

Got milk?

Laurance Jerrold

Brooklyn, NY

Heather is one of your most valued assistants. She has worked for you for years. She recently went out on maternity leave and is now ready to come back to the office. You are thrilled. It has not been the same without her. About a week before she returns to the office, she comes in to speak with you about a personal issue. She wants to know where in the office she will be able to express milk for her newborn. You ask for more information: what exactly she needs, how many times a day she will need to do this, for how long, and so on. You didn't expect this; maybe you should have but, well ... Anyway, you tell her to give you a few days so you can figure this out.

Time for the big think. Do you have to do this? If so, what is it you have to do? How long do you have to do this for? These questions were recently answered by an updating of the Illinois Compiled Statutes, 820 ILCS 260, entitled Nursing Mothers in the Workplace Act. Following are the meat and potatoes of the act.

Section 5 starts off with defining an employee and an employer. An employee is someone who is currently employed; is subject to recall after layoff or leave of absence with a right to return to work; or was an employee who terminated service within the past year. An employer is an individual, corporation, partnership, business, or commercial entity that has 5 or more employees exclusive of family members.

Section 10 discusses "break time." Employers need to provide reasonable time to an employee who needs to express milk whenever she has the need to do so and to continue to allow it for up to 1 year after the child's birth. The break time may run concurrently with any break time the employee is already entitled to. You can not reduce the employee's compensation for the break time taken. All of this needs to be done "unless to do so would create an undue hardship as defined ... [by] the Illinois Human Rights Act Sec. 2-102(J)(4)" which states:

[U]ndue hardship means an action that is prohibitively expensive or disruptive when considered in light of the following factors: (i) the nature and cost of the accommodation needed; (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources, or the impact otherwise of the accommodation on the operation of the facility; (iii) the overall financial resources of the employer, the overall size of the business of the employer in terms of the number of its employees, and the number, type, and location of its facilities; and (iv) the type of operation or operations of the employer, including the composition, structure, and functions of the workforce of the employer, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

Finally, Section 15 provides that an employer must provide a private place for nursing mothers, such as a room or other location that is in close proximity to the work area. It can not be a toilet stall or bathroom; and it must provide the employee with privacy. As section 7 of the federal Fair Labor Standards Act defines it, "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 following facts and statistics are interesting. Most health professionals and public health officials promote breastfeeding because of the benefits that extend to both mother and child. Breast milk contains both antibacterial and antiviral antibodies; therefore breastfed children tend to have fewer ear, respiratory, and urinary tract infections; they experience diarrhea less often; they tend to need fewer visits to health care practitioners; and they need fewer prescriptions and hospitalization stays. All of this results in lower medical costs for postnatal care than can be found in non-breastfed children. Breastfeeding also has positive effects for the mother. These include an earlier return to prepregnancy weight and a reduction in the occurrence of premenopausal breast cancer and osteoporosis. Although approximately 80% of mothers start off by breastfeeding, only slightly more than 20% are still doing so exclusively 6 months later.

Chair, Division of Orthodontics, and Program Director, Orthodontics and Dentofacial Orthopedics, NYU Langone Hospital, Brooklyn, NY.

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All 50 states have laws protecting a woman's right to breastfeed in public. Thirty states exempt breastfeeding from public indecency laws; and 29 states have laws regulating breastfeeding in the workplace. Seventeen states exempt breastfeeding mothers from jury duty or allow it to be postponed. Several states have enacted laws to cover breastfeeding in child care facilities. Finally, individual states have enacted laws covering such things as the distribution of human milk, banning sales tax on any items relating to breastfeeding, accommodation for students in public schools who need to breastfeed, and breastfeeding in prisons.

So, what are you going to do about Heather?

COMMENTARY

About 25 years ago, when I was the clinic director of a different program, I was faced with an interesting situation. One of my junior faculty members, I'll call her Heather, had just given birth and wanted to return to work (she was really good, the residents loved her, and we desperately needed her) but she wasn't sure she would be able to return because she needed to breastfeed and, at the time, she had no one to care for the baby. The institution I was at had this little room off to one side of the clinic; we referred to it as our library. It was small; if memory serves it was about 6 feet by 10 feet. Because the university had a huge modern library a few floors down it was really a vestigial place where we kept old (really old) text books and junk that we didn't use in the clinic anymore. It had a door that automatically locked, and diagonally over the doorknob it had a little rectangular window, about 3 or 4 inches by 18 inches. Anyway, I had an idea.

I figured that with not too much effort, I could turn that room into a place where Heather could leave the baby as well as nurse her. Cleaning out the room was easy, maintenance threw out almost everything. It gave us a chance to go through all of the ancient stuff and give the main library any of the old texts it didn't have. We got rid of the stack-on shelves and kept the pedestal portion to use as a changing table. A couple of coats of paint got rid of that old book smell and really brightened up the room. All of the faculty and residents chipped in and we bought a rocking chair and a stand-up crib. The best thing was the little baby monitor

from Radio Shack. Heather was now able to nurse the baby in solitude, put the baby in the crib, and go back out onto the clinic floor knowing that her baby was safe and secure in a locked room. She wore the monitor so she could hear if the baby cried. It was perfect ... or so I thought.

Well, the Dean eventually heard about what Jerrold had done and I was summoned to his office. He asked me if I had gone off my meds, and where did I come off opening a day care facility in the school? I calmly explained that it was not day care as we were not caring for the child in any way. We merely took an unused room and made it into a nursery, a room for Heather to privately nurse her baby. Everybody in orthodontics, from the staff, to the residents, to the faculty, were on board and Heather, who was tickled pink, was now able to return to work. She controlled the security for the room and had signed a waiver I had drafted (I'm not stupid, I knew this would happen) so I didn't see much downside, because we had nothing to do with what was going on other than to provide a room. I'm not going to tell you what he called me but suffice it to say, I got my dressing down. On the upside, however, he was a progressive guy and let us keep the room. After a year or so, it was no longer needed and once again the little space fell into disrepair. However, for one brief moment in time, our program felt really good about something that we had done.

If you ask me what the moral of the story is, other than saying I would rather ask for forgiveness than to ask permission when I knew the answer would be no, I can't tell you. But getting back to my hypothetical about your employee Heather: There has to be a way. Find an odd space somewhere in your office that you can block off. You may have to give up your office for a brief period during the day; and no, you can't go in there to make a few telephone calls or do paperwork while Heather is doing her business, regardless of your sex. If the situation arises, and it will for some of you, be creative, figure it out; it's usually worth it in the long run. Once you come up with something, not only will you feel good about having done the right thing, but in the end, you will have a great story to tell that lets the world know what a renaissance man or woman you are.

Ah, to have the milk of human kindness running through one's veins.