

Written Statement of Nikia Sankofa
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Before the Subcommittee on Civil Rights and Human Services
and Subcommittee on Workforce Protections, United States House of Representatives
Joint Hearing: *Fighting for Fairness: Examining Legislation to Confront Workplace Discrimination*
March 18, 2021

Dear Chairs Bonamici and Adams and Ranking Members Fulcher and Keller:

The U.S. Breastfeeding Committee (USBC) submits this letter to the House Civil Rights and Human Services Subcommittee and Workforce Protections Subcommittee for the record of the joint hearing, "Fighting for Fairness: Examining Legislation to Confront Workplace Discrimination" in full support of the **Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act**.

The USBC is a coalition of more than 100 national nonprofits, breastfeeding coalitions, community-based organizations, and federal agency partners that support a shared mission to drive collaborative efforts for policy and practices that create a landscape of breastfeeding support across the United States. We are committed to ensuring that all families in the U.S. have the support, resources, and accommodations to achieve their breastfeeding goals in the communities where they live, learn, work, and play.

We know that the vast majority of people become parents during their lifetime, and their needs and the needs of their infants are neither surprising nor difficult to meet if we plan appropriately. A simple and common-sense policy solution to address ongoing workplace barriers and inequities is within the reach of this committee: the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act, which strengthens the existing Break Time for Nursing Mothers law and has bipartisan and bicameral support.

Human Milk: A Proven Prevention Strategy

Breastfeeding is a primary prevention strategy that builds a foundation for life-long health and wellness, adapting over time to meet the changing needs of the growing child.ⁱ The evidence for the value of human milk feeding to overall health is scientific, robust, and continually being reaffirmed by new research.ⁱⁱ

Human milk feeding is proven to reduce the risk of a range of illnesses and conditions for infants and mothers.ⁱⁱⁱ Compared with commercial milk formula fed children, breastfed infants have a reduced risk of ear, skin, stomach, and respiratory infections; diarrhea; sudden infant death syndrome; and necrotizing enterocolitis. In the longer term, breastfed children have a reduced risk of obesity, type 1 and 2 diabetes, asthma, and childhood leukemia.^{iv} Women who breastfed their children have a reduced long-term risk of type 2 diabetes, cardiovascular disease, and breast and ovarian cancers.^v The American Academy of Pediatrics recommends infants be exclusively breastfed for about 6 months with continued breastfeeding while introducing complementary foods for at least 1 year.^{vi}

Barriers to Success

The great majority of pregnant women and new parents want to breastfeed, but significant barriers in the community, health care, and employment settings can impede breastfeeding success.^{vii} In 2017, the national breastfeeding initiation rate among infants was 84.1%, representing a 13.8% increase from 2001. However, by six months of age, only 25.6% of U.S. infants exclusively breastfeed. Despite overall

increases in breastfeeding initiation and duration, deep racial, geographic, and socioeconomic disparities in breastfeeding rates persist. Compared to national averages, only 73.7% of Black infants and 80.7% of Native American infants are ever breastfed, contributing to inequalities in maternal and infant health outcomes. Furthermore, a distressing 60 percent of mothers report that they did not breastfeed for as long as they intended.^{viii}

Structural and environmental barriers can make it difficult or impossible for families to establish an adequate milk supply to sustain human milk feeding at medically recommended levels.^{ix} For many families, rather than being a matter of personal choice, infant feeding practice is informed by circumstance.

The U.S. is one of only three countries that does not guarantee paid leave for new mothers.^x Only 19 percent of the workforce has any paid family leave through an employer.^{xi} The Family and Medical Leave Act provides for unpaid leave, but about 40 percent of the workforce is not eligible.^{xii} Many parents return to work quickly after birth, before a strong breastfeeding relationship is established because they cannot afford to take unpaid leave or because they do not qualify for federal legal protections. More than half of mothers enter or return to the labor force before their children turn one year old,^{xiii} with as many as one in four women returning within just two weeks of giving birth.^{xiv}

When back at work or school, many discover that they are unable to pump breast milk as frequently as necessary or they have no choice but to pump in an unsanitary or unsafe location, such as a bathroom or room without a locked door. Economically-marginalized women and non-white women are more likely to return to work earlier than their more affluent white counterparts.^{xv} Without necessary accommodations, they are too often unable to produce enough milk for a caregiver to feed their child during separations and may not be able to maintain their milk supply.

