

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found: 1	Unduplicated Employees Agreed: 1
Total Amount BWs Computed: \$216.58	Total Amount BWs Agreed: \$216.58
Total Amount LDs Computed: \$0.00	Total Amount LDs Agreed: \$0.00

Conclusions & Recommendations:

46 hrs. FLSNM, Ent coverage. ADV > \$500K, ER has over (b) (4) EE's. (b) (4) is not exempt under Sect 7, (b) (4) is covered under sect 7(r). Nursing mothers (b) (7)(E) (b) (7)(E) had baby under 1 year & was not provided with a functional space that (b) (6), (b) (6) could use to express milk. ER delayed installing electrical outlet for pump. (b) (6) supply diminished. (b) (6) was forced to clock out while other nursing mother was paid for the time. Section 215(a)(3) violation found for unpaid breaks in the amount of \$216.58. ER ATC/ATP.

WHI Signature: _____ Date: 08/05/2016

Reviewed By: _____ Date: _____

Case I.D # 1766287
Walmart Super Center
3200 Market Street
Carson City, NV 89706
TAX I.D. # 71-0415188
Phone: 775-883-6415

FLSA NURSING MOTHERS NARRATIVE

COVERAGE:

Subject firm is an American multinational retail corporation that operates and manages a chain of over 11,500 discount department stores and warehouse stores in 28 countries. Walmart was founded on July 2nd, 1962 by Sam Walton and Walmart Stores, Inc. was incorporated on October 31st, 1969 in Arkansas. Walmart currently employs (b) (4) employees worldwide and (b) (4) in the United States alone.

Walmart Store associates or employees process credit card payments on a daily basis and answer phone calls from out of state. Employees also regularly handle items that have moved through interstate commerce such as electronics from Sony, Cannon, and Nikon which are all headquartered in Tokyo, Japan, Baby Einstein which is headquartered in Burbank, California and Faded Glory clothing which is headquartered in New York, New York among hundreds of other items that have traveled through interstate commerce. (See Exhibits C-1 – C-7-h)

Section 3(d) Employer: During the investigation it was determined that (b) (6), (b) (7)(C) is an employer that meets the definition of Section 3(d). (b) (6), (b) (7)(C) is involved in the daily operations of the business. (b) (6), (b) (7)(C) has hired and fired employees, directs the work of the entire store in Carson City, NV, has incorporated policy and procedures for the company store, completes all the financial aspects of the

company and administers pay and payroll and has otherwise acted in the direct interest of the corporate entity in relation to the employees and the store.

According to the employer, the subject firm's annual dollar volume has exceeded (b) (4) for the past three years (each year). Since the dollar volume annually exceeds \$500,000, the employer has at least two or more full time employees and the employees have handled goods that have traveled through interstate commerce, coverage is asserted under section 3(s)(1)(A)(i)&(ii) and therefore, all employees are covered in all weeks. (See Exhibits C-1 – C-7)

Period of Investigation: From 09/23/2012 to 09/21/2015

EXEMPTIONS:

The overtime exemptions were tested to determine whether (b) (6), (b) (7)(C) is exempt from Break Time for Nursing Mothers under Section 7 of the Fair Labor Standards Act. Based on the interview statement and payroll records, (b) (6), (b) (7)(C) is a cashier and does not perform any management duties or any duties that would classify (b) (6), (b) (7)(C) as exempt under 29 CFR Part 541 or FLSA Sections 13(a) or 13(b) provisions. Furthermore, (b) (6), (b) (7)(C) confirmed that the company classifies its cashiers as non-exempt employees; therefore, (b) (6), (b) (7)(C) is subject to Section 207 of the Act and is not exempt from Break Time for Nursing Mothers under Section 7(r) of the Fair Labor Standards Act. (See Exhibits B-1-a – B-1-b, C-1 – C-7, D-4-a –D-4-bj)

STATUS OF COMPLIANCE:

