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Basic

EXPLANATION: NURSING MOTHERS

This policy is optional and was created at the request of several school districts;

however, it is in line with current practice in many districts. There is little law addressing accommodation of nursing mothers in general. Federal law requires all employers of employees considered nonexempt under the Fair Labor Standards Act (such as secretaries, custodians, food service workers, aides, cooks, etc.) to provide "reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk." Employers are also required to provide "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." For more information, see the U.S. Department of Labor's

guidance at <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>.

Please note that this policy goes beyond what this law requires and allows all employees reasonable break time to express breast milk. MSBA has also chosen to drop the one-year limit from this policy. The World Health Organization has issued the following recommendations, which are endorsed by many other health organizations: "As a global public health recommendation, infants should be exclusively breastfed for the first six months of life to achieve optimal growth, development and health. Thereafter, to meet their evolving nutritional requirements, infants should receive nutritionally adequate and safe complementary foods while breastfeeding continues for up to two years of age or beyond." Given this, MSBA has not included any limits on how long employees and students may

express milk after the baby is born.

The Equal Employer Opportunity Commission (EEOC) has issued guidance indicating that discrimination or retaliation against an employee due to nursing or expressing breast milk would be a violation of Title VII's prohibition of gender discrimination as well as the Pregnancy Discrimination Act (PDA) because lactating is a pregnancy-related condition. See "Enforcement Guidance: Pregnancy Discrimination and Related Issues" at: http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#lact.

This guidance is not law and in fact was recently ignored by the U.S. Supreme Court in a pregnancy discrimination case involving a different issue. Courts are currently divided on whether Title VII or the PDA require accommodation of nursing mothers, and the issue has not been addressed by a Missouri court. Nevertheless, this guidance gives employers notice

of what the EEOC expects. According to the guidance:

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An employee must have the same freedom to address such lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions. For example, if an employer allows employees to change their schedules or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances.

The Office for Civil Rights (OCR) of the U.S. Department of Education has recently released guidance regarding the accommodation of pregnant and parenting students, stating that failure to accommodate these students could be a violation of Title IX and gender discrimination. However, this guidance does not go into great detail regarding obligations to nursing mothers and is not necessarily a statement of the law as much as the expectations of the OCR. See "Supporting the Academic Success of Pregnant and Parenting Students" at: <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>.

Missouri state statute makes it clear that it is not indecent for a mother to nurse a child in public and clearly states, "Notwithstanding any other provision of law to the contrary, a mother may, with discretion, breastfeed her child or express breast milk in any public or private location where the mother is otherwise authorized to be." 5191.918, RSMo.

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