"I didn't have an easy time pumping when I went back to work. My employer didn't have a room for me to pump and I had to do it in the bathroom. I felt rushed and uncomfortable. The only reason I didn't give up breastfeeding was that I only worked part-time so it was only a few days a week that I had to put up with this. I cherish being able to breastfeed my children and we must do better supporting women." ~ Krystal, New York

Making matters worse, the COVID-19 pandemic created a host of challenges for breastfeeding employees. While businesses adapted to the pandemic, many nursing mothers did not feel safe going to work or were no longer able to access the lactation accommodations they needed. Across the nation, childcare centers were closed or extremely limited, leaving many without childcare.

"I have been disappointed with my [employer] healthcare facility returning from maternity leave. I am pumping and have an immune deficiency. I expressed my concerns before I returned and asked for a clean space to pump. Despite my efforts, I have not been provided a proper lactation area. My personal safety was compromised as I was pumping in the next room to a suspected COVID patient. They turned the lactation area into an isolation area without telling me. Returning to work has its many challenges and I feel with the addition of COVID, there is additional pressure." ~ Andria, California

Breastfeeding families throughout the United States are facing barriers that make it difficult or impossible to start or continue breastfeeding – but it does not have to be this way. Public health

initiatives, including legal and policy interventions and approaches designed to enable more infants to breastfeed, have the potential to markedly improve population health.

Current Laws and Simple Accommodations Across Industries

The Break Time for Nursing Mothers law (Break Time law), passed in 2010, provides critical protections to ensure that employees have reasonable break time and a safe, private place to pump breast milk.^{xvi} All the same strategies that businesses use for any other type of break time, such as rest breaks, meal breaks, or medical breaks can be utilized to support breastfeeding employees.

A lactating employee must pump about as often as the baby usually eats. This means that employees will need to pump their milk about every 3 hours. According to the HHS *Business Case for Breastfeeding* it usually takes around 15-20 minutes to pump breast milk, plus the time it takes to travel to the pumping space, set up and clean supplies, and store the pumped milk.^{xvii} The space provided must be completely private so that no one can see inside the space and no one is able to enter the space while it is being used. To be functional, the pumping space simply needs to be furnished with seating and a flat surface such as a desk, small table, or shelf for the breast pump.

Businesses of all sizes and in every industry have found simple, cost-effective ways to meet the needs of their breastfeeding employees as well as their business. The Department of Health and Human Services (HHS) Office on Women's Health hosts the Supporting Nursing Moms at Work resource,^{xix} which provides a critical link between the need for workplace support for breastfeeding families and the need for implementation guidance for their employers. The online resource provides a user-friendly tool that employers can use to identify and implement industry-specific solutions to providing time and space accommodations that work from farm fields to grocery stores, and restaurants to offices. These examples are already helping employers and employees identify practical solutions that work for their industry and for their workspace so that they are in compliance with the Break Time for Nursing Mothers law.

"I was able to pump at work until both of my children were 12 months old. That allowed me to continue breastfeeding when I was with them and then past a year as well as my milk was established. The support from my husband and coworkers, space to pump at work, & time to pump at work were all key to our successful journey! As a nurse & mama, I want to give my babies the best start to life and breastfeeding is proven to be that. Breast milk replacements have a place but I have known plenty of women who have had to use them because they didn't have support or time in the work place to express milk. We all can play a part to ensure mamas get time to pump & feel supported to breastfeed." ~ Kari, Iowa

Providing staff coverage when employees are taking a pumping break can be handled in a variety of ways. In many businesses, workers cover for one another or the supervisor or manager may provide coverage when an employee needs to be away from the workstation. Some businesses employ designated floaters to provide coverage when an employee is taking a break or will adjust an employee's work schedule to accommodate their needs.

In office buildings, many businesses use a small existing office, or use cubicle partitions to create a lactation space. Other businesses have converted closets and storage spaces to create permanent milk expression areas, with the only expenses being cleaning fees and the cost of seating and a flat surface. Health care facilities often use a patient or exam room and retail stores often use fitting rooms. Businesses in the same shopping mall or plaza may create a shared space that is available to employees

in all of the businesses. In outdoor worksites, pop up tents or the cab of a construction vehicle are used to meet the needs of breastfeeding employees.

In many workplaces, there is no unused space. In that case, the employer could instead provide access to a space normally used for other things, like a manager's office or a storage area. Alternatively, if more than one breastfeeding employee will need the space, mothers can develop a room-use schedule or the employer can install privacy curtains or dividers so that the room can be used by more than one person at a time. To put it simply, if the space is available each time the breastfeeding employee needs it, the employer is meeting the requirements of the law. If there are no breastfeeding employees, the employer does not need to maintain a space.