Reason for Break Time for Nursing Mothers Investigation: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was not provided with a functional space that (b) (6), (b) (7)(E) could use to express

breast milk and was told to use any available fitting room. The fitting rooms did not have an electrical outlet for (b) (6), (b) (7)(C) to plug (b) (6), (b) (7)(C) electric pump. (b) (6), (b) (7)(C) was told that (b) (6), (b) (7)(C) could use the training room and break room which were not shielded from view and free of intrusion and was constantly interrupted with managers and associates coming in while (b) (6), (b) (7)(C) was actively pumping or expressing milk. (b) (6), (b) (7)(C) was also told that (b) (6), (b) (7)(C) could use the room next to the server electrical room that had no reasonable expectation of privacy since there were cameras, was a health hazard since there was exposure to high voltage and there was also no expectation of cleanliness since the room was full of dirt and dust given that it was next to the server electrical room. Furthermore, (b) (6), (b) (7)(C) was not provided the ability to safely store the milk for (b) (6), (b) (7)(C) child. The employer did not ensure that there was a place where (b) (6), (b) (7)(C) could store the milk while (b) (6), (b) (7)(C) was at work. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) expressed milk had gone missing or was stolen from the employees' break room refrigerator. (b) (6), (b) (7)(C) stated that the employer had several mini refrigerators around the store that were not in use and that had locks but (b) (6), (b) (7)(C) was not allowed to use those refrigerators to store (b) (6), (b) (7)(C) expressed milk to avoid the milk from getting stolen or coming up missing. In addition, (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) was told by management that (b) (6), (b) (7)(C) was taking too much time on (b) (6), (b) (7)(C) breaks to express milk and the length of time was questioned. (b) (7)(E) and Exhibit B-1-a – B-2, E-6-a – E-6-h)

Prior History: There is no history for this company regarding Break Time for Nursing Mothers Section 7(r) under the Fair Labor Standards Act.

MODO: Little Rock District Office is the MODO. Contact was made in WHISARD with the MODO. (b) (7)(E) (See Exhibits D-1-a – D-1-d)

Section 207(r)(1)(A) &(B): Break Time for Nursing Mothers: Violation was found because the employer did not provide a functional space shielded from view and intrusion for nursing mothers to express milk and also by not providing a reasonable amount of break time for the employee by questioning the time that (b) (6), (b) (7)(C) took to express milk for (b) (6), (b) (7)(C) nursing child under Section 7(r) of the FLSA.

On 07/24/2015 this WHI contacted (b) (6), (b) (7)(C), store manager for the Carson City, NV store and informed (b) (6), (b) (7)(C) of the investigation and the requirements under Break Time for Nursing Mothers under the Fair Labor Standards Act. (b) (6), (b) (7)(C) agreed to comply but stated that (b) (6), (b) (7)(C) was taking an excessive amount of time on (b) (6), (b) (7)(C) breaks to pump. (b) (6), (b) (7)(C) wanted to know how much time was considered enough time for an employee to express milk. This WHI referred (b) (6), (b) (7)(C) to Federal Register Volume 75, No. 244 Reasonable Break Time for Nursing Mothers and explained to (b) (6), (b) (7)(C) that there was no set time that was considered a sufficient amount of time and that it varied from woman to woman. It was further explained that all applicable factors needed to be considered. This WHI referenced part “b. Reasonable Break Time” and explained factors to be considered.

This WHI also advised (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to be provided a functional and separate space in which (b) (6), (b) (7)(C) could express milk that is shielded from view and free of intrusion. It was stated that (b) (6), (b) (7)(C) had been expressing and pumping milk in the training room and had been walked in on excessively by management (both male and female) and walked in on by associates while (b) (6), (b) (7)(C) was actively pumping milk. It was stated that (b) (6), (b) (7)(C) had been walked in on and had groups of employees stand around having meetings or conversations while (b) (6), (b) (7)(C) was pumping and exposed. It was further stated that (b) (6), (b) (7)(C) was then instructed to use the room next to the electrical server room which has high voltage and danger signs, had cameras and was filthy. It was stated that in both of these situations (expressing milk in the training room and the room next to the electrical server) (b) (6), (b) (7)(C) was not in a separate space that was shielded from view and free from intrusion. It was further stated that the room next to the server room was considered a health hazard and not appropriate to express milk that would then be given to an infant baby.

