



May 21, 2019

To Whom It May Concern:

The United States Breastfeeding Committee (USBC) supports the Department of Labor's effort to update overtime regulations via the proposed rule, "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees."

The USBC is an independent nonprofit coalition of professional, educational, and governmental organizations and state, territorial, local and cultural breastfeeding coalitions that support its mission to drive collaborative efforts for policy and practices that create a landscape of breastfeeding support across the United States.

The proposed overtime 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 overtime rule proposal would also expand the right to workplace accommodations for breastfeeding to many additional employees.

Failure to update overtime regulations in recent decades has left workers earning as little as \$23,660 a year ineligible for overtime compensation when working more than 40 hours a week. This exemption to overtime eligibility was originally meant for highly-compensated executive, administrative, and professional employees, but this salary threshold no longer reflects the reality of the U.S. economy and workforce.

The USBC appreciates that the Department proposes to raise the salary level for the EAP exemption from \$23,660 to \$35,308 per year and supports this as an incremental measure to better align overtime regulations with today's workforce. However, we urge the Department to increase the salary threshold to the level proposed by the Department in 2016 and to establish a mechanism to automatically adjust the salary threshold to create stability and predictability for both employees and employers.

The Economic Policy Institute (EPI) has shown that under the current proposed salary threshold, an estimated 8.2 million workers who would have gotten new or strengthened overtime protections under regulations finalized in 2016 will be left behind. These 8.2 million workers include 4.2 million women, 3.0 million people of color, and 2.7 million parents of children under the age of 18. Further, because the proposed rule does not automatically index the threshold going forward, the number of workers left behind grows from 8.2 million in 2020 to an estimated 11.5 million over the first 10 years of implementation.ⁱ

Because women disproportionately occupy jobs at the low end of the salary scale for managerial and professional employees, 6.4 million women would have benefitted from the provision of overtime protection to salaried workers earning up to \$47,476 annually, as put forth in the 2016 Final Rule.ⁱⁱ By limiting the salary threshold to \$35,308 per year, 4.2 million of those women will be left behind.ⁱⁱⁱ



Employment is the norm for women of childbearing age, yet breastfeeding families 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} Discrimination against breastfeeding workers often forces them to stop breastfeeding and almost three-fourths of breastfeeding discrimination cases included in a recent study involved economic loss, and nearly two-thirds ended in job loss.^{viii}

Employed mothers are more likely to stop breastfeeding early if they do not receive the support they need in the workplace. It is critical that breastfeeding employees are protected by the FLSA provision requiring break time and a private space to express breast milk during the workday. Expanding overtime protections to more workers will help the U.S. take an important step forward and better support breastfeeding employees.

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.^{ix}

All major medical authorities recommend that mothers breastfeed exclusively for six months and continue breastfeeding for at least the first year. We know that 83% of mothers breastfeed at birth, yet only 36% of U.S. infants are still breastfed at one year of age.^x Further, significant racial and geographic disparities in breastfeeding initiation and duration persist. Fewer non-Hispanic black infants (69.4%) are ever breastfed compared with non-Hispanic white infants (85.9%) and Hispanic infants (84.6%). Infants living in the southeast are less likely to be breastfed at 6 months than infants living in other areas of the country. In addition, infants in rural areas are less likely to ever breastfeed than infants living in urban areas.^{xi}

The 2016 Final Rule was exhaustively researched, analyzed and commented on by thousands of experts, businesses, and private citizens. It 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 raise the salary threshold from the current proposed level back to that originally proposed in the 2016 Final Rule, thereby expanding coverage of the "Break Time for Nursing Mothers" law.

Respectfully submitted,

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Chair
United States Breastfeeding Committee

ⁱ Economic Policy Institute. *More than 8 million workers will be left behind by the Trump administration overtime proposal.*



<https://www.epi.org/press/more-than-8-million-workers-will-be-left-behind-by-the-trump-administration-overtime-proposal-poll-shows-support-for-stronger-overtime-protections/>. Published 2019. Accessed May 12, 2019.

ⁱⁱ Economic 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 May 12, 2019.

ⁱⁱⁱ Economic Policy Institute. *More than 8 million workers will be left behind by the Trump administration overtime proposal*.

<https://www.epi.org/press/more-than-8-million-workers-will-be-left-behind-by-the-trump-administration-overtime-proposal-poll-shows-support-for-stronger-overtime-protections/>. Published 2019. Accessed May 12, 2019.

^{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.

^v In 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 May 12, 2019.

^{vi} Kimbro 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} Center For Worklife Law. Exposed: Discrimination Against Breastfeeding Workers. <https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf>. Published 2019. Accessed May 12, 2019.

^{ix} 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.

^x *2015 Breastfeeding Report Card*, Centers for Disease Control and Prevention Publication.

<http://www.cdc.gov/breastfeeding/data/reportcard.htm>. Accessed May 12, 2019.

^{xi} Centers for Disease Control and Prevention. *Facts*. <https://www.cdc.gov/breastfeeding/data/facts.html>. Accessed May 20, 2019.