During today's sessions, all attendees will be in listen only mode.

Q&A session after presentation. Questions may be submitted at any time during the webinar. Please type your questions into the Questions box on your webinar control panel.
Moms on the Move

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.

More than 3 out of 4 people working in health care are women.
Stories Shine A Light on the Challenges Breastfeeding Families Face
But Separation ≠ Breastfeeding Cessation

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

• Health Care Industry Challenges
  • Patient responsibilities
    • Emergencies are not predictable!
  • Long shifts
  • Fast-paced environment
  • Finding coverage during breaks
  • Long walks to pumping spaces

• Health care Industry Supports
  • Strong understanding of human physiology and medical recommendations
  • Access to lactation support providers and other resources
  • Access to ice for milk storage
Workplace Accommodations: Challenges Abound

27.6 million women workers of childbearing age nationwide are left without the basic legal protections needed by all breastfeeding workers.

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!

Breastfeeding Works
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

Breastfeeding Works
Common Misconception

Applies to employers of all sizes!

Fewer than 50 employees: undue hardship defense available
Major Coverage Gaps

“Learned Professionals” who are exempt from overtime are also not covered by the Nursing Mothers Law

(1) Must be paid at least $455/week on a “salary” or “fee basis”

(2) Her “primary duties” must include work that is predominantly intellectual in nature, and which requires the consistent exercise of discretion and judgment, as opposed to performing routine mental, manual, or physical tasks. (Typically requires a specialized advanced academic degree.)
Exempt professionals apply judgment and exercise discretion, based on advanced knowledge from a higher academic degree.

- Evaluate and Record Patient Symptoms
- Perform diagnostic tests and analyze results
- Perform patient procedures
- Create plan for patient care
- Instruct patients on how to manage illnesses
- Oversee the work of other care providers

Typically Includes: Registered Nurses, Nurse Practitioners, Medical Technologists, Pharmacists, and Physician Assistants.
Major Coverage Gaps

Covered employees perform routine manual, mental, or physical work that does not require exercising significant discretion

- Administer medicine, as instructed
- Take patient vitals
- Clean medical equipment and supplies
- Provide patient assistance with daily activities (e.g. bathing)
- Monitor patients to update doctors and RNs
- Assist doctor or RN with patient procedures or treatment

*Typically Includes: Licensed Vocational Nurses, Licensed Practical Nurses, Certified Nursing Assistants, Medical Assistants, Pharmacy Technicians, & Paramedics/EMTs*
Break Time Law Limitations

Major Gaps in Coverage

Enforcement Challenges

Break Time and Space Only

Breastfeeding Works
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
Breastfeeding Works

State Law Protections

Elizabeth Gedmark,
Senior Staff Attorney/Director of the Southern Office
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
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/
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 Students

Jessica Lee, Staff Attorney
Center for WorkLife Law
Who is covered?

Often a case-by-case question, but generally:
• In a course of study with a college, university, vocational school or other academic institution; AND,
• Earning credit or fulfilling training requirement.
• Students may also be employees.
Title IX and Breastfeeding Students

Who is covered?

Where are they covered?

Any externship, internship, or training program that is sponsored/required by their academic institution and overseen by their institution
Title IX and Breastfeeding Students

Who is covered?

Where are they covered?

Who is responsible?

In doubt?
Title IX and Breastfeeding Students

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 or trainee’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 Students: 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
- Universities must protect students from harassment
- Dept. of Ed. encourages room with electric outlet and refrigerator
Breastfeeding Students

- Model Campus Breastfeeding Policy
- FAQs for students and administrators
- Helpline
- www.ThePregnantScholar.org
Scenario 1

Sharon, a registered nurse, is returning to work in a couple months. Before going out on leave, she told her supervisor she would need accommodations for breastfeeding when she returns. The supervisor said she didn’t know if it would work out because they’re too short staffed to have someone cover Sharon’s patients. The supervisor told Sharon they could discuss it when she returned to work.

*What should Sharon consider?*
Talking to Your Boss about Your Pump?

Guide available at:

www.pregnantatwork.org/Breastfeeding-Workers

or

https://www.abetterbalance.org/resources/state-laws-for-nursing-mothers-at-work/
Scenario 2

Allie works in a hospital, and after she requested a private place to pump, her employer let her use an exam room. The room is nearly always covered in body fluids when she needs to use it.

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.

*What should Allie consider?*
Scenario 3

Monica is a medical assistant at a vaccine clinic. She has been assigned to work in the mobile flu vaccine clinic for the season, and is away from the home office throughout her shift. In most of the locations where she works, there is no space for her to pump in private, so she will no longer breastfeed exclusively.

What should Monica consider?
Scenario 3: Get Creative!

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

www.womenshealth.gov/breastfeeding/employer-solutions/
Scenario 4

Renee has a 8 hour internship for her degree program at a local hospital. Renee must take a break each morning to pump.

Her internship supervisor learned Renee is missing part of her clinic, and her course grade is suffering. The supervisor told Renee that was her absence policy and there was nothing that could be done.

*What should Renee consider?*
Scenario 4

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