(b) (6), (b) (7)(C) responded by stating that (b) (6), (b) (7)(C) was never instructed to use the training room nor the room next to the electrical server room and that (b) (6), (b) (7)(C) had taken it upon (b) (6), (b) (7)(C) to pump and express milk there. What (b) (6), (b) (7)(C) stated directly contradicted the proof of text messages that (b) (6), (b) (7)(C) provided this WHI. The text messages show that (b) (6), (b) (7)(C) (manager) had allowed (b) (6), (b) (7)(C) to use the training room/personnel room and that (b) (6), (b) (7)(C) (assistant manager) had told (b) (6), (b) (7)(C) that they could use the room next to the electrical server to pump and express milk. The text messages also show that (b) (6), (b) (7)(C) had prohibited (b) (6), (b) (7)(C) from using an extension cord in the fitting rooms to connect (b) (6), (b) (7)(C) electric pump and express milk because it was a tripping hazard. (See Exhibits E-6-a – E-6-h)

On 08/03/2015 this WHI received Walmart's Break Time for Nursing Mothers Policy. This WHI then called (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) had purchased a manual pump for (b) (6), (b) (7)(C) further stated that (b) (6), (b) (7)(C) had talked to (b) (6), (b) (7)(C) and that everything had been resolved. This WHI explained again the requirements to allow reasonable break times to express milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) understood and that they were allowing (b) (6), (b) (7)(C) to take the time that (b) (6), (b) (7)(C) needed to express milk.

On the same day (08/03/2015), after talking to (b) (6), (b) (7)(C), this WHI called (b) (6), (b) (7)(C) to verify that the issue had been resolved. (b) (6), (b) (7)(C) stated that their solution was to buy (b) (6), (b) (7)(C) a manual pump and that (b) (6), (b) (7)(C) was unable to express milk with the manual pump because (b) (6), (b) (7)(C) body was already used to the electric pump. (b) (6), (b) (7)(C) further stated that they started requiring (b) (6), (b) (7)(C) to clock out on (b) (6), (b) (7)(C) breaks when (b) (6), (b) (7)(C) needed to express milk but that there was another nursing mother (b) (6), (b) (7)(C) that took breaks to pump and (b) (6), (b) (7)(C) was not required to clock out and was still being paid for (b) (6), (b) (7)(C) break time.

On 08/05/2015, this WHI called (b) (6), (b) (7)(C) again and advised that under the regulations (b) (6), (b) (7)(C) needed to provide a functional space that an employee could use to express breast milk. It was explained that at a minimum, a space must contain a place for the nursing mother to sit, and a flat surface, other than the floor, on which to place the pump. It was explained that the space should have access to electricity so that the nursing mother can plug in (b) (6), (b) (7)(C) electric pump. (b) (6), (b) (7)(C) agreed to install an electrical outlet in the fitting room so that it would be functional and (b) (6), (b) (7)(C) would be able to plug in (b) (6), (b) (7)(C) pump and express milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was off for several days and that (b) (6), (b) (7)(C) would have the outlet installed before (b) (6), (b) (7)(C) had to return to work again. (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) would send the work order to this WHI as proof of installation.

This WHI called (b) (6), (b) (7)(C) on 08/12/2015, 08/14/2015, and 08/18/2015 and every time, (b) (6), (b) (7)(C) was not available and this WHI would leave a message with an associate at the store to return the call. On 08/18/2015, this WHI also called (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) advised that no outlet had ever been installed.

