

# Puerto Rico Supreme Court Scolds Employer for Interfering with Working Mother's Breastfeeding Rights

By Maralyssa Álvarez-Sánchez and Gabriela Dávila Micheo

February 5, 2016

Emphasizing that Puerto Rico legislation protects employees' breastfeeding rights in the workplace and that maternity enjoys special judicial protection in the Commonwealth's legal framework, the Puerto Rico Supreme Court has ruled that employers, public and private, regardless of their circumstances, must provide a "private, safe, and hygienic" space for employees to exercise their breastfeeding rights upon returning to work. *Siaca v. Bahía Beach Resort & Golf Club*, Num. AC-2012-102, \_\_ P.R. Dec. \_\_ (2016).

Although the Court did not specifically define what that "space" entails, while rejecting the adequacy of all of the "spaces" the employer afforded to the plaintiff, it outlined what employers must do to safeguard working mothers' rights.

## The Law

Law No. 427 of December 16, 2000, establishes that employers must provide a one-hour period during a full workday for employees to breastfeed or extract breastmilk in a designated "space" for a 12-month period upon their return to work. This period may be divided into two periods of 30 minutes or three periods of 20 minutes.

Failure to comply with Law 427 may result in employer sanctions amounting to three times the employee's salary for each day the employer interfered with the breastfeeding period. Law 427 applies to all employers, regardless of their size or the number of employees they employ.

## The Facts

Jacqueline Siaca, a supervisor in the security department at Bahía Beach Resort & Golf Club, returned to work after giving birth and requested the period allowed by Law 427 to breastfeed (milk extraction) and an adequate space to do so. Bahía, which was undergoing construction and had to relocate some offices temporarily in wagons or trailers, offered Siaca use of the restrooms, a temporary office in the Human Resources trailer located five minutes away from her station, and a distant wagon at a construction site. Siaca found these spaces unhygienic, lacked storage for breastmilk, or were cluttered and moldy. Moreover, coworkers would interrupt her while she was breastfeeding, notwithstanding her sign on the door saying, "Mother breastfeeding-Please do not interrupt." Despite Siaca's complaints to her supervisor, Bahía failed to take action.

Siaca filed suit against Bahía, alleging Bahía obstructed her right to extract milk in her workplace by providing "spaces" that were in deplorable conditions, insecure, and unsanitary. She also made the novel argument that Bahía's lack of diligence in providing her an adequate space to breastfeed violated her constitutional right to privacy.

## Inadequate Alternatives

The Puerto Rico Supreme Court held that the "spaces" provided by Bahía for Siaca to extract milk failed to comply with Law 427. Moreover, the Court ruled that Bahía's refusals to provide Siaca with an adequate "space" violated Law 427's public policy.

## Meet the Authors



Maralyssa Álvarez-Sánchez  
Of Counsel  
San Juan  
787-522-7314  
Maralyssa.Alvarez-Sanchez@jacksonlewis.com



Gabriela Dávila Micheo  
Associate  
San Juan  
787-522-7312  
Gabriela.DavilaMicheo@jacksonlewis.com

The Court said the spaces provided to Siaca were dirty and failed to offer privacy because on several instances Bahía employees ignored the “Mother Breastfeeding” sign on the door and entered the rooms while Siaca was breastfeeding. It found the space assigned to Siaca (where the Human Resources office was located) was not private because it had clear windows and no curtains. While Siaca covered the windows, the Court found that having to do so took time from her breastfeeding period. It also found Bahía could have reasonably utilized its resources to remedy this situation, but it chose not to. Further, the Court said that, without consulting Siaca or obtaining her consent, Bahía moved her to a trailer at a construction site that took up to 16 minutes to and from her worksite. As to this second site, the Court found the travel time reduced Siaca’s breastfeeding period from the 30 minutes to which she was entitled to roughly 15 minutes. Further, the Court found the space was not hygienic as it was cluttered with files, moldy, humid, and infected with insects. In addition, the air conditioner broke and Bahía did not repair it promptly. Finally, she was moved to a third space without notice or consent — a small storage room the Court found was not hygienic since the air conditioning duct was moldy and humid and had a leak directly on top of the table where Siaca extracted her milk. The space also failed to offer the necessary privacy. The Court found these spaces lacked privacy because Siaca was interrupted, more than once, by employees who entered the rooms notwithstanding her sign.

It is futile, the Court said, for employers to afford a breastfeeding period if they do not provide a space that is secure, private, and hygienic for their employees to breastfeed or extract milk. The Court found all the obstructions that Siaca faced in order to exercise her right to extract milk in the workplace caused her physical and emotional damages (including depression) that significantly affected her milk production and caused her to stop breastfeeding.

