

Congress Should Pass the PUMP (Providing Urgent Maternal Protections) for Nursing Mothers Act Forthcoming in the 116th Congress

Millions of nursing moms are in the workforce and need protections to pump breast milk.

Breastfeeding is the norm among American mothers, with over 80% of newborns breastfed in 2015. These moms are also breadwinners for their families. More than half of mothers return to the paid labor force before their children are three months old, with as many as one in four returning within just two weeks of giving birth. Many of these mothers choose to continue breastfeeding well after their return to work to meet standard health guidelines—and those employees need to express (or “pump”) breast milk on a regular schedule.

The Break Time for Nursing Mothers law, passed in 2010, (“the 2010 Break Time law”) provided critical protections to ensure that employees would have reasonable break time and a private place to pump. But because of an unintentional gap in the law, millions of nursing mothers were left without a clear right to pump at work. Without these protections, nursing mothers face serious health consequences, including risk of painful illness and infection, diminished milk supply, or inability to continue breastfeeding. According to a recent report from the University of California’s Center for WorkLife Law, the consequences of this coverage gap also include harassment, reduced wages, and job loss.

Breastfeeding benefits babies, mothers, and employers.

Every major medical authority urges breastfeeding for at least the first year of life. According to the Surgeon General, breastfeeding protects babies from illnesses like ear, skin, and respiratory infections, diarrhea, and vomiting, as well as longer-term conditions such as obesity, type 1 and 2 diabetes, and asthma. Mothers who breastfeed for the recommended duration benefit, too, from lower risks of breast cancer, heart disease, and other ailments.

Employment is compatible with breastfeeding, and solutions to support nursing mothers exist in all industries. In fact, studies show that supporting nursing mothers leads to lower employer health care costs, absenteeism, and turnover, as well as improved morale, job satisfaction, and productivity.

How the PUMP for Nursing Mothers Act supports working mothers.

Nursing mothers are suffering negative health consequences and being forced to choose between breastfeeding and earning a paycheck. The PUMP for Nursing Mothers Act would strengthen the 2010 Break Time law by:

- *Closing the coverage gap.* The bill would protect 9 million employees unintentionally excluded from the 2010 Break Time law by extending the law’s protections to cover salaried employees as well as other categories of employees currently exempted from protections, such as teachers.
- *Providing employers clarity on when pumping time must be paid and when it may be unpaid.* The bill clarifies that, in accordance with existing Fair Labor Standards Act (FLSA) regulations, employers are not allowed to deduct pay from a salaried, exempt employee for time spent pumping and they must pay an hourly employee for any time spent pumping if the employee is also working.

- *Providing remedies for nursing mothers.* The bill would ensure that nursing mothers have access to remedies that are available for other violations of the FLSA.

The PUMP for Nursing Mothers Act fixes a loophole that unintentionally excluded millions of women from the 2010 law protecting breastfeeding employees.

To meet the needs of nursing moms at work, Congress passed the 2010 Break Time for Nursing Mothers law (29 U.S.C. 207(r)). The law amends the Fair Labor Standards Act (FLSA) to require employers to provide “reasonable break time for an employee 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.” Employers must also 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.” This groundbreaking law provided protection for a significant percentage of working women.

Unfortunately, the 2010 Break Time law’s placement within the part of FLSA that sets minimum wages and overtime meant that 9 million women — nearly one in four women of childbearing age — are excluded from coverage and have no clear right to break time and space to pump breast milk. Those left unprotected include teachers, software engineers, and many nurses, among many others.

The categories of employees excluded under FLSA predate the 2010 Break Time law, and were created specifically with overtime exemptions in mind. **There is no principled reason why these working mothers should be ineligible to receive break time and space to pump breast milk. And indeed, the legislative history makes clear that the exclusion of millions of women from the 2010 Break Time law was unintentional.** The PUMP for Nursing Mothers Act fixes this harmful error.

The PUMP for Nursing Mothers Act provides clarity for employers to ensure pumping moms are not incorrectly docked pay, and makes existing FLSA remedies equally available to nursing moms.

The PUMP for Nursing Mothers Act clarifies that although the breaks taken under the law are typically unpaid, if an hourly worker is not actually relieved from duty while pumping, then she should be paid for her work during that time. It also clarifies, consistent with current law, that employers may not deduct compensation for break time from the salaries of employees who are exempt from receiving overtime.

The PUMP for Nursing Mothers Act also addresses another unintended consequence of the 2010 Break Time law’s placement in the FLSA: that an employee who is denied break time and space has no effective remedy for the violation. An employer that violates the 2010 Break Time law can be ordered to pay the employee “the amount of their unpaid minimum wages,” but violations typically do not involve unpaid wages. This leaves women denied the ability to pump without any meaningful way to enforce their rights, or to address the negative health consequences (such as physical or emotional suffering from infections or early termination of breastfeeding) or financial harms (like unpaid leave or job loss) that they may suffer.

In light of the many exemptions and the absence of an effective way to enforce the law’s requirements, it is no surprise that sixty percent of breastfeeding employees still did not have access to break time and space after the 2010 Break Time law was in effect. The PUMP for Nursing Mothers Act plugs the gaps in the 2010 Break Time law so all breastfeeding employees receive the full protections of the law.