On 09/03/2015, this WHI requested time records for all nursing mothers that were taking break time to express milk for the investigative period. On 09/14/2015, this WHI received time records for all nursing mothers that were taking break time to express milk. According to the employer, there were only two

employees during the investigative period that were taking breaks to express milk and they were (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). The employer explained that it was believed that (b) (6), (b) (7)(C) was pumping or expressing milk before and after (b) (6), (b) (7)(C) shift and during her 30 minute lunch and that is why (b) (6), (b) (7)(C) was not required to clock out and why (b) (6), (b) (7)(C) was required to clock out. The employer further explained that they would reimburse (b) (6), (b) (7)(C) for the paid 15 minute break that they had been deducting but that anything after the 15 minute break would not be compensated nor reimbursed. It was further stated that they had approved (b) (6), (b) (7)(C) request to run an electrical line and outlet to a designated nursing area that will enable (b) (6), (b) (7)(C) to plug in (b) (6), (b) (7)(C) electric breast pump.

The same day (09/14/2015), this WHI called (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) advised that (b) (6), (b) (7)(C) was not allowed to run an electrical line and that no electric outlet had been installed and that (b) (6), (b) (7)(C) had been unable to pump. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) milk supply had diminished drastically and (b) (6), (b) (7)(C) baby didn't have enough milk to drink. (b) (6), (b) (7)(C) further stated that (b) (6), (b) (7)(C) had coworkers buy (b) (6), (b) (7)(C) formula because they felt bad for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) baby so that (b) (6), (b) (7)(C) baby would have milk to drink. This WHI also talked to another coworker named (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) corroborated the description of events.

On 09/21/2015, WHI (b) (6), (b) (7)(C) and this WHI investigator traveled to Carson City, NV to take a tour of the establishment and to verify whether or not an electric outlet had been installed. It was confirmed that an electric outlet had been installed that very morning on 09/21/2015. The manager at the time named (b) (6), (b) (7)(C) confirmed that the electrical outlet had been installed that morning as well as (b) (6), (b) (7)(C) and another associate confirming the same thing. Pictures were taken of the fitting room and electrical outlet designated for nursing mothers.

Even though the electrical outlet was installed on 09/21/2015, it took the employer almost nine weeks to install an electrical outlet or provide a functional space to allow nursing mothers a functional space to express milk. By this time it was too late for (b) (6), (b) (7)(C) milk supply diminished completely and (b) (6), (b) (7)(C) was forced to feed (b) (6), (b) (7)(C) baby formula. (b) (6), (b) (7)(C) supply dropped so drastically that when (b) (6), (b) (7)(C) was home, (b) (6), (b) (7)(C) baby refused to nurse because (b) (6), (b) (7)(C) body could not produce enough milk to feed (b) (6), (b) (7)(C) baby and (b) (6), (b) (7)(C) baby started to prefer the bottle with formula. (b) (6), (b) (7)(C) now is unable to pump and express milk and (b) (6), (b) (7)(C) baby is now drinking solely formula.

(b) (6), (b) (7)(C) was also being provided with an electric pump by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C). When (b) (6), (b) (7)(C) milk supply started to dwindle, (b) (6), (b) (7)(C) had requested that (b) (6), (b) (7)(C) provide (b) (6), (b) (7)(C) with formula because (b) (6), (b) (7)(C) was unable to feed (b) (6), (b) (7)(C) baby. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that in order to get formula (b) (6), (b) (7)(C) would have to return the electric pump that they had provided (b) (6), (b) (7)(C) because they could not provide both the electric pump and the formula. Coworkers of (b) (6), (b) (7)(C) felt bad for (b) (6), (b) (7)(C) and had witnessed (b) (6), (b) (7)(C) crying because (b) (6), (b) (7)(C) could not feed (b) (6), (b) (7)(C) baby and they had bought (b) (6), (b) (7)(C) formula so that (b) (6), (b) (7)(C) could feed (b) (6), (b) (7)(C) baby. Eventually (b) (6), (b) (7)(C) was forced to return the electric pump in order to receive formula for (b) (6), (b) (7)(C) baby.

