



Written Statement of Liz Morris, Deputy Director of the Center for WorkLife Law  
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 15, 2021

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

The Center for WorkLife Law enthusiastically supports the “Providing Urgent Maternal Protections for Nursing Mothers Act” or “PUMP for Nursing Mothers Act.” This bill would advance maternal and infant health and economic stability by ensuring working mothers don’t have to choose between earning an income and breastfeeding.

The Center for WorkLife Law is a research and advocacy organization that seeks to advance gender, racial, and class equity in employment and education. WorkLife Law’s 2018 report *Exposed: Discrimination Against Breastfeeding Workers* found lactating employees face significant obstacles at work.<sup>1</sup> Breastfeeding workers leaking milk have been denied permission to take pumping breaks; they have been fired just for asking; and refused privacy, forcing them to pump milk with their breasts exposed to coworkers, clients, and the public in physically unsafe conditions.<sup>2</sup> Workers who do not receive the break time and private space they need can face serious health consequences, including illness and painful infections, diminished milk supply, and weaning earlier than doctors recommend.<sup>3</sup> Many breastfeeding workers also suffer devastating *economic* consequences when they are fired or forced to resign following a request for lactation accommodations.<sup>4</sup>

The shocking toll of breastfeeding discrimination on the lives of workers is captured, in their own words, in the attached excerpt from the Center for WorkLife Law’s *Exposed* report.

The 2010 Break Time for Nursing Mothers law was enacted to ensure breastfeeding workers have access to the most basic workplace supports needed by employees who are away from their nursing babies all day: reasonable break time and private space for pumping milk. Despite its clear purpose, the law has two

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<sup>1</sup> Morris L, Lee J, & Williams J, *Exposed: Discrimination Against Breastfeeding Workers* (January 1, 2019), Center for WorkLife Law, UC Hastings Law; available at <https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf> (hereinafter “*Exposed*”).

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

major—and unintentional—shortcomings that have prevented the law from realizing its full potential:

- Nearly 9 million women workers of childbearing age are not covered by the law. Excluded workers range from kindergarten teachers to registered nurses to farmworkers.<sup>5</sup>
- Even for employees who are covered, technicalities make the Break Time for Nursing Mothers law practically unenforceable, even in cases where an employee is fired for requesting breaks. Noncompliance is widespread.<sup>6</sup>

The PUMP Act would address both of these critical shortcomings by expanding coverage to all workers who need the law’s protections and ensuring remedies are available to employees whose rights have been violated, thereby encouraging widespread employer compliance.

### **Breastfeeding Parents Need Reasonable Break Time and Private Space to Pump during the Workday**

In light of overwhelming evidence of health benefits for babies and mothers, breast milk as a child’s first food is universally recommended by all relevant major American medical associations.<sup>7</sup> Yet, despite this medical advice, the health benefits, and a high national breastfeeding initiation rate, a large majority of American mothers, and particularly women of color, do not meet the breastfeeding goals set by themselves<sup>8</sup> or the medical community.<sup>9</sup> One major obstacle to meeting breastfeeding goals is that many mothers have to choose between nursing their babies and keeping their jobs when they are denied basic break time and space accommodations.<sup>10</sup>

These accommodations are necessary because nursing parents are constantly producing milk. When a nursing parent is away from their child, they have to express milk on roughly the same schedule as their child nurses.<sup>11</sup> If their employment situation prevents them from regularly expressing milk, serious health consequences may follow. Once milk fills the breast, it must be removed (either through nursing, pumping, or by hand) to avoid excessive build up and painful pressure. This breast engorgement can lead to mastitis, an inflammation of the breast tissue that may involve an infection, abscess, pain, fever, and

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<sup>5</sup> *Id.* at 22-26.

<sup>6</sup> *Id.* at 32-33.

