide appropriate break time
- Educate employees on the company's commitment to complying with the law regarding lactation breaks, including the prohibition against retaliatory behavior when employees take lactation breaks;
- ; and
- Ensure supervisors are aware of their responsibilities and nursing mothers' rights.

Employers may also want to keep in mind that the FLSA sets minimum standards for pumping accommodations. States and municipalities are free to provide greater protections, and many have enacted laws covering lactation accommodations, including Arkansas; [California](#); [Connecticut](#); Washington, D.C.; Hawaii; [Illinois](#); Indiana; Maine; [Massachusetts](#); Minnesota; New Jersey; [New York](#); New York City; Oregon; Puerto Rico; Rhode Island; San Francisco; South Carolina; Tennessee; and Vermont.

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