The Court imposed a fine upon Bahía for its Law 427 violations, to be determined by the lower court, and upheld an award of \$50,000 in damages for violation of Siaca’s constitutional right to privacy and for suffering caused by Bahía’s failure to provide an adequate space to extract her milk, as mandated by law.

## Takeaways

In Puerto Rico, if an employer’s actions make breastfeeding difficult for a working mother or, *de facto*, have the effect of impeding her from breastfeeding, the employer may be found to interfere with her right to make an important and private decision as to the upbringing of her newborn, which, in turn, may violate her right to privacy. Working mothers may be awarded monetary damages for constitutional violations of their right to privacy if an employer interferes with their decision to breastfeed if, directly or indirectly, they impose onerous conditions that may effectively hinder a working mother’s breastfeeding rights. The right to privacy is protected by the Puerto Rico Constitution and holds a special hierarchy in the constitutional framework.

The constitutional violation is *not* automatic. If an employee proves that her employer failed to provide the breastfeeding period or a “private, secure and hygienic” space, the employer will *not* automatically be found liable for violating her constitutional right to privacy.

Violations will exist if the employee is forced to stop breastfeeding or her breastfeeding capacity is affected by the negligent acts or omissions of her employer. Thus, an employee must establish a causal nexus between her employer’s failure to comply with Law 427 and the damages she suffered. If an employer’s actions adversely affect the employee’s ability to extract milk (*e.g.*, reduction in milk production) or “force” the employee to stop breastfeeding, it may be liable for damages under a separate cause of action for violation of the employee’s constitutional right to privacy.

The Court clarified its holding does not mean that in every case employers must provide a fixed and permanent space for breastfeeding. Nevertheless, employers must provide a clean, private, and secure space for their employees to breastfeed or extract milk. Finally, although Bahía never *directly* prohibited Siaca from extracting milk in the workplace, the employer was found liable because “in practice,” it nullified her breastfeeding rights by imposing onerous conditions on her to exercise the right.

Under Law 427:

- Mandatory one-hour breastfeeding period must be accompanied by a “private, secure and hygienic space.”
- Restrooms are not a viable option.
- The space afforded must be in close proximity to the employee’s workplace so that her breastfeeding period is not reduced by travel time.
- Rooms should not have clear windows, but if they do, they should include heavy curtains.
- Being under construction or renovation or having temporary offices is not an excuse for failing to comply with the law.
- Educate employees as to a working mother’s breastfeeding rights and to not interfere with the employee’s right to breastfeed or extract milk in the workplace.

- The employee must be notified and expressly consent to a change in the breastfeeding period or space.

Please feel free to contact the Jackson Lewis attorney with whom you regularly work with if you have any questions regarding this case or any other issue regarding Puerto Rico employment law.

---

©2016 Jackson Lewis P.C. This Update is provided for informational purposes only. It is not intended as legal advice nor does it create an attorney/client relationship between Jackson Lewis and any readers or recipients. Readers should consult counsel of their own choosing to discuss how these matters relate to their individual circumstances. Reproduction in whole or in part is prohibited without the express written consent of Jackson Lewis.

This Update may be considered attorney advertising in some states. Furthermore, prior results do not guarantee a similar outcome.

Jackson Lewis P.C. represents management exclusively in workplace law and related litigation. Our attorneys are available to assist employers in their compliance efforts and to represent employers in matters before state and federal courts and administrative agencies. For more information, please contact the attorney(s) listed or the Jackson Lewis attorney with whom you regularly work.

---

## Related Articles You May Like

February 4, 2016

### Retail Employer Workplace News - Winter 2016



Top Five OSHA Changes to Watch for in 2016 Retailers should stay tuned in the year ahead to the busy agenda of the Occupational Safety and Health Administration (OSHA) as it attempts to finalize significant rulemakings and guidance documents. OSHA initiatives on electronic injury and illness recordkeeping, employer safety incentive...

January 29, 2016

### What California Retail Employers Need to Know About Accommodating Pregnancy



Navigating the California laws on discrimination and accommodation of pregnant employees is a significant challenge for retail employers. The Golden State's protections for pregnant employees are many and they differ from those of federal law and of other states. Pregnancy Disability Leave Law Under the Pregnancy Disability...

January 28, 2016

### St. Paul is Second Minnesota City to Weigh Paid Sick Leave Ordinance



Minnesota's Twin Cities of Minneapolis and St. Paul are both preparing to enact local laws affording employees paid sick leave. St. Paul Mayor Chris Coleman and the St. Paul City Council have announced that the Council will convene a Task Force to discuss an ordinance mandating that all private and public sector employees be...

---

## Related Practices

