



September 25, 2017

To Whom It May Concern:

The United States Breastfeeding Committee (USBC) writes to urge the Department of Labor (the Department) to defend the final overtime regulations issued by the Department in 2016 (the Final Rule) and maintain the salary threshold established therein.

By raising the salary threshold under which employees may not be considered exempt from overtime pay to \$47,476, the Final Rule provides or strengthens overtime protections under the Fair Labor Standards Act (FLSA) for as many as 12.5 million people, 6.4 million of whom are women.ⁱ While enforcement of this critically needed rule has been stalled by litigation, we strongly urge the Department to focus its energies on defending the Final Rule in its current form in the court proceedings rather than revisiting its provisions through this Request for Information or any future rulemaking.

Women will be among the workers most negatively affected if the salary threshold is lowered.

Because women disproportionately occupy jobs at the low end of the salary scale for managerial and professional employees, they disproportionately benefit from the provision of overtime protection to salaried workers earning up to \$47,476 annually.

Further, the Final Rule would have a profound effect on breastfeeding employees. In order to maintain her milk supply, a breastfeeding mother must express milk as often as her baby usually eats. Section 7(r) of the Fair Labor Standards Act requires employers to provide nonexempt employees who are nursing mothers with reasonable unpaid break time and a private, non-bathroom location to express breast milk for one year after the child's birth. By increasing the number of employees who are considered nonexempt under the Fair Labor Standards Act, the final overtime regulation would also expand the right to workplace accommodations for breastfeeding to many additional employees.

The Institute for Women's Policy Research estimated that, under the slightly higher salary threshold originally proposed by the Department (\$50,440), more than a third of all women workers who had been exempt from overtime protections—and nearly half of exempt Black and Hispanic women workers—would be newly covered in 2016.ⁱⁱ Many of these women are breadwinners or co-breadwinners for their families: 44 percent of previously exempt unmarried mothers and 32 percent of previously exempt married mothers would be covered.ⁱⁱⁱ

Employment is now the norm for women of childbearing age, yet breastfeeding mothers continue to face barriers in the workplace, putting them at particular risk for not meeting their breastfeeding goals. More than half of mothers enter or return to the labor force before their children turn one year old,^{iv}

with as many as one in four women returning within two weeks of giving birth.^v Low-income women are more likely than their higher income counterparts to return to work earlier and to have jobs that make it challenging for them to continue breastfeeding.^{viii}

Importantly, research shows that support for lactation at work benefits employers. Women who receive support to express milk at work are more productive and loyal to the company. Employers also benefit from an enhanced public image, as well as decreased absenteeism, health care costs, and employee turnover.^{viii}

All major medical authorities recommend that mothers breastfeed exclusively for six months and continue breastfeeding for at least the first year. We know that 80% of mothers intend to breastfeed, and 83% actually do breastfeed at birth. Yet only 34% of U.S. infants are still breastfed at one year of age.¹ Employed mothers are more likely to stop breastfeeding early if they do not receive the support they need in the workplace.

Support for breastfeeding is a national priority for prevention efforts: *The Surgeon General's Call to Action to Support Breastfeeding*; the Institute of Medicine report, *Accelerating Progress in Obesity Prevention*; and the *National Prevention Strategy* each call for employers to establish and maintain lactation support programs for their employees.

The "Supporting Nursing Moms at Work: Employer Solutions" resource from the HHS Office on Women's Health provides businesses with cost-effective tips and solutions for any industry setting. These simple accommodations are critical for employees' breastfeeding success, and this new resource means that employers have the support they need to implement accommodations that make breastfeeding and working possible.

When the Department released its proposed update to the overtime salary threshold in 2015, the applicable \$23,660 threshold covered just 8 percent of salaried workers; by comparison, the 1975 salary threshold covered 62 percent of salaried workers.^{ix} The salary threshold established by the Final Rule restores a more appropriate line between clearly overtime-eligible employees and potentially exempt Executive, Administrative, and Professional (EAP) employees. And by establishing a mechanism to update the threshold every three years, the Department ensured the value of the threshold will not erode as it has in the past, creating stability and predictability for both employees and employers.

¹ *2014 Breastfeeding Report Card*, Centers for Disease Control and Prevention Publication. Retrieved 20 August 2015, from <http://www.cdc.gov/breastfeeding/data/reportcard.htm>



The 2016 Final Rule—and the salary threshold it established—was exhaustively researched, analyzed and commented on by thousands of experts, businesses and private citizens. It was crafted with the primary purpose of protecting working people and their families and is consistent with the Department’s traditional methodology, which reflects an inverse relationship between a demanding inquiry into work duties and a higher salary threshold. We urge the Department to uphold its mission “to foster, promote, and develop the welfare of the wage earners” of the United States by defending the Final Rule and maintaining the salary threshold established therein, thereby expanding coverage of the "Break Time for Nursing Mothers" law.

The United States Breastfeeding Committee is an independent nonprofit coalition of more than 50 nationally influential professional, educational, and governmental organizations that support its mission to drive collaborative efforts for policy and practices that create a landscape of breastfeeding support across the United States.

Respectfully submitted,

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Chair
United States Breastfeeding Committee

- ⁱEconomic Policy Institute. *The new overtime rule will directly benefit 12.5 million working people.* <http://www.epi.org/publication/who-benefits-from-new-overtime-threshold/>. Published 2016. Accessed September 12, 2017.
- ⁱⁱInstitute for Women's Policy Research. *How the New Overtime Rule Will Help Women & Families* [https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/Women%20and%20Overtime%20\(Final\).pdf](https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/Women%20and%20Overtime%20(Final).pdf). Published 2015. Accessed September 13, 2017.
- ⁱⁱⁱIbid.
- ^{iv}Bureau of Labor Statistics, U.S. Department of Labor. *The Economics Daily: Labor force participation of mothers with infants in 2008.* <http://www.bls.gov/opub/ted/2009/may/wk4/art04.htm>. Published 2009. Accessed April 15, 2016.
- ^vIn These Times. *The Real War on Families: Why the U.S. Needs Paid Leave Now.* <http://inthesetimes.com/article/18151/the-real-war-on-families>. Published 2015. Accessed October 8, 2015.
- Klerman JA, Daley K, Pozniak A. *Family And Medical Leave In 2012: Technical Report.* Cambridge, MA: Abt Associates; 2014.
- ^{vi}Kimbrow RT. On-the-job moms: work and breastfeeding initiation and duration for a sample of low-income women. *Matern Child Health J.* 2006;10(1):19-26.
- ^{vii}Ortiz J, McGilligan K, Kelly P. Duration of breast milk expression among working mothers enrolled in an employer sponsored lactation program. *Pediatr Nurs.* 2004;30(2):111-119.
- ^{viii}Cohen R, Mrtek MB & Mrtek RG. (1995). Comparison of maternal absenteeism and infant illness rates among breastfeeding and formula-feeding women in two corporations. *American Journal of Health Promotion*, 10 (2), 148-153.
- Ball T & Wright A. (1999). Health care costs of formula-feeding in the first year of life. *Pediatrics*, 103 (4), 871-876.
- Ortiz J., McGilligan K., Kelly P. (2004). Duration of breast milk expression among working mothers enrolled in an employer-sponsored lactation program. *Pediatr Nurs*; 30:111-119.
- ^{ix}Economic Policy Institute. *An Updated Analysis of Who Would Benefit from an Increased Overtime Salary Threshold.* <http://www.epi.org/blog/an-updated-analysis-of-who-would-benefit-from-an-increased-overtime-salary-threshold/>. Published 2015. Accessed September 15, 2017.