<sup>7</sup> Am. Acad. of Pediatrics, Policy Statement, Breastfeeding and the Use of Human Milk, 129 PEDIATRICS e827, 32 (2012), available at <http://pediatrics.aappublications.org/content/pediatrics/early/2012/02/22/peds.2011-3552.full.pdf>; Am. Acad. Fam. Physicians, Policy Statement, Breastfeeding (2012), <http://www.aafp.org/about/policies/all/breastfeeding.html>; Am. Acad. Of Fam. Physicians, Policy Statement, Breastfeeding (1988, 2017 COD); Am. Coll. of Obstetricians and Gynecologists, ACOG COMMITTEE Opinion #756 Optimizing Support for Breastfeeding as Part of Obstetric Practice; Am. Pub. Health Ass’n. A Call to Action on Breastfeeding: A Fundamental Public Health Issue. Policy No. 200714 (2007) <https://www.apha.org/policies-and-advocacy/public-health-policystatements/policy-database/2014/07/29/13/23/a-call-to-actionon-breastfeeding-a-fundamental-public-health-issue>; See also World Health Organization, Factsheet: Infant and young child feeding (2018) <http://www.who.int/en/news-room/fact-sheets/detail/infant-and-young-child-feeding> (recommending breastfeeding for two years).

<sup>8</sup> Six in ten mothers stop breastfeeding earlier than the intended. Odom EC et al., Reasons for Earlier Than Desired Cessation of Breastfeeding. PEDIATRICS. 131(3), e726-32 (Mar. 2013).

<sup>9</sup> CDC, Breastfeeding Report Card (2020), available at <https://www.cdc.gov/breastfeeding/data/reportcard.htm>.

<sup>10</sup> *Exposed* at 7.

<sup>11</sup> See U.S. Dep’t of Labor, Wage & Hour Div., Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80075 (Dec. 21, 2010).

illness.<sup>12</sup> The condition may require hospitalization and, in some cases, surgical intervention. Inability to express milk can also negatively impact future milk production, because the body produces breast milk in response to milk removal on a demand and supply basis.<sup>13</sup> Nursing parents who aren't able to pump as needed typically suffer a drop in their milk supply, leaving them unable to supply enough milk for their infant, and they may ultimately be unable to breastfeed.<sup>14</sup>

Half of all women in one national survey reported that their employment impacted their breastfeeding-related decisions, and a third said that their employment posed a challenge to breastfeeding.<sup>15</sup> Breastfeeding rates tell the same story. Workplace accommodations for breastfeeding significantly predict breastfeeding duration.<sup>16</sup> Women who receive appropriate break time and private space for pumping breast milk are over twice as likely to be breastfeeding at six months, even after controlling for sociodemographic factors.<sup>17</sup>

But despite the 2010 Break Time for Nursing Mothers law requiring employers nationwide to provide reasonable break time and private space for pumping breast milk, three out of every five mothers work for employers who do not provide these basic accommodations.<sup>18</sup> Low-income workers face the greatest barriers. They are only half as likely as middle-income workers and one-third as likely as high-income workers to be provided sufficient break time and private space. Married women are four times more likely to receive break time and private space than single mothers.<sup>19</sup> Perhaps not surprisingly, low-income and single mothers are less likely to initiate breastfeeding and to breastfeed for as long as medically recommended.<sup>20</sup> Barriers to breastfeeding that break down along race and class lines serve to reinforce other problematic racial and economic health disparities.

Breastfeeding workers whose employers refuse to support their basic physical needs face severe consequences. Many lose their jobs, are forced to stop breastfeeding, or jeopardize their health or the health of their child.<sup>21</sup>

### **The PUMP Act Would Enable the 2010 Nursing Mothers Law to Finally Deliver on Its Promise**

The decade-old Break Time for Nursing Mothers law was a landmark step toward achieving equity for mothers and nursing parents. But despite its significant gains, the law has fallen short of its promise due to two major shortcomings: (1) major gaps in coverage have excluded millions from its protections; and (2) the lack of practical means of enforcing the law has led to widespread noncompliance. The PUMP Act offers a simple solution to effectively address both shortcomings, and would thereby promote the health and economic security of workers and their families.

