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**LEGAL ALERT**

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**March 31, 2010**

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**ALERT ON LEGAL DEVELOPMENTS FOR EMPLOYERS IN PUERTO RICO**

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**FEDERAL LAW CATCHES UP WITH LOCAL PROTECTIONS FOR WORKING  
MOTHERS WHO BREASTFEED THEIR INFANTS**

On March 23, 2010 President Barack Obama signed the Patient Protection and Affordable Care Act. Under that law, employers covered by the Fair Labor Standards Act are now required to furnish “reasonable” breaks to working mothers each time they need to express milk for their infant. The law covers mothers with children up to one year of age. The law also requires employers to provide to covered employees with a private space to express milk. A bathroom facility does not qualify as a private place under the new law. Employers with less than fifty employees may claim an exemption from the law if compliance would cause them an undue hardship in terms of significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business. This break is unpaid. 29 U.S.C. 207(r)(1).

As you know, Puerto Rico already has a law in place that creates generous protections for breastfeeding working mothers (Law No. 427 of December 16, 2000). As to employers here who are covered by that law and FLSA as well, the more generous provision of either law will apply. For instance, the local law allows a break of up to one hour for employees who work at least a 7.5 hour day. The federal law does not specify the duration of the break, other than it be reasonable. Also, it does not limit its protection to employees who work days of a particular number of hours. Thus, under the federal law, a part time employee may be entitled to reasonable breaks to express milk, even if the local law would not protect her. Further, unlike the federal law, the local law allows the worker to use the break not only for milk expression, but also for breastfeeding the infant. Therefore, the more generous local law will prevail in this regard, at least as to employees who work a 7.5 hour day.

The federal law is silent as to how the employee is to qualify for the break and how can the break schedule be structured. In contrast, the local law creates medical certification qualification requirements and mandates that the employer and the employee agree to a break schedule that may not be changed without either party’s consent. Finally, the federal law has no incentives for compliance or penalties for non compliance and does not appear to create a private cause of action. In contrast, the local law creates a tax credit to motivate compliance and imposes a fine of up to thrice the employee’s salary for each day in which the break was denied.

### **ARRA EXTENDED FOR THE SECOND TIME, A THIRD EXTENSION PENDING**

You may recall the American Recover and Reinvestment Act of 2009 (ARRA), which created a 65% COBRA premium subsidy for eligible employees who were involuntarily terminated from their jobs. The subsidy applies as well to the eligible family members of the covered employees. As originally approved, the subsidy was to last for nine months and applied to employees terminated between September 1, 2008 and December 31, 2009. Then, the Department of Defense Appropriation Act of 2010 extended the subsidy to fifteen months and the coverage to employees terminated until February 28, 2009. Well, on March 2, 2010, the Temporary Extension Act of 2010 extended the COBRA subsidy eligibility period until March 31, 2010.

The Temporary Extension Act of 2010 also expanded the group of individuals who may receive the subsidy to include employees terminated within the period who had become COBRA eligible because of a reduction in hours between September 1, 2008 and March 31, 2010. This group of employees must receive a second COBRA notice informing them of these benefits within 60 days from their termination, if they declined COBRA coverage or let it lapse and were subsequently terminated. Those who elected and maintained COBRA coverage need not receive a second notice but are now entitled to the subsidy.

Apparently, there is a third extension yet brewing. On March 11, the U.S. Senate approved a bill that would provide an extension through December 31, 2010, of the COBRA subsidy program. Further legislative action is still pending before the bill can become law.

### **CLOSING REMARKS**

I hope that the information provided in this bulleting will be of interest to you. This bulletin is not intended as legal advice but as an alert for situations when seeking such advice might be to your business advantage. Please feel free to contact us should you wish to discuss these or any other employment matters further. You can also find our Employment Law Updates in our website [www.arizmendisafilippo.com](http://www.arizmendisafilippo.com).