

Plaintiff's Claim For Direct Violation Of Breast Milk Expression Provisions Of The PPACA Required To Be Filed Directly With DOL

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The United States District Court for the Northern District of Iowa recently dismissed a plaintiff's claim pertaining to her right to privacy in expressing breast milk in the workplace, pursuant to the Patient Protection and Affordable Care Act (the "Act"). The [opinion](#) granted the defendant's motion to dismiss in part, finding that the more appropriate forum for the plaintiff's complaint -- that she was not afforded a place to express breast milk that was "shielded from view and free from intrusion" -- was the U.S. Department of Labor. See *Salz v. Casey's Marketing Co.*, No. 3:11-cv-03055-DEO, slip op. (ND. Iowa, July 19, 2012) (O'Brien, Senior Judge). The Court, however, allowed the plaintiff's claims of constructive discharge and retaliation under the Act to remain before it.

The plaintiff, a convenience store employee and breastfeeding mother, had been provided an office in which to express milk, beginning in or around April 2011. She alleged, however, that while expressing milk in the office in late July, she noticed an operating video camera in the area (which she subsequently learned had been installed in mid-July, after the defendant had acquired her store location). After complaining, the plaintiff contended that her concerns were not appropriately addressed and that her inability to relax in the office resulted in a reduction in her milk production, thereby impacting her ability to feed her infant. Plaintiff subsequently separated from employment, after having allegedly been reprimanded for her failure to perform certain tasks (filling an ice cream machine, putting hot dogs on the grill, removing dirty dishes).

In finding that it lacked jurisdiction over her claim for a direct violation of the portion of the Act requiring that the defendant provide an appropriate space for her to express milk, the Court noted there did not appear to be an enforcement provision directly applicable to the express breast milk provisions, and found the Department of Labor's interpretation to limit an employee to filing claims directly with it. Accordingly, the claim was dismissed. In contrast, however, the plaintiff's constructive discharge and retaliation claims were maintained, as they were governed by different enforcement provisions.

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