(b) (6), (b) (7)(C) baby also was sensitive to formula and required a sensitive formula which (b) (6), (b) (7)(C) did not provide unless (b) (6), (b) (7)(C) provided a doctor's note from (b) (6), (b) (7)(C) baby's pediatrician stating that (b) (6), (b) (7)(C) baby needed sensitive formula. So for about six weeks, (b) (6), (b) (7)(C) had to pay out of pocket for formula until (b) (6), (b) (7)(C) was able to take (b) (6), (b) (7)(C) baby to the pediatrician and get a doctor's note from the pediatrician to provide to (b) (6), (b) (7)(C).

After (b) (6), (b) (7)(C) was able to get the doctor's note from (b) (6), (b) (7)(C) baby's pediatrician stating that (b) (6), (b) (7)(C) baby needed sensitive formula, (b) (6), (b) (7)(C) started to provide (b) (6), (b) (7)(C) the means to purchase sensitive formula. When (b) (6), (b) (7)(C) started to give (b) (6), (b) (7)(C) baby the specific brand sensitive formula that (b) (6), (b) (7)(C) would approve (b) (6), (b) (7)(C) baby could not properly digest that particular brand of sensitive formula and was getting sick. The only formula that (b) (6), (b) (7)(C) baby can digest is Infamil Gentlease. (b) (6), (b) (7)(C) does not cover this particular brand formula so (b) (6), (b) (7)(C) has been forced to pay out of pocket for this formula because this is the only formula that (b) (6), (b) (7)(C) baby can digest.

Section 215(a)(3) – Retaliation Under the FLSA: Violation found.

After (b) (6), (b) (7)(C) (b) (7)(E), the employer told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had to start clocking out for (b) (6), (b) (7)(E) breaks to pump or express milk. (b) (6), (b) (7)(C) was the only nursing mother that had to clock out and not get paid for the break time (b) (6), (b) (7)(E) used in order to pump and express milk. There was another nursing mother (b) (6), (b) (7)(C) that did not have to clock out. (b) (6), (b) (7)(C) was not compensated for the time (b) (6), (b) (7)(E) took to express and pump milk while the other nursing mother was being compensated. Furthermore, prior to (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not clocking out for (b) (6), (b) (7)(E) breaks to express milk and was not told that (b) (6), (b) (7)(E) had to clock out.

Also, prior to (b) (6), (b) (7)(C) (b) (7)(E), (b) (6), (b) (7)(C) was always scheduled a 30 minute lunch break. (b) (6), (b) (7)(C) had recently had knee surgery and needed (b) (6), (b) (7)(C) 30 minute lunch breaks to rest (b) (6), (b) (7)(C) knee because (b) (6), (b) (7)(C) worked as a cashier standing up the entire shift. After (b) (7)(E) and the employer was contacted by this WHI (b) (6), (b) (7)(C) stopped being scheduled (b) (6), (b) (7)(C) 30 minute lunch breaks and was forced to work (b) (6), (b) (7)(C) entire shift without a lunch break. (b) (6), (b) (7)(C) was told by management that this happened to (b) (6), (b) (7)(C) because (b) (6), (b) (7)(E). Another employee that was interviewed corroborated (b) (6), (b) (7)(C) story and affirmed that management stopped scheduling lunch breaks for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was forced to work (b) (6), (b) (7)(C) entire shift without a break standing up on (b) (6), (b) (7)(C) injured knee. (See Exhibits B-1-a – B-2)

The employer took nine weeks to install an electrical outlet. They told (b) (6), (b) (7)(C) that installing an electrical outlet would inconvenience them and told (b) (6), (b) (7)(C) could not use (b) (6), (b) (7)(C) electrical pump anymore. Furthermore, the employer stopped scheduling (b) (6), (b) (7)(C) 30 minute breaks as stated above and the employer decreased (b) (6), (b) (7)(C) breaks by only scheduling (b) (6), (b) (7)(C) one 15-minute break. Due to the amount of backlash (b) (6), (b) (7)(C) received for trying to pump milk for (b) (6), (b) (7)(C) baby and due to the exorbitant amount of time that the employer took to install an electrical outlet, (b) (6), (b) (7)(C) milk supply diminished drastically and eventually (b) (6), (b) (7)(C) was no longer able to produce milk because of the extremely stressful situation (b) (6), (b) (7)(C) was in and also because (b) (6), (b) (7)(C) was not able to pump with required frequency in order to keep (b) (6), (b) (7)(C) supply up.

