Breastfeeding Works:
How to Support Nursing Employees & Students
August 21, 2018
Moms on the Move

61% of children under age 5 are in some type of regular child care arrangement.

62% of women return to work before their child’s 1st birthday, with 23% returning within 2 weeks of giving birth.

26% of undergraduate students are also parents of dependent children, 50% of these students have children ages 5 or younger.
Breastfeeding Works

Stories Shine A Light on the Challenges Breastfeeding Families Face

Dirty Bathrooms, No Privacy: The Horrifying Struggles Of Breastfeeding Moms Who Need To Pump At Work

By Steve Jankowski
05/26/2014 07:35 am ET | Updated Dec 06, 2017

Creating a Bill with the Labor Department show that breastfeeding mothers can face serious hardships, from public restrooms to lack of privacy, while pumping at work.
But Separation ≠ Breastfeeding Cessation

• Simple, inexpensive accommodations can make continued breastfeeding possible
  • Time
  • Space
  • Milk Storage

• Health care and lactation support providers are uniquely positioned to provide support to families when they need it most
Workplace Accommodations: Challenges Abound

60% of employed women do not have access to both break time and private space to pump.

Low-income women are more likely to return to work earlier & have jobs that make it challenging to continue breastfeeding.

Women with both adequate break time and private space to pump were 2.3 times as likely to be breastfeeding exclusively at 6 months.
Stories Also Shine A Light on the Solutions!
Pumping at Work: The Break Time for Nursing Mothers Provision

Liz Morris, Deputy Director, Center for WorkLife Law
Break Time for Nursing Mothers Law (ACA/FLSA)

- Reasonable break time as needed
- Private, non-bathroom space
- For up to one year following birth
Common Misconception

Applies to employers of all sizes!

Fewer than 50 employees: undue hardship defense available
Break Time Law Limitations

Major Gaps in Coverage

Covers employees eligible for overtime (“non-exempt”)

Excludes:
• Administrative, executive, and professional employees (e.g., managers & teachers)
• Airline and railway workers
• Agricultural laborers
• Many others
Breastfeeding Works

Break Time Law Limitations

- Major Gaps in Coverage
- Enforcement Challenges
- Break Time and Space Only
Anti-Discrimination: Title VII and the Pregnancy Discrimination Act

Galen Sherwin, Senior Staff Attorney, ACLU Women’s Rights Project
Sex discrimination: Definition

• Treating a worker differently “because of sex” in a way that impacts the terms or conditions of employment.
  • Supreme Court originally said sex did not include pregnancy
  • Congress responded by passing the Pregnancy Discrimination Act (PDA)

• Sex is defined as including pregnancy, childbirth, & related medical conditions.

• Workers affected by pregnancy and childbirth must be treated the same as others “similar in their ability or inability to work.”
What about lactation?

• Early court cases said “sex” discrimination did not include lactation discrimination.
• 2014: EEOC guidance states that it is covered
• Courts are finally figuring it out!
Courts are finally figuring it out!

- **EEOC v. Houston Funding II** (5th Circuit 2013)
  - Lactation discrimination is sex discrimination
- **Young v. UPS** (Supreme Court 2015)
  - Failure to provide accommodations to pregnant workers can be illegal discrimination if other workers are accommodated, and there's no good reason to treat them differently
- **Hicks v. Tuscaloosa** (11th Circuit 2017)
  - Employers must treat requests for breastfeeding accommodations the same as other accommodation requests
  - Employers who fail to accommodate can be held liable if the employee quits as a result.

*These cases establish a duty to accommodate breastfeeding workers to the same extent as other workers, absent a valid reason not to*
Other types of illegal discrimination

• Policies that explicitly treat breastfeeding differently than other conditions.
  • Example: policy excluding insurance coverage for breastfeeding-related care

• “You’re breastfeeding, you’re fired.”

• Retaliation: When an employer punishes an employee for complaining about discrimination or asserting their rights

• Sexual Harassment: offensive or sexual comments related to breastfeeding that create a hostile work environment
State Law Protections

Sarah Brafman, Staff Attorney,
A Better Balance
Types of State Laws

**General Anti-Discrimination Laws**
Often similar to the Pregnancy Discrimination Act/Title VII

**Pregnant Worker Fairness Acts**
Typically include a standalone right to accommodation

**Time and Space Laws**
Often similar to the Federal Break Time for Nursing Mothers provision (FLSA)

**Laws Addressing Certain Groups**
Such as city laws, or laws protecting only public workers

Breastfeeding Works
## State Lactation Accommodation Laws

- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- Georgia
- Hawaii
- Illinois
- Indiana
- Louisiana (public schools only)
- Maine
- Massachusetts
- Minnesota
- Montana (public employers only)
- Nebraska
- Nevada
- New Jersey
- New Mexico
- New York
- Oklahoma
- Oregon
- Rhode Island
- South Carolina
- Tennessee
- Texas (public employers only)
- Utah
- Vermont
- Virginia (public schools only)
- Washington
- West Virginia
- District of Columbia
State Workplace Lactation Laws

Click on your state to learn more.

https://www.pregnantatwork.org/state-workplace-lactation-laws/

Breastfeeding Works
Taking Time Off After Childbirth

In the U.S., there is still no federal law requiring employers to provide paid time off to bond with a new child.

