



## Legal Provisions

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Legal Provisions

**Reference Number:** MTAS-852

### ***Federal Law***

Effective March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPCA) that includes a provision for nursing mothers in the workplace. The regulations amended Section 7 of the Fair Labor Standards Act that provides new requirements for employers to accommodate nursing mothers. The new requirements state that “employers are required to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child’s birth each time the employee has a need to express breast milk.”

These changes to the Fair Labor Standards Act (FLSA) also apply to exempt employees, which are employees who are exempt under section 213 of FLSA and meet the executive, administrative, professional, outside sales or computer professional exemptions.

### ***State Law***

The FLSA requirement does not pre-empt state laws that may provide greater protections to employees (i.e., providing break time beyond one year after the child’s birth). Since Tennessee state law does not specify an infant’s age limitation, employees are permitted to express breast milk for as long as they are breast-feeding their child. The Tennessee state law applies to exempt employees as well as non-exempt employees. This means exempt and non-exempt employees shall be provided reasonable break time for the purpose of expressing milk. Effective July 31, 2011, the Tennessee legislature passed Chapter No. 91 (HB0871/SB0083), which removed the age limit on children who can be breast-fed in public. This statute amends T.C.A. §§ 39-13-511 and 68-58-101 by removing the current 12-month age limit on children who can be legally breast-fed publicly.

### ***Employers with Fewer than 50 Employees***

Employers with less than 50 employees are not subject to the FLSA break time requirement if the breaks would pose an undue hardship on the employer. Undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size of the employer. All employees, regardless of work site, are counted when determining whether the exemption may apply. The Department of Labor is expected to provide additional guidance on this exemption.

### ***Employers with 50 or More Employees***

Employers with 50 or more employees must comply with the regulation, regardless of hardship. All work sites and employee statuses are counted for purposes of employee count. This differs from T.C.A. § 50-1-305 (1999), which allowed Tennessee employers of all sizes to opt out if the breaks created an undue hardship on the employer.

### ***Tennessee Legislative History***

In 1999, the Tennessee legislature passed T.C.A. § 50-1-305 that requires Tennessee employers to provide daily unpaid break time for a mother to express breast milk for her infant child. When possible, the break time should run concurrently with any break time already provided to the employee. In addition, there was an exemption to the law if the practice unduly disrupts the operations of the employer. (Note: this exemption now only applies to employers with fewer than 50 employees.) The law also stated that the employer should make reasonable efforts to provide a room, other than a bathroom, where the employee could express milk in close proximity to the work area.

In 2006, the Tennessee legislature passed T.C.A. § 68-58-101 *et seq.* that permits a mother to breast-feed an infant, 12 months or younger, in any location public or private, that the mother is authorized to be, and prohibits local governments from criminalizing or restricting breast-feeding. In addition, the law specifies that the act of breastfeeding shall not be considered public indecency, nudity, sexual in nature or obscene. In 2011, the Tennessee legislature removed the age limit on breast-feeding in public. Amends T.C.A. §§ 39-13-511 and 68-58-101.

To remain up-to-date with current Tennessee legislation regarding breastfeeding laws, visit the state’s Department of Health website [1].

**Links:**

[1] <https://www.tn.gov/health/health-program-areas/fhw/bf/breastfeeding-laws.html>

*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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