According to Section 216(b) it states, “Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title...”

The purpose of section 207(r) is to allow a nursing mother “a reasonable break time 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...”

Legal or equitable relief in regards to Section 207(r) is for the mother to be able to provide enough breast milk to feed her child. Since (b) (6), (b) (7)(C) is no longer able to produce breast milk to feed (b) (6), (b) (7)(C) child, the closest “equitable relief” would be to provide breast milk to feed (b) (6), (b) (7)(C) child by purchasing breast milk so

that (b) (6), (b) (7)(C) is able to feed (b) (6), (b) (7)(C) child. Furthermore, if (b) (6), (b) (7)(C) had been allotted reasonable break time and a functional space to express milk, (b) (6), (b) (7)(C) would not have had to buy formula for (b) (6), (b) (7)(C) child. Therefore, “equitable relief” granted to effectuate the purposes of section 215(a)(3) would also encompass compensating (b) (6), (b) (7)(C) for all the monies spent on formula for (b) (6), (b) (7)(C) child because had (b) (6), (b) (7)(C) been able to pump and express milk for (b) (6), (b) (7)(C) child, (b) (6), (b) (7)(C) would not have had to purchase formula to begin with.

(b) (6), (b) (7)(C) is also due equitable relief in the form of payment of wages lost for the times in which (b) (6), (b) (7)(C) had to clock out to pump and express milk. Although (b) (6), (b) (7)(C) did not do any work during the time that (b) (6), (b) (7)(C) clocked out to express milk, the employer was allowing another nursing mother to take breaks in order to express milk and was not requiring the other nursing mother to clock out. Hence, equitable relief would be to compensate (b) (6), (b) (7)(C) for the break time (b) (6), (b) (7)(C) was not paid while (b) (6), (b) (7)(C) expressed milk.

Because (b) (6), (b) (7)(C) was not producing milk to feed (b) (6), (b) (7)(C) child, (b) (6), (b) (7)(C) was forced to turn in (b) (6), (b) (7)(C) electric breast pump so that WIC would provide (b) (6), (b) (7)(C) the means to purchase formula to feed (b) (6), (b) (7)(C) baby. Again, if (b) (6), (b) (7)(C) had been allotted reasonable break time and a functional space to express milk, (b) (6), (b) (7)(C) would not have had to buy formula for (b) (6), (b) (7)(C) child and therefore not had to turn in (b) (6), (b) (7)(C) electric breast pump. Equitable relief for this particular aspect of the situation would be to provide (b) (6), (b) (7)(C) with an electric breast pump so that (b) (6), (b) (7)(C) can have the opportunity to express milk for (b) (6), (b) (7)(C) child.

Calculations per 15(a)(3)

Regarding 15 minute breaks deducted:

The employer agreed to reimburse (b) (6), (b) (7)(C) for the 15-minute breaks not paid to (b) (6), (b) (7)(C) plus any overtime. The breakdown goes as follows:

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED]

Total back wages for unpaid 15-minute breaks = \$216.58

DISPOSITION:

On 08/05/2016, a final conference was held over the phone and present during the conference were Sam Roberts, Assistant General Counsel, and this WHI. This WHI discussed FLSA provisions including minimum wage, overtime, child labor and record keeping in detail.

This WHI discussed in great detail the FLSA Nursing Mother provision. This WHI stated to Mr. Roberts that a covered employer must provide reasonable break time for an employee to express milk for [REDACTED] nursing child for one year after birth each time there is a need to express milk, and the employer must provide a private place for this activity. This WHI investigator discussed the series of events that occurred throughout the case.