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<sup>12</sup> Lisa Amir. & The Academy of Breastfeeding Medicine Protocol Committee, ABM Clinical Protocol #4: Mastitis, *BREASTFEEDING MEDICINE*, 9 (5), 239, 239 (Revised March 2014).

<sup>13</sup> Mayo Clinic, Mastitis, <https://www.mayoclinic.org/diseases-conditions/mastitis/symptoms-causes/syc-20374829>.

<sup>14</sup> Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. at 80075.

<sup>15</sup> Katy B. Kozhimannil et al., Access to Workplace Accommodations to Support Breastfeeding after Passage of the Affordable Care Act, 26 *WOMEN'S HEALTH ISSUES*, 6 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4690749/pdf/nihms715360.pdf>.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.*

<sup>20</sup> Forste R & Hoffmann JP, Are U.S. Mothers Meeting the Healthy People 2010 Breastfeeding Targets for Initiation, Duration, and Exclusivity? The 2003 and 2004 National Immunization Surveys. *J OF HUM. LACT.* 24(3):278-88 (Aug 2008).

<sup>21</sup> *Exposed* at 11.

## The PUMP Act Would Close the Existing Coverage Gap That Excludes Millions of Workers

Nearly 9 million women of childbearing age are currently excluded from the protections of the Break Time for Nursing Mothers Law, meaning they have no clear federal right to receive break time and private space to pump milk during the workday.<sup>22</sup> This exclusion was unintentional at the time the law was enacted.<sup>23</sup>

Congress added the Break Time for Nursing Mothers language to the Fair Labor Standards Act (FLSA) by amending section 7 of that law, which generally requires employers to pay overtime compensation for long work hours.<sup>24</sup> Due to its placement in section 7, the Break Time for Nursing Mothers provision is subject to other sections of the FLSA that were originally designed to regulate employers with regard to payment of overtime—not the provision of pumping breaks.

One such section involves employee “exemptions.” Under the FLSA there are numerous categories of workers who are not entitled to receive overtime compensation, regardless of the number of hours they work in a week.<sup>25</sup> These employees are said to be “exempt” from overtime. However, because of the Nursing Mothers law’s placement within the overtime section, these workers have also been made exempt from the breastfeeding protections and have no workplace lactation rights under the FLSA.<sup>26</sup>

When the Nursing Mothers law was passed, it was intended to cover all workers.<sup>27</sup> The exclusions are the unintended byproduct of the statutory placement. The resulting coverage gap is considerable and impacts employees in a wide range of occupations, including many of those working in the top two pink-collar occupations: nursing and teaching.<sup>28</sup> The PUMP Act would simply correct this unintentional exclusion to bring *all* workers whose employers are covered by the FLSA under the law’s protection.

## The PUMP Act Would Deter Employers from Violating the Existing Break Time and Space Requirements

Even when clear violations occur, the Break Time for Nursing Mothers provision cannot be counted on to deliver justice in a court of law. Because employers cannot be held accountable for intentional legal violations, noncompliance has been widespread.<sup>29</sup> One federal judge astutely observed: “An employer faced with a request to allow an employee to take breaks to breastfeed may simply fire the employee rather than attempt to accommodate the request for breaks.”<sup>30</sup> And indeed, the Center for WorkLife Law has heard from too many workers whose employers have done exactly that.

Again, this is another consequence of the break time provision’s placement within the FLSA’s overtime section. The FLSA provides that employers who violate the overtime section are liable to employees “in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may

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<sup>22</sup> *Exposed* at 26.

<sup>23</sup> See United States Breast Feeding Committee, Supporting Working Moms Act (SWMA), <http://www.usbreastfeeding.org/swma>.

<sup>24</sup> 29 U.S.C. § 207(r).

<sup>25</sup> 29 U.S.C. § 213.

<sup>26</sup> *Exposed* at 25-26.