If you are eligible, the **Family and Medical Leave Act** is a federal law provides:

- Up to 12 weeks of **unpaid** time off to bond with a new child (biological, adopted, or foster)
- Care for a family member with a serious health condition
- Address certain military family needs

Some states have state-level unpaid time off laws that provide more protections.
Stories Shine A Light on the Breastfeeding Experience
Paid Time Off After Childbirth

A Growing Movement

- Six states and Washington D.C. now have paid family & medical leave laws
  - California
  - Rhode Island
  - New Jersey
  - New York
  - Washington State (benefits begin on January 1, 2020)
  - Washington D.C. (benefits begin on July 1, 2020)
  - Massachusetts (benefits begin on January 1, 2021; and for caregiving on July 1, 2021)
Need more info about leave laws in your state?

https://babygate.abetterbalance.org/

https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/
Breastfeeding Works

Pumping at School

Jessica Lee, Staff Attorney, Center for WorkLife Law
Discrimination because of lactation = sex discrimination

This interpretation of the law is new and guidance is lacking, but bottom line is simple:

• Treat lactating students like other students with health conditions

• If student’s ability to get an education is limited because there is no reasonable time or place to pump, that is likely a violation of Title IX
Pumping at School: Title IX Accommodations

Time for expressing milk

- “Medically necessary” absences or tardiness should be excused, without penalty
- Students may need to provide a doctor’s note

Private, sanitary location

- Schools must protect students from harassment
- Dept. of Ed. encourages room with electric outlet and refrigerator
Breastfeeding at School

- Model Breastfeeding Policy
- FAQs for students and administrators
- Helpline
- www.ThePregnantScholar.org
Best Practices for Care Providers

✓ **Talk about pumping early:**
  - Encourage planning before the baby is born
  - Remind her that legal protections exist

✓ **Spot issues:**
  Is your patient back at work/school and seeking help for
  - Reduced supply?
  - Recurrent mastitis or plugged ducts?
  - Engorgement?

✓ **Seek Help**
  Know what resources are available

✓ **Write an effective medical note**
Writing Effective Notes for Lactation Accommodations

**Educate** the employer/educator about breastfeeding and pumping:

- Explain that breastfeeding (and regular expression of milk) is important and recommended.
- Make clear that this is important for the patient’s health, and that pumping accommodations are medically necessary.
Educate about breastfeeding and pumping

Be specific about the patient’s needs:

Such as

- The need for a private space other than a bathroom
- The frequency and duration of breaks
  
  “As needed, but at least X minutes of break time every X-Y hours.”
- Unique accommodations, if needed (e.g. avoiding radiation, desk duty, uniform modification)

Be sure to mention if the patient (or her baby) has a medical condition or impairment.
Writing Effective Notes for Lactation Accommodations

**Educate** about breastfeeding and pumping

**Be specific** about the patient’s needs

Communicate that **the accommodation is temporary** and **the patient is able to continue working/studying**

Double check that you answer **Why? When? Where?** And, for **How Long?**
Model note available at: www.PregnantAtWork.org/healthcare-professionals/breastfeeding
Scenario 1

Sharon, a teacher, is returning to work in a couple months. Before going out on leave, she told the school’s principal she would need accommodations for breastfeeding when she returns. The principal said she didn’t know if it would work out because there would be no one to cover Sharon’s classroom and there are no private spaces available on campus. The principal told Sharon they would discuss it when she returned to work.

How do you respond?
Practical Tips

For care providers

• How Medical Professionals Can Support Breastfeeding Patients:
  www.pregnantatwork.org/healthcare-professionals/breastfeeding/

For patients

• Talking to Your Boss about Your Pump:
  www.pregnantatwork.org/Breastfeeding-Workers or
  https://www.abetterbalance.org/resources/state-laws-for-nursing-mothers-at-work/
Scenario 2

Allie works in a factory, and after she requested a private place to pump, her employer let her use an old locker room. It is filthy and hot, with bugs on the floor and no chair. On one occasion, someone leaves a milk pail outside the door while she’s pumping. Her co-workers frequently pound on the door while she’s using the room. On another occasion, she finds that the lock has been glued shut so she can’t open the door.

How do you respond?
Scenario 3

Monica is a bus driver and works day-long shifts away from the bus depot. She tells you that there is no space for her to pump in private, so she will no longer breastfeed.

*How do you respond?*
Scenario 3: Your Response—Get Creative!

The HHS Office on Women’s Health *Supporting Nursing Moms at Work: Employer Solutions*, has ideas for businesses in every industry.

Scenario 4

Renee has back to back classes at her college, with only a short break in between. Renee must leave a 3 hour lecture class a few minutes early to pump.

Her professor docked Renee’s participation credits, and her course grade is suffering. The professor told Renee that was her absence policy and there was nothing that could be done.

*How do you respond?*
Scenario 4: Your Response

Photo: ACLUNC.org
We’re here to help!

Center for WorkLife Law: (415) 565-4640
www.pregnantatwork.org | www.pregnantscholar.org

ACLU Women’s Rights Project: (212) 549-2644
womensrights@aclu.org

A Better Balance: (212) 430-5982 | www.abetterbalance.org

US Breastfeeding Committee: (773) 359-1549
office@usbreastfeeding.org