

## Economic Analysis for Proposed Rule Change 25 NCAC 01 N .0601-.0605, Lactation Support

**Rule Citation Numbers:** 25 NCAC 01N .0601, .0602, .0603, .0604, .0605

**Agency:** Office of State Personnel

**Agency Contact:** Charlene Shabazz  
1331 Mail Service Center  
Raleigh, NC 27699  
[Charlene.Shabazz@osp.nc.gov](mailto:Charlene.Shabazz@osp.nc.gov)

**Nature of Impact:** State Impact – YES  
Local Impact – NO  
Substantial Economic Impact – NO  
Federal Impact – NO  
Small Business Impact – NO

**Authorizing Statute:** 29 U.S.C. 207

### **Summary of Proposed Rule:**

The proposed rule (see Appendix 1) implements a **federal requirement** of the Patient Protection and Affordable Care Act (H. R. 3590), the health care reform bill which was signed into law on March 23, 2010 and which amends Section 4207 of the Fair Labor Standards Act (FLSA) (see Appendix 2 for text of H.R. 3590 section 4207). The federal amendment states that “an employer shall provide a reasonable break time for an employee to express milk for her nursing child for 1 year after the child’s birth each time such employee has a need to express the milk”. Additionally, the federal amendment states that “an employer shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk”. Based on this federal requirement for employers to provide adequate space, a lactation support program, which is a part of the NC State Government work/life initiatives, would be developed to assist agencies in implementing this federal requirement. Note that in the absence of this rule, state agencies would still have to comply with the federal requirement.

### **COST**

To implement the lactation support program for state agencies, the primary cost will be associated with one-time expenses for setting up the space. This cost per agency to comply with the proposed rule would be up to \$4,000, a cost that would be incurred regardless since agencies have to comply with the federal requirement. The paragraph below provides detail to how the total state impact from the rule was computed.

Based upon data received from State Property Office, there are currently 77 agencies occupying 44 state-owned building in the Government Center (Raleigh, NC) and 1,003 leased buildings throughout the State. In order to determine the economic impact for the State, the following assumptions were made:

- Of the 77 agencies, 90% (or 69 agencies) have employees with private offices, thus the minimum cost would be for a sign for the employee's door or cost for lock which would be \$2,070 assuming a cost of \$30 for a sign or lock (including labor).
- Of the 77 agencies, 10% (or 8 agencies) would not have private offices and if there was not a vacant office within the facility, the State would need to construct a room with an average square footage of 80 feet; this cost would be approximately \$18,400, assuming a \$30 cost per square foot (including labor).
- Of the 1003 leased building, the space requirement could be accomplished in three ways: private offices; additional lease space; or reconfiguration of existing space. If 45% of the leased buildings have private offices, then the associated cost would be \$13,530 for a sign/lock. If 10% of the buildings could obtain additional lease space then the associated cost would an increase in the annual lease payments of \$116,000. Lastly, if 45% of the leased building had to reconfigure an existing space then the one-time cost would be \$1,804,000, assuming a \$50 per square foot cost (including labor).
- In the case were agencies would need to convert space, there is an additional cost in terms of the foregone value of using the space for the lactation room as opposed to some other purpose. This value is hard to quantify not knowing what the space would be used for instead.

## **Opportunity Costs**

Agencies may require employees to use their regularly scheduled break times for this program and if more time is required, the employee may utilize paid leave or unpaid time thus there is no cost associated with the breaks. If agencies do not currently have regularly scheduled break times, then the agency must afford the employee the breaks as required by the federal law. If employees are currently allowed break times for other purposes with pay, then that same time should be allowed for lactation. The lost work time per employee for agencies that provide paid break time would be based upon the average hourly rate of \$20.10. Thus, the average cost for the year would be \$94,068, assuming that:

- 1) as many women would go on maternity leave as men on paternity leave (based upon the limited data available within the BEACON system, 52 employees from 11 agencies utilized paternity leave during the 2009 calendar year),
- 2) women would continue to breastfeed for up to 9 months (180 working days) after returning to work, and
- 3) that one half hour break per day would be allowed.

OSP will use a current employee as the coordinator for this program thus there are no additional salary cost. This employee will spend approximately 25% assisting agencies and the current hourly rate is \$31.70 or approximately \$16,484 for the first year. The amount of time in subsequent years would be approximately 5% and without any salary increases that

would be \$3,297 each year (note table below assumes an annual average salary increase of 2%).

**Table 1. Summary of State Costs**

<b>Actual Cost</b>	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b>	<b>2013-2014</b>	<b>2014-2015</b>
Agencies w/private offices	\$2,070	N/A	N/A	N/A	N/A
Agencies w/o private offices	\$18,400	N/A	N/A	N/A	N/A
Leased buildings w/private office	\$13,530	N/A	N/A	N/A	N/A
Leased buildings w/o private office (additional lease payments)*	\$116,000	\$118,784	\$121,635	\$124,554	\$127,543
Reconfigure leased building space	\$1,804,000	N/A	N/A	N/A	N/A
<b>Total Actual Cost</b>	<b>\$1,954,000</b>	<b>\$118,784</b>	<b>\$121,635</b>	<b>\$124,554</b>	<b>\$127,543</b>
<b>Opportunity Cost**</b>					
Break time (if paid)	\$94,068	\$95,949	\$97,868	\$99,826	\$101,822
Program Coordinator	\$16,484	\$3,363	\$3,430	\$3,499	\$3,569
<b>Total Opportunity Cost</b>	<b>\$110,552</b>	<b>\$99,312</b>	<b>\$101,298</b>	<b>\$103,324</b>	<b>\$105,391</b>
<b>Total Cost</b>	<b>\$2,064,552</b>	<b>\$218,096</b>	<b>\$222,933</b>	<b>\$227,878</b>	<b>\$232,934</b>
<b>Net Present Value***</b>	<b>\$2,641,887</b>				

\* Assumes the cost of leasing space goes up by 2.4% every year (based on historic data).