<sup>27</sup> See United States Breast Feeding Committee, Supporting Working Moms Act (SWMA), <http://www.usbreastfeeding.org/swma>.

<sup>28</sup> *Exposed* at 25.

<sup>29</sup> *Exposed* at 32.

<sup>30</sup> *Hicks v. City of Tuscaloosa*, No. 7:13-cv-02063-TMP, 2015 U.S. Dist. LEXIS 141649, at \*104 (N.D. Ala. Oct. 19, 2015).

be.”<sup>31</sup> This makes sense in the context of wage violations. But unpaid wages is a meaningless remedy for an employee who has been terminated, forced to resign or take unpaid leave because of breastfeeding discrimination. As one judge put it, “there does not appear to be a manner of enforcing the express breast milk provisions.”<sup>32</sup>

Even when the law has undoubtedly been broken, judges’ hands are tied. As one judge expressed in the case of an EMT who was fired simply for *asking* that she be given break time and space: “While the Court is sympathetic to Plaintiff’s argument that this renders [the Nursing Mothers law] ineffective, there is no support from the case law or DOL [Department of Labor]” to provide a remedy.<sup>33</sup>

The Nursing Mothers law’s weak enforcement mechanism explains why it has been so frequently ignored. Despite that law, 60% of women reported in years following the law that their employer still did not provide access to break time and space.<sup>34</sup> One study that examined eight different types of breastfeeding-support laws found that the single most impactful law that increased breastfeeding rates at six months postpartum was a workplace pumping law with an enforcement mechanism. Children in states that passed enforceable laws were over 3 times more likely to ever breastfeed and over 2 times more likely to breastfeed for at least six months as a result.<sup>35</sup>

A recent analysis by the Center for WorkLife Law found that, although enforceable laws increase breastfeeding rates, litigation rates involving enforceable break time and space laws are extremely low in states where private rights of action exist.<sup>36</sup> We believe this is because employers preemptively comply with such laws to avoid the risk of litigation. Complying with break time and space requirements is simple, and creative solutions exist in all industries.<sup>37</sup> As described by the U.S. Department of Health and Human Services, employers that support breastfeeding with affordable solutions realize cost savings from increased loyalty and retention, reduced sick time, and decreased health care and insurance costs.<sup>38</sup>

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<sup>31</sup> 29 U.S.C. § 216(b).

<sup>32</sup> *Salz v. Casey’s Marketing Co.*, No. 11-CV-3055-DEO, 2012 U.S. Dist. LEXIS 100399, at \*7 (N.D. Iowa July 19, 2012).

<sup>33</sup> *Mayer v. Prof’l Ambulance, LLC*, 211 F. Supp. 3d 408, 415 (D.R.I. 2016).

<sup>34</sup> *Kozhimannil*, supra note 16, at 2.

<sup>35</sup> Smith-Gagen et. al., *The Association of State Law to Breastfeeding Practices in the U.S.*, *MATERN CHILD HEALTH J.* 18(9):2034-43 (Nov. 2014), note 4.

<sup>36</sup> Four states – Hawaii, Minnesota, Vermont, and the District of Columbia – have passed privately enforceable break time and space laws with reasonable break time and private space requirements, similar to those under the federal Break Time for Nursing Mothers provision of the FLSA. See Haw. Rev. Stat. §§378-91 – 93; M.S.A. § 181.939; 21 V.S.A. § 305; D.C. Code Ann. § 2-1402.82. To conduct its research, the Center for WorkLife Law searched all federal and state court orders and federal and state case pleadings in each of the four states that were available on Westlaw and Lexis in early 2021. We reviewed the cases filed in each state beginning in the year following the law’s enactment through 2020 and found extremely low litigation rates. We identified a total of three (3) cases filed in Minnesota since the statute’s adoption in July 2014, an average of 0.5 per year. We identified two (2) cases filed in the District of Columbia since the statute’s adoption in 2007, an average of 0.15 cases per year. We did not identify a single case filed in Hawaii since the statute’