



David Weil  
Administrator, Wage and Hour Division  
U.S. Department of Labor  
Frances Perkins Building  
200 Constitution Ave, NW  
Washington, DC 20210

January 4, 2017

Dear Mr. Weil:

We, the undersigned organizations, thank you for your leadership implementing the “Reasonable Break Time for Nursing Mothers” provision contained in Section 207(r) of the Fair Labor Standards Act (FLSA). This provision gives covered women workers who are classified as “non-exempt” employees (hourly wage-earning and some salaried workers who are eligible for overtime pay) reasonable break time to express milk in a private, non-bathroom location for one year after their child’s birth. We write to urge the Wage and Hour Division (WHD) to amplify the information available to the public and provide additional information on the scope of the law’s protections for employees and requirements for employers.

In the years since this law has been in effect, employers in almost all industries have implemented a variety of simple and cost-effective solutions to come into compliance with the law, to the great benefit of working families. However, additional clarification in the WHD’s “Fact Sheet #73, Break Time for Nursing Mothers under the FLSA” and Break Time for Nursing Mothers FAQs, would go a long way toward ensuring that employers have easy access to the information they need to comply fully, while minimizing the impact on their operations.

This could largely be accomplished by incorporating existing interpretations contained in the Request for Information on Break Time for Nursing Mothers (RFI), and other helpful resources, into existing public education materials. The RFI, which represents the WHD’s initial interpretation of the law’s requirements, provides “useful information for employers to consider,” and contains substantial additional detail that, if added to existing materials on DOL’s website (such as the FAQs or Fact Sheet), would make a profound difference in clarifying intent and strengthening implementation.

The most common inquiries that are not addressed in existing WHD guidance, and our recommendations for addressing them, are listed below. These **six top priority, simplified recommendations** are drawn from a [larger list of 20 recommendations](#) that the U.S. Breastfeeding Committee (USBC) and American Civil Liberties Union (ACLU) sent to WHD in August 2015. They fall into two categories: 1) recommendations that simply call for

including links to existing federal resources, and 2) recommendations that include language changes or additions from the RFI.

### **Top Priority Recommendations to Link to Existing Federal Resources:**

- **Where employers can find information & assistance:** Most employers want to comply with the law, but many need guidance and support for implementation, especially to ensure they are aware of the most creative, cost-effective solutions available that also minimize impact on their operations. We therefore recommend including citations with links to existing resources hosted by other federal agencies, especially the U.S. Department of Health & Human Services Office on Women’s Health [Supporting Nursing Moms At Work: Employer Solutions](#) resource, and the Health Resources & Services Administration’s [Business Case for Breastfeeding](#).
- **Understanding who is covered:** Both employers and employees report confusion over who is covered by the “Break Time” law. We recommend highlighting existing resources, like the [Fair Labor Standards Act Advisor](#) and Wage and Hour Division phone number, to help individuals determine coverage under the law.

### **Top Priority Recommendations Requiring New or Updated Language:**

- **Guidelines on breastfeeding spaces:** Employers commonly ask for practical information and additional detail on the space requirements. We recommend including information on what makes a space adequate for breastfeeding employees; how to calculate an appropriate number of lactation spaces; whether locker rooms, anterooms, or lounge areas connected to a bathroom are in compliance with the law; and other details included in the RFI but not the FAQs or Fact Sheet #73.
- **Information on how unpaid break time affects other workplace benefits:** Employees have expressed concern that exercising their rights under the “Break Time” law will impact other workplace benefits. We recommend providing information and resources about the relationship between break time taken under this provision and the calculation of hours for benefits eligibility, including health insurance. In addition, we recommend providing information about the relationship between break time taken under this provision and paid time off and paid/unpaid leave.
- **Privacy concerns:** Many employees report being walked in on or otherwise interrupted while expressing breast milk during the work day. We recommend providing additional guidance from the RFI, stating that the employer must ensure the employee's privacy through, for example, signs that designate when the space is in use or a lock on the door.
- **Education on rights and responsibilities:** Many employers and employees are not yet aware of protections provided by the “Break Time” provision. To ensure that women know their rights and employers understand their responsibilities, we recommend including information on section 207(r) in Department publications, posters created for employers to post in their workplaces, and in employer and employee trainings on the FMLA and minimum wage and overtime laws.

The evidence for the value of breastfeeding to children’s and women’s health is scientific, solid, and continually being reaffirmed by new research. All major medical authorities recommend exclusive breastfeeding for the first six months of life, followed by continued breastfeeding until at least one year of age. While 80 percent of babies born in the United States start out breastfeeding, six in ten breastfeeding mothers stop earlier than they intend. By six months of age, only 22 percent of U.S. infants are exclusively breastfed.

More than half of mothers enter or return to the labor force before their children turn one year old, with as many as one in four women returning within two weeks of giving birth. A supportive workplace plays a central role in enabling women to breastfeed. The protections provided under this statute have made a world of difference for breastfeeding families.

Workplace breastfeeding support is a simple and inexpensive way to reduce health care spending and improve the health of our Nation’s mothers and babies. Breastfeeding accommodation is a win-win-win for businesses, families, and the economy. Employers that provide lactation support experience an impressive return on investment, including lower health care costs, absenteeism, and turnover rates, as well as improved morale, job satisfaction, and productivity. According to the *Business Case for Breastfeeding* companies who have invested in their breastfeeding employees have substantial return on investment (almost 3:1). Translated, for every dollar spent, three are saved.

Again, we applaud your leadership in the implementation of Section 207(r) of the FLSA and stand ready to help you achieve its intended purpose. Please don’t hesitate to contact Amelia Psmythe at 773.359.1549 x23 or [apsmythe@usbreastfeeding.org](mailto:apsmythe@usbreastfeeding.org) if you have any questions.

## **SIGNATORY ORGANIZATIONS**

### **United States Breastfeeding Committee (USBC)**

### **American Civil Liberties Union (ACLU)**

9to5, National Association of Working Women  
A Better Balance  
American Academy of Nursing  
American Academy of Pediatrics  
American Association of Birth Centers  
American Congress of Obstetricians and Gynecologists  
Association of Maternal & Child Health Programs  
Center for WorkLife Law, University of California,  
Hastings College of the Law  
Childbirth and Postpartum Professionals Association  
Every Mother, Inc.  
Healthy Children Project, Inc.  
Human Milk Banking Association of North America

International Board of Lactation Consultant  
Examiners  
Lamaze International  
March of Dimes  
MomsRising  
National Association of Professional and Peer  
Lactation Supporters of Color  
National WIC Association  
Reaching Our Sisters Everywhere, Inc  
United States Lactation Consultant Association  
Women-Inspired Systems' Enrichment  
ZERO TO THREE