It was advised that the store manager, (b) (6), (b) (7)(C), complained about the excessive amount of time that (b) (6), (b) (7)(C) was taking on [REDACTED] breaks to pump. This WHI told Mr. Roberts that this WHI referred (b) (6), (b) (7)(C) to Federal Register Volume 75, No. 244 Reasonable Break Time for Nursing Mothers and

explained to (b) (6), (b) (7)(C) that there was no set time that was considered a sufficient amount of time and that it varied from woman to woman. It was further explained that all applicable factors needed to be considered. This WHI referenced part “b. Reasonable Break Time” and explained factors to be considered.

This WHI also advised Mr. Roberts that this WHI had a conversation with (b) (6), (b) (7)(C) in which it was stated that (b) (6), (b) (7)(C) needed to be provided a functional and separate space in which (b) (6), (b) (7)(C) could express milk that is shielded from view and free of intrusion. It was stated that (b) (6), (b) (7)(C) had been expressing and pumping milk in the training room and had been walked in on excessively by management (both male and female) and walked in on by associates while (b) (6), (b) (7)(C) was actively pumping milk. It was stated that (b) (6), (b) (7)(C) had been walked in on and had groups of employees stand around having meetings or conversations while (b) (6), (b) (7)(C) was pumping and exposed. It was further stated that (b) (6), (b) (7)(C) was then instructed to use the room next to the electrical server room which has high voltage and danger signs, had cameras and was filthy. It was stated that in both of these situations (expressing milk in the training room and the room next to the electrical server) (b) (6), (b) (7)(C) was not in a separate space that was shielded from view and free from intrusion. It was further stated that the room next to the server room was considered a health hazard and not appropriate to express milk that would then be given to an infant baby.

It was further advised that (b) (6), (b) (7)(C) responded by stating that (b) (6), (b) (7)(C) was never instructed to use the training room nor the room next to the electrical server room and that (b) (6), (b) (7)(C) had taken it upon (b) (6), (b) (7)(C) to pump and express milk there. This WHI advised Mr. Roberts that what (b) (6), (b) (7)(C) stated directly contradicted the proof of text messages that (b) (6), (b) (7)(C) provided this WHI. The text messages showed that (b) (6), (b) (7)(C) (manager) had allowed (b) (6), (b) (7)(C) to use the training room/ personnel room and that (b) (6), (b) (7)(C) (assistant manager) had told (b) (6), (b) (7)(C) that they could use the room next to the electrical server to pump and express milk. The text messages also show that (b) (6), (b) (7)(C) had prohibited (b) (6), (b) (7)(C) from using an extension cord in the fitting rooms to connect (b) (6), (b) (7)(C) electric pump and express milk because it was a tripping hazard.

This WHI then advised Mr. Roberts that (b) (6), (b) (7)(C) had purchased a manual pump for (b) (6), (b) (7)(C) to use. This WHI further stated that (b) (6), (b) (7)(C) was unable to express milk with the manual pump because (b) (6), (b) (7)(C) body was already used to the electric pump and in addition to that (b) (6), (b) (7)(C) was being required to clock out on (b) (6), (b) (7)(C) breaks to express milk but that there was another nursing mother that

took breaks to pump and was not required to clock out. Therefore, the other nursing mother was being paid for (b) (6), (b) (7)(C) break time.

Mr. Roberts stated that their policy was clear and that employees could take the time needed to pump milk and that anything over the allotted break time would be unpaid. He also stated that (b) (6), (b) (7)(C) had gone “above and beyond” by purchasing a manual pump for (b) (6), (b) (7)(C). Mr. Roberts stated that employees were not supposed to be clocking out and that they were only supposed to fill out a time adjustment sheet for the additional time that was taken on their breaks past the 15 paid minutes. He further stated that the other nursing mother, because of (b) (6), (b) (7)(C) schedule, did not pump as often and that (b) (6), (b) (7)(C) pumped during (b) (6), (b) (7)(C) lunch breaks and 15 minute breaks.

