

Policy 1341
Nursing Mothers – Break Time

Date of Current Revision: March 2022
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 §207(r), et seq.

Code of Virginia § 2.2 1201(A)(14b)

3. DEFINITIONS

Exempt Employee

An employee who is exempt from the overtime provisions of the Fair Labor Standards Act and is therefore not eligible to receive overtime pay for hours worked in excess of 40 in a workweek.

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 one and one-half times 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 Fair Labor Standards Act and therefore must be paid at a rate of one and one-half times the employee's regular rate of pay for hours worked in excess of 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 healthcare 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 employees.

- a. An employee shall be eligible for this benefit up to, but not beyond, one year after the child's birth.
- b. 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, the employee may use their normal break time and/or meal period for this purpose or a reasonable amount of time during the employee's regular work shift.
 - a. 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 make adjustments to the employee's work schedule for the purpose of expressing milk.
 - b. Non-exempt and exempt full-time employees may opt to use appropriate leave, in lieu of making adjustments to the employee's work schedule for the purpose 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. 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 Spaces](#).

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.

All departments, offices and employees that generate, receive or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) - Records Management.

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 FLSA

United States Department of Labor, Wage and Hour Division – [Fact Sheet #22](#): Hours Worked Under the FLSA

[La Leche League](#)

Womenshealth.gov

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Approved by president: April 2014