

NEW HEALTH CARE LAW AMENDS FAIR LABOR STANDARDS ACT

The far-reaching healthcare overhaul bill signed into law this week makes changes to numerous existing laws, among them the Fair Labor Standards Act (FLSA).

The FLSA has a significant impact on nearly every employer in the United States. Its best known requirements are the minimum wage (currently \$7.25 per hour) and the obligation to pay time-and-a-half for overtime work by non-exempt employees. The economic impact of FLSA violations is also significant. In the last five years, employers have paid more than \$1 billion in back wages and penalties for FLSA violations. The FLSA actually encourages employees to enforce their rights by requiring employers to pay the attorneys fees of employees who prevail in an FLSA lawsuit.

In general, the FLSA addresses only the payment of wages, and does not require employers to provide fringe benefits. (In contrast, government contractors subject to wage and hour laws such as the Service Contract Act or the Davis Bacon Act have long been required to provide health and welfare benefits.) While that is still true, the health care bill does amend the FLSA to say that a covered employer with more than 200 full-time employees that offers one or more health benefits plans must automatically enroll new full-time employees in one of the plans offered (subject to any waiting period authorized by law). Also, such an employer must continue the enrollment of current employees in a health benefits plan offered through the employer. This appears to mean that employers that currently offer health benefit plans must always continue to offer such plans. The law directs the Secretary of Labor to issue regulations implementing these requirements, so it remains to be seen exactly how they will operate.

Another change that the law makes to the FLSA is that covered employers are now required to provide a reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. Furthermore, the employer must 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. This requirement does not apply to employers with fewer than 50 employees if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.



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Finally, a new section has been added to the FLSA's anti-retaliation provisions prohibiting employers from discriminating against employees who are entitled to subsidized health care called for by other sections of the health care bill. (Under those provisions, employees may be entitled to reduced cost health benefits depending on income levels and family size.) In addition, it will be illegal to retaliate against an employee who files a complaint or testifies regarding an employer's violation of the anti-discrimination requirements.

The FLSA is a complicated law, and it has now become more complicated. Employers need to be aware that, if they are sued for violations, the amount of damages they pay can be cut in half if they demonstrate a good-faith intent to comply with law. One way to do this is to conduct an "FLSA self-audit" in which an outside consultant or attorney reviews the employer's policies and practices to ensure FLSA compliance.

To learn more about the changes to the FLSA or how to conduct an FLSA self-audit, please contact one of the following Brown Rudnick attorneys:

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