\*\* State government salaries are assumed to increase at a rate of 2% per year (based on historic data and current budget situation).

\*\*\* Net present value is computed over a five-year period assuming a constant discount rate of 7%.

## **UNCERTAINTY**

The cost analysis comes with a lot of uncertainties such as:

- If multiple agencies occupy a building, would each agency need a lactation room or could a room be shared among agencies? If agencies were to share a lactation room, the cost estimate would be lower.
- How many employees within each agency would need the space? Based upon the limited data available within the BEACON system, 52 employees from 11 agencies utilized paternity leave during the 2009 calendar year (unfortunately, there is no clear information on maternity leave). Thus, depending on the rate of utilization of maternity leave, the cost could be significantly less than the \$1,954,870 shown in the table above. Assuming that twice the amount of women would take leave rather than men (104 women from 11 agencies in the Government Center and 11 agencies that lease space) and that nothing else changes, the actual and opportunity costs in the first year would be about \$24,000 and \$204,000, respectively.

- Some agencies already provide this space and others have said that they have the space available. Current agencies that have space already identified for this purpose include the General Assembly and the Division of Public Health. If more agencies have the space already, the cost commitment would be significantly reduced. If all agencies in the Government Center either have private offices or a designated space, the first year actual costs could be reduced by \$17,000; if all agencies leasing space could lease extra space, the cost could be further reduced by about \$800,000.
- The cost to convert a space will differ depending on the circumstances of each agency. If the cost per square foot were \$50 for both Government Center agencies and agencies leasing space, the first year actual cost could be \$1,967,000. However, if all conversion of space would cost \$30 per square foot, the estimate would be about \$1,187,000.

## **BENEFITS**

*The benefits of a lactation support program both to the State and the employee are not unquantifiable; however qualitative benefits as documented in the “Eat Smart North Carolina: Businesses Leading the Way in Support of Breastfeeding”, a planning and resource guide produced by the N.C. Division of Public Health for each are shown below.*

### **State**

*Overall Cost Savings* - According to the Association of Women’s Health, Obstetric, and Neonatal Nurses, an employer will save \$3 for every \$1 is spent on health care cost for a breastfed baby which amounts to \$400 per baby in the first year of life. The savings is realized in the reduction of doctor visits and the reduction of time that parents spend away from work caring for a sick child.

*Decreased Absenteeism* – According to the Journal of Health Promotion, employees who breastfeed their babies are less likely to miss work with a sick child.

*Increased Employee Retention* – According to research conducted by Mutual of Omaha and Pediatric Nursing, employers with lactation support program experience a higher retention rate than the national retention rate. This would save the state on the cost of search for and training a replacement.

*Employee Recruitment Incentive* – Female employees value businesses that provide lactation support programs.

### **Employee**

*Increased Employee Job Satisfaction* – According to Health Care Women International, employees who participate in a lactation support program have an overall positive work experience and less stress due to fewer child illnesses.

If paid breaks would be allowed where they were not before, employees would benefit from them. The value of this benefit would be equal to the value of the opportunity cost of break time incurred by the state.

Breastfed babies are healthier babies compared to babies that are formula fed.

Breastfeeding benefits mothers by decreasing their likelihood of serious health conditions according to the U.S. Department of Health and Healthcare Research and Quality.

Breastfeeding is more cost effective than bottle-feeding formula. The average yearly cost for formula per child is \$1,500.

### **ALTERNATIVES**

There are no other alternative to the lactation support program as it is a requirement of the federal law.

## **Appendix 1. Proposed Rule**

### **SECTION .0600 – LACTATION SUPPORT**

#### **25 NCAC 01N .0601 – PURPOSE**

The purpose of this rule is to provide guidelines that will assist agencies in the development of a worklife balance initiative which supports nursing mothers working in North Carolina State Government.

#### **25 NCAC 01N .0602 - POLICY**

It is the policy of the State to assist working mothers who are nursing children during their transition back to work following the birth of a child by providing lactation support. A lactation support program allows a nursing mother to express breast milk periodically during the work day.

#### **25 NCAC 01N .0603 – OFFICE OF STATE PERSONNEL RESONSIBILITY**

The Office of State Personnel will designate a program coordinator to assist agencies with questions regarding this rule.

#### **25 NCAC 01N .0604 – AGENCY RESPONSIBILITIES**

State agencies shall provide suitable space, privacy, and time for nursing mothers to express breast milk by doing the following:

- (1) Providing private space within reasonable proximity to the work area that is not in a restroom or other common area. The space should have a door that can be secured or locked adequate lighting and seating, and electrical outlets for pumping equipment. The space should also have a source of running water within a reasonable distance.
- (2) Providing reasonable time to express breast milk. The agency may require the employee to use the regularly scheduled paid break time to express breast milk. If time is needed beyond the regularly scheduled paid break times, the agency shall make reasonable efforts to allow employees to use paid leave or unpaid time for this purpose.

#### **25 NCAC 01 N .0605 – EMPLOYEE RESPONSIBILITY**

The employee will be responsible for storage of the expressed breast milk.

## **Appendix 2. Patient Protection and Affordable Care Act (H.R. 3590)**

### **SEC. 4207. REASONABLE BREAK TIME FOR NURSING MOTHERS.**

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

“(r)(1) An employer shall provide—

“(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk; and

“(B) a place, 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.

“(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

“(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.

“(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.”.