This WHI advised Mr. Roberts that according to Federal Register Volume 75, No. 244, it explained that expressing breast milk alone typically takes about 15 to 20 minutes and that there are other factors in determining break time such as the location of the space and amenities nearby, proximity of employee's work area, availability of a sink for washing, location of a refrigerator or personal storage for the milk, etc. This WHI stated that given these factors and that the other nursing mother was manually pumping, that it was difficult to believe that the other nursing mother only took the 15 minute breaks and did not go over that time.

This topic was a difficult topic to prove given that there was no concrete information regarding the details of when the other nursing mother took breaks to pump. This WHI advised Mr. Roberts that the information provided regarding the time that it takes for nursing mothers to pump is to give him an idea of a realistic amount of time that could be taken by a pumping mother. It was further stated that the managers at that location were not informed and did not appear to have concrete knowledge of the break time for nursing mothers provision.

This WHI advised that the ER cannot dictate what type of pump an employee should use. It was reiterated that the ER has to provide a functional space free from intrusion in order for the nursing mother to express milk. It was explained that not having an electric outlet hence did not qualify the fitting room as a functional space for the nursing mother to express milk.

Mr. Roberts also inquired about who instructed (b) (6), (b) (7)(C) to clock out so that he could take

appropriate action in regards to the particular manager.

This WHI also discussed the lack of timeliness that the store manager displayed in having the electrical outlet installed. It was stated that it took nearly seven weeks to have the electrical outlet installed and because of this exorbitant amount of time, (b) (6), (b) (7)(C) milk supply diminished completely. Because of this, (b) (6), (b) (7)(C) was forced to feed (b) (6), (b) (7)(C) baby with formula. It was further stated that this caused a financial hardship on (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) baby had trouble digesting the milk and had to be switched to a more expensive sensitive formula.

This WHI further explained that (b) (6), (b) (7)(C) had to give up (b) (6), (b) (7)(C) electric pump in order to be provided formula from (b) (6), (b) (7)(C). It was explained that these series of events led to permanent damage to (b) (6), (b) (7)(C) as well as (b) (6), (b) (7)(C) baby.

Mr. Roberts stated that he assumed that (b) (6), (b) (7)(C) put in the work order to have an electrical outlet installed and that it must have taken that long to have it installed. He further stated that since (b) (6), (b) (7)(C) was not an electrician, (b) (6), (b) (7)(C) had no control over the timeliness of the install of the electrical outlet.

This WHI asked Mr. Roberts to produce proof of the time and date that the work order was submitted and the request was made to have an electrical outlet installed into the designated fitting room that was converted into the room exclusively for nursing mothers.

Mr. Roberts stated that he would look into getting that information to fully verify that the work order was requested in a timely manner.

Mr. Roberts was provided with additional publications. CMPs were addressed with Mr. Roberts and he was advised that CMPs may be assessed for repeated, willful, or child labor violations. He stated that he understood.

The employer agreed to future compliance and agreed and has already paid the back wages due to (b) (6), (b) (7)(C) Mr. Roberts provided proof of payment, as well.

(b) (6), (b) (7)(C) **Notification:** **(b) (6), (b) (7)(C)** was notified of the status of the investigation on 08/05/2016.

Publications Provided: HRG, Fact Sheet 44, Fact Sheet 73, FLSA, and Federal Register Volume 75, No. 244 Reasonable Break Time for Nursing Mothers

Recommendation: Back wages due have already been paid and proof of payment has been provided. This WHI recommends that case file be administratively closed **(b) (7)(E)**.

Future Correspondence:

Sam Roberts
Assistant General Counsel
Wage & Hour, Employment Division
Phone 479-277-0181
Fax 479-277-5991
sam.roberts@walmartlegal.com

(b) (6), (b) (7)(C)
Investigator