

ACADEMIC AFFAIRS COUNCIL

AGENDA ITEM: 6.A.1

DATE: July 26, 2010

SUBJECT: Expressing Milk/Breastfeeding in the Workplace
PREPARED BY: Janice Minder

In accordance with the Patient Protection and Affordable Care Act, President Obama signed into effect an amendment to the Fair Labor Standards Act to require breaks and space to express milk for nursing mothers. This amendment was effected immediate the signing of the act (March 23, 2010).

This amendment applies to all employers covered under the Fair Labors Standard Act. Federal regulations regarding rest breaks indicate "rest periods of short duration, running from 5 minutes to about 20 minutes are common in the industry...[and] must be counted as hours worked." (29 C.F.R. Section 785.18). Therefore, you will note for the OT Eligible employees these rest periods are considered hours worked.

This policy represents the recommendations of national organizations to comply with the Patient Protection and Affordable Care Act. In addition to the BOR policy, universities/special schools and administrative offices shall:

1. Identify and designate a private space in the work location, other than a bathroom, which can be used for employees needing to express breast milk.
2. Distribute the policy upon approval to employees, so that currently breastfeeding mothers can request an accommodation as necessary.
3. Communicate how the designated space can be accessed and whether other mothers will be using it. If multiple women will be using the space, consider implementing a reservation system, so that all mothers can be accommodated.
4. Analyze work schedules to ensure that appropriate breaks can be provided when necessary.
5. Train managers and supervisors about new policies and procedures for nursing mothers and ensure that they are aware of the need for accommodation and space.

RECOMMENDED ACTION

Informational only. This policy will go to BAC, AAC, RAC, Council on University Relations, COPS and BOR for August 2010 approval.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Expressing Milk/Breastfeeding in the Workplace

NUMBER: 4:45

1. Preamble

It is the policy of the South Dakota Board of Regents, in accordance with federal law, to provide a private lactation space and appropriate break periods for the expression of milk.

2. Applicability

Eligible employees, including all academic and non-academic faculty, administrators and professional staff, classified staff, temporary, and student employees. Eligible is defined where individual has a child at or less than 12 months of age (from birth).

3. Break Period

An employee shall be allowed break times to express breast milk for her nursing child for 1 year after the child's birth. Employees may need, but are not limited to, 2-3 fifteen minute breaks each 8 hour day for this purpose. If additional breaks are needed the employee should discuss the need with the supervisor and/or a Human Resources representative.

Breaks shall follow these guidelines:

A. Overtime Eligible Employees:

Lactation breaks of less than 20 minutes each 4 hour work period may be paid in accordance with the BOR policy on paid breaks. In this case, the lactation break will count as the paid break period.

At the discretion of the supervisor, lactation breaks of greater than 20 minutes require:

1. The employee to use available compensatory time balance, personal leave balance, annual leave balance, or leave without pay (in accordance with BOR policies on leave use).
2. Employees can also request an adjustment to the work schedule in accordance with the needs of the department.

Travel to and from the work place to the lactation space, and the time to clean equipment and the space, shall be included as part of the break.

B. Overtime Exempt Employees:

Exempt from overtime employees will be provided with lactation breaks in accordance to the above Section 3. As with any partial day absences, salaried employees are accountable to their supervisor to ensure they are meeting attendance and work expectations/goals/projects.

4. Lactation Area

Each institution shall provide at least one room, 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. To protect the employee's privacy, the space shall be able to be locked from the inside. A sign shall be provided that the user may place on the door while in use to protect privacy. The space shall include a chair, and an elevated surface to set lactation equipment. Requests for alternative spaces may be considered by the institution on a case by case basis. In these cases, the cost of repurposing the space may be the responsibility of the employee. Repurposing any space must be completed in accordance with institutional design guidelines standards.

The institution is only responsible to clean the space in accordance with their normal cleaning standards. The employee is responsible to clean all appropriate surfaces following each use of the space. The institution will provide an appropriate antibacterial cleaning solution and towels. The employee is responsible for cleaning lactating equipment and to provide the means to store the expressed milk. For public health reasons, public refrigerators may not be used to store expressed milk.

5. Breastfeeding in the Workplace

An employee may use a University/Special School/Administrative designated lactation area to breastfeed her child who has been brought to her during her rest breaks by a care provider or another such individual. A supervisor may allow an employee to use a private area in the work place, as identified in this policy, for breastfeeding during rest periods if such use of the space is compatible with operational needs and workplace safety considerations. Should the supervisor have concern about the child being in the workplace due to potential safety or worksite issues, the supervisor is to confer with the Office of Human Resources (see BOR Policy 4:41). In all cases, the supervisor has a responsibility to take into consideration the immediacy of the employee's need when making lactation support arrangements.

6. Notice to Department Supervisor

The employee shall provide reasonable notice to her supervisor that she intends to express milk in order to allow the supervisor sufficient time to make arrangements necessary to comply with this policy. The supervisor must take into consideration the immediacy of the employee's need when making these arrangements.

If the employee's supervisor is unavailable due to illness or absence from the workplace, the employee is to provide notice to the supervisor's director, department head, dean, or notice may be provided to the Office of Human Resources.

SOURCE: BOR, August 2010.