Gaps in Current Law and Impact on Families

Unfortunately, the placement of the Break Time law within section 7(r) of the Fair Labor Standards Act (FLSA) resulted in 9 million women^{xx} — nearly one in four women of childbearing age — being excluded from coverage. Those left unprotected include teachers, software engineers, and many nurses, among others.

In addition, little recourse is available for employees who are covered by the Break Time law to ensure they can use their rights. Section 7(r) of the FLSA does not specify any penalties if an employer is found to have violated the break time for nursing mothers requirements. This means that in most instances, an employee may only bring an action for unpaid minimum wages or unpaid overtime compensation and an additional equal amount in liquidated damages. According to the Request for Information on the Break Time for Nursing Mothers provision, which includes the Department of Labor's preliminary interpretations of the law, "Because employers are not required to compensate employees for break time to express breast milk, in most circumstances there will not be any unpaid minimum wage or overtime compensation associated with the failure to provide such breaks."^{xxi}

"We need real change, real legislation, and real support on every level. I know too many mothers that have given up breastfeeding simply because it's too difficult to juggle all of their other responsibilities." ~ Sarah, Pennsylvania

Without these protections, breastfeeding employees face serious health consequences, including risk of painful illness and infection, diminished milk supply, or inability to continue breastfeeding. According to a report from the University of California's Center for WorkLife Law, the consequences of this coverage gap also include harassment at work, reduced wages, and job loss, putting some new mothers in the position of risking their family's economic security by attempting to continue breastfeeding and working.^{xxii}

"As a salaried employee, my employer was not required to allow me to pump at work. I am thankful that they did... It is absurd to me that those laws that protect a woman's right to express breast milk at work do not protect salaried mothers. Are the babies born to salaried mothers any less entitled to be exclusively breastfed than the babies born to mothers who make hourly wages?" ~ Jillian

Accommodating breastfeeding employees has not been the norm, but the tide is turning. The Society for Human Resources Management Employee Benefits Survey found that in 2009, only 25 percent of surveyed businesses had an onsite lactation room. In 2018, that number had nearly doubled to 49 percent.^{xxiii}

A Bipartisan Solution to Simplify Existing Law: the PUMP for Nursing Mothers Act

A policy solution with bipartisan support, the PUMP Act would support breastfeeding employees while clarifying implementation for employers across the nation. The bill would strengthen the 2010 Break Time law by closing the coverage gap, providing employers clarity on when pumping time must be paid and when it may be unpaid, and providing remedies for nursing mothers that are available for other violations of the FLSA.

The Break Time for Nursing Mothers provision is written with language that provides immense flexibility and does not require the construction of a permanent, dedicated lactation space. The PUMP for Nursing Mothers Act would maintain this flexibility. More than half of all states have enacted legislation that impacts breastfeeding employees.^{xxiv} For many of these states, the PUMP for Nursing Mothers Act would have little to no impact on employer requirements.

"I barely made it to 7 months breastfeeding my 2nd born son as a dental hygienist while my employer provided no time in between patients for me to do so. I made it over a year with my 1st born because I had support from work. Breastfeeding laws that cover ALL employers are a critical part of making breastfeeding the 'norm' rather than the exception in the US and are vital for those that do not work for large businesses." ~ Candice, Pennsylvania

Over the past decade we have learned how to make breastfeeding and employment work, but the significant coverage gaps in the Break Time for Nursing Mothers law mean that workplace breastfeeding accommodation implementation is radically inconsistent. Employees of the same company and in the same building frequently do not have access to the same accommodations, and to figure out who must be accommodated can be complicated for businesses. The employees that fall between the cracks are left to choose between breastfeeding and their paycheck. That is why the PUMP for Nursing Mothers Act represents the next critical step toward bringing federal legislation into alignment with the needs of our nation's families and their employers.

Thank you for your consideration,

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^v Systematic Review of Breastfeeding Programs and Policies, Breastfeeding Uptake, and Maternal Health Outcomes in Developed Countries | Effective Health Care Program. Effectivehealthcare.ahrq.gov. <https://effectivehealthcare.ahrq.gov/products/breastfeeding/research-protocol>. Published 2020. Accessed January 22, 2020.

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^{vii} The Surgeon General's Call to Action to Support Breastfeeding. *Clinical Lactation*. 2011;2(1):33-34. doi:10.1891/215805311807011746

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