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Labor and Employment Update

Employers: Ensure That the Area Designated to Express Milk is “Private, Safe And Clean”

An employer who fails to provide a “private, safe and clean” place for an employee to extract milk could be violating the employee’s constitutional right to privacy, if its failure negatively impacted the employee’s capacity to breastfeed her child or made her stop doing so. Siaca v. Bahia Beach Resort & Golf Club, 2016 TSPR 11. In those cases, the employer would be violating the requirement of Law No. 427-2000 that it afford an employee who breastfeeds her infant a time and place to express milk, but its liability would not be limited to the penalties provided under said statute. The employer would also be liable for actual damages.

Significantly, Law No. 427 is silent as to what is an acceptable place for milk extraction. The Puerto Rico Supreme Court filled that void in Siaca. The employee in this opinion worked as a security supervisor in a construction project. Upon returning to work she informed her employer of her intention to breastfeed. The employer designated the following as areas for milk-expression:

- the bathroom,
- an office where she had to cover the windows with paper in order to get privacy from peeking employees,
- a humid, roach-infested file room 15 minutes away from her working area,
- a narrow warehouse room whose AC Unit leaked on top of the milk extraction area.

At least three times the employee was surprised by others who entered into these rooms without warning in spite of the sign outside that she was expressing milk. Each time she complained of the conditions in the milk-expression area, the employer changed her to another of the areas listed above.

The employee claimed that the obstacles she faced to expressing milk at work eventually made her fall into clinical depression and all but extinguished her milk production. The Supreme Court concluded that, even though the employer never denied her permission to express milk, it nullified that right by subjecting it to onerous conditions. The Supreme Court thus allowed the trial court’s \$50,000 damages award to stand.

Employers should therefore be aware that they have to do more than pay lip service to an employee’s request to express milk at work. They must make the exercise of that right possible by affording the employee a place that is private, that has a clean area where the employee can place her milk expression equipment and the expressed milk, with adequate ventilation, electric outlets and other accoutrements as appropriate. In some places of employment, compliance may be easy to achieve, but



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in others, compliance will require creativity. Our attorneys are available to assist you in this process.

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