Breastfeeding Employees: Making Sense of the Legal Landscape and Resources for Implementation

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Answering The Surgeon General’s Call to Action to Support Breastfeeding

Action 14. Ensure that employers establish and maintain comprehensive, high-quality lactation support programs for their employees

Implementation Strategies:
- Develop resources to help employers comply with federal law that requires employers to provide the time and a place for nursing mothers to express breast milk
- Design and disseminate materials to educate employers about the benefits of providing more comprehensive, high-quality support for breastfeeding employees
- Develop and share innovative solutions to the obstacles to breastfeeding that women face when returning to work in non-office settings
- Promote comprehensive, high-quality lactation support programs as part of a basic employee benefits package

Healthy People 2020

- **Objective MICH-22:** Increase the proportion of employers that have worksite lactation support programs
- **Data Source:** Society for Human Resource Management Employee Benefits Survey
- **Current:** 35% of companies surveyed had an onsite lactation/mother’s room
- **Target:** 38% of employers report providing an onsite lactation/mother’s room

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Making It Work

- Examples of simple, cost-effective time and space solutions have been found in every industry
- HHS Office on Women’s Health hosts Supporting Nursing Moms at Work: Employer Solutions, a comprehensive online resource that provides businesses with tips and simple solutions (with photos and videos!) from businesses across the country

Challenges

- Many aren’t aware of federal and state protections for breastfeeding employees or are confused about the requirements
- Many don’t know how to implement workplace breastfeeding support or where to turn for support

WKKF First Food Message Guide

See March 2015 Power Tools webinar: Let’s Talk Breastfeeding

www.usbreastfeeding.org/power-tools
Understanding the Legal Landscape

- USBC was funded through a cooperative agreement with the CDC to develop an inventory and analysis of the intersection of federal and state workplace breastfeeding laws
- Collaborative process with state breastfeeding coalitions, federal and state agencies charged with enforcement, and other content and context experts
  - Shout out to Center for WorkLife Law, University of California, Hastings College of the Law!
  - Shout out to Sarah Walz for building the website!
- Guide to the Rights of Breastfeeding Employees in production for each state with relevant legislation

Legal Protections

- **Federal:**
  - Break Time for Nursing Mothers Provision
  - Title VII of the Civil Rights Act
- **State:**
  - 28 states, DC, Guam, and Puerto Rico have laws addressing breastfeeding employees
A Wide Spectrum

Workplace Accommodations:
- Typically require break time and/or a private space for employees to pump during the work day

Anti-discrimination Protection:
- Prohibitions against discrimination based on sex, pregnancy, childbirth, and related medical conditions

Breaking It Down

- Require accommodation for lactation/breastfeeding.
- Require accommodation for pregnancy/childbirth and related medical conditions.
- Require that women affected by pregnancy/childbirth and breastfeeding be treated the same as other employees not so affected.
- Require that women affected by pregnancy/childbirth and related medical conditions be treated the same as other employees not so affected.
- Require that women affected by pregnancy and/or childbirth be treated the same as other employees not so affected but does not mention breastfeeding or related medical conditions. Noted, but a full analysis not developed.
- Provide that employers not discriminate against women affected by pregnancy, childbirth, and breastfeeding/related medical conditions (but does not explicitly say they have to be treated the same).
- Provide that employers cannot discriminate against women affected by pregnancy and childbirth. Noted, but a full analysis not developed.
- Prohibit discrimination on the basis of sex, with no mention of pregnancy or childbirth. Not included in analysis.
In Other Words…

It’s messy, and figuring out the legal landscape may feel like a heavy lift…

…but you’re not on your own!

Federal Law: Break Time for Nursing Mothers

- **Coverage**: Nonexempt (most hourly wage earners and some salaried) employees covered by the [Fair Labor Standards Act](https://www.dol.gov/whd/regs/compliance/FLSA/).
- **Required Accommodations**: Employers must provide “reasonable” unpaid break time and a place that is not a bathroom that is shielded from view, free from intrusion from coworkers and the public, functional for pumping breast milk, and available each time it is needed.
Federal Law: Break Time for Nursing Mothers

- **Enforcing Agency:** The [U.S. Department of Labor Wage and Hour Division](https://www.dol.gov/whd) (WHD)

- **Small Businesses:** All employers covered by the FLSA, regardless of their size or number of employees, must comply. If a complaint is filed with the WHD by a breastfeeding employee and an investigation takes place, businesses with fewer than 50 employees that can demonstrate to WHD that accommodating the employee would cause an undue hardship on the business, may be able to bypass these requirements.

Federal Law: Title VII of the Civil Rights Act

- Sex discrimination on the basis of pregnancy, childbirth, and related medical conditions is prohibited

- Less favorable treatment of a lactating employee may be considered unlawful discrimination

- Breastfeeding employees must have the same freedom to address lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions

Federal Law: Title VII of the Civil Rights Act

- **Coverage:** Businesses with 15 or more employees
- **Enforcing Agency:** The [U.S. Equal Employment Opportunity Commission](https://www.eeoc.gov)

**Bringing It Together**

- If an employee is covered by more than one law, and those laws address the same component, the employee is entitled to the strongest protection available.
- The USBC’s Online Guide: *What You Need to Know About the “Break Time for Nursing Mothers” Law* was developed as a tool to help identify the rights of breastfeeding employees and obligations of employers under the federal “Break Time” law.
  
  [www.usbreastfeeding.org/workplace-law](http://www.usbreastfeeding.org/workplace-law)

- State Guides to the Rights of Breastfeeding Employees live in the Online Guide section “What if your state already has a law?”
  
  [www.usbreastfeeding.org/workplace-guide](http://www.usbreastfeeding.org/workplace-guide)
Legal Rights Identified – What Now?

- Many organizations are working to support compliance with workplace breastfeeding law
- “Resource and Referral Guide for Breastfeeding Employees and their Employers” outlines types of support provided and contact information of key orgs

   Download Here: www.usbreastfeeding.org/workplace-help

Webinar Training Coming Soon!

- Watch your inbox for an invitation to join the USBC and legal experts from the Center for WorkLife Law next month for a webinar training on the legal landscape surrounding breastfeeding employees and how the new state Guides can be brought together with other tools to meet the needs of employees and their employers
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Workplace Support State Community of Practice

- Comprised of state breastfeeding coalitions actively working ("practicing") on workplace issues
- CoP will have the flexibility to function in alignment with priority strategies, funding sources, etc. and will have flexibility to adapt over time to meet the needs of COP participants
  - updates and cross-pollination of strategies and activities between national Constellation participants and state coalitions
  - networking and sharing between/among state coalitions

If your coalition is interested in joining, please complete the form at this link: https://www.surveymonkey.com/r/WS-CoP
Questions?

Thank you for all you do!

Action 20. Improve national leadership on the promotion and support of breastfeeding.

- Increase the capacity of the USBC and affiliated state coalitions to support breastfeeding.
- Create a federal interagency work group on breastfeeding.