

Policy 1341
Break Time for Nursing Mothers

Date of Current Revision: July 2017

Primary Responsible Officer: Director of Human Resources

1. PURPOSE

The purpose of this policy is to establish guidelines for break times for nursing mothers at James Madison University as provided by Section 7(r) of the Fair Labor Standards Act (FLSA), which applies to all employees.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia § 23.1-1600; § 23.1-1301. The Board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND/OR REGULATION

The Fair Labor Standards Act, 29 USC 201, et seq., as amended by the Patient Protection and Affordable Care Act (2010) requires, among other things, that employers provide a nursing mother reasonable break time to express breast milk after the birth of her child. The amendment also requires that employers provide a place for an employee to express breast milk.

The amended FLSA provisions are essentially the same as those of [House Joint Resolution 145](#) and [House Bill 1264](#), both passed by the Virginia General Assembly in 2002.

3. DEFINITIONS

Exempt Employee

An employee who is exempt from the overtime provisions of the FLSA and is therefore not eligible to be paid overtime by the university. Such positions are normally supervisory, management, administrative, or specialized positions such as faculty members and information technology, and must meet the specific criteria for exemption established by the FLSA. The FLSA status of each position is evaluated using the primary duties and responsibilities of that position, not the working title.

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes wage and salary requirements, hours worked, and overtime pay, among other things affecting full-time and part-time workers. Overtime pay at a rate of not less than time and a half the regular rate of pay is required after 40 hours of work in a workweek.

Non-Exempt Employee

An employee who is not exempt from the overtime provisions of the FLSA and therefore must be paid at a rate of not less than time and a half the regular rate of pay for every hour worked over 40 in a workweek.

The Patient Protection and Affordable Care Act of 2010 (PPACA)

The Patient Protection and Affordable Care Act of 2010 is a federal health-care reform statute, which contains provisions for the protection of health and other related provisions. Section 4207 of the PPACA amends Section 7 of the Fair Labor Standards Act, requiring employers to provide breaks for nursing mothers.

4. APPLICABILITY

This policy applies to all employees, including student workers.

1. An employee shall be eligible for this benefit up to, but not beyond, one year after the child's birth.
2. This benefit is available to employees during their basic workweek and any overtime or additional hours worked.

5. POLICY

In accordance with The Patient Protection and Affordable Care Act, which amended section 7 of the Fair Labor Standards Act (FLSA), James Madison University employees will be allowed reasonable, unpaid break time to express milk for a nursing child for up to one year after the child's birth, each time such employee has need to express milk. A specific location will be provided, other than a bathroom, which is shielded from view and free from intrusion from co-workers and the public.

6. PROCEDURES

6.1 Employees who wish to express milk during the work period should keep supervisors informed of their needs so that appropriate accommodations can be made to satisfy the needs of both the employee and the department.

6.2 Reasonable Break Time

The university allows nursing mothers a reasonable amount of break time to express milk as frequently as needed. The frequency of breaks, as well as the duration of each break will likely vary. Although an employee is not required to, she may use her normal break time and/or meal period for this purpose or a reasonable amount of time during her regular work shift.

6.2.1 If possible, the nursing or milk expressing time is to run concurrently with any break time already provided. For Non-Exempt employees, break times of 15 minutes or less will be considered 'paid time,' while breaks of more than 15 minutes will be 'unpaid' time, as long as she is away from her work station and free from regular work duties. Therefore, supervisors, in consultation with their employees, are encouraged to use "[flextime](#)" for the purposes of expressing milk.

6.2.2 Non-Exempt and Exempt classified employees may opt to use appropriate leave, in lieu of using flextime for the purposes of expressing milk.

6.3 Dedicated Space

University departments will dedicate space for nursing mothers upon return to work, if requested by the employee to express milk for her child. A temporary space created or converted for expressing milk will be made available when needed by the nursing mother. A bathroom does not meet the requirements of this statute. This space must be shielded from view, lockable, have a place to sit, as well as an electrical outlet. See [Lactation Rooms on Campus](#).

6.4 Storage

The ability to safely store expressed milk for her child is required under this policy. While the university is not required to provide refrigeration options for nursing mothers, they must be allowed to bring a pump and insulated food container to work for expressing and storing the milk and a place where she can store the pump and insulated food container while she is at work (e.g., a locker, closet, cabinet, or other space where the pump and container will not be disturbed or contaminated).

7. RESPONSIBILITIES

Employees are encouraged to give their supervisors advance notice of their intent to take breaks at work to express milk and must discuss appropriate scheduling options with their supervisors.

Supervisors may ask an expectant employee if she intends to take breaks to express milk upon her return to work. This will facilitate the supervisor's ability to comply with the law (e.g. determining an acceptable location for expressing milk, coverage during the employee's break, etc.).

Human Resources will provide guidance and assistance about these requirements to employees and their supervisors to assure compliance with the PPACA and Section 7 of the Fair Labor Standards Act.

8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination of employment.

9. EXCLUSIONS

None.

10. INTERPRETATION

The authority to interpret this policy rests with the president, and is generally delegated to the director of human resources.

ADDITIONAL RESOURCES

United States Department of Labor, Wage and Hour Division – Fact Sheet #73: Break Time for Nursing Mothers under the FLSA <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>

United States Department of Labor, Wage and Hour Division – Fact Sheet #22: Hours Worked Under the FLSA <http://www.dol.gov/whd/regs/compliance/whdfs22.htm>

La Leche League <http://www.llli.org/>

Womenshealth.gov <https://www.womenshealth.gov/breastfeeding/>

Previous Version: April 2014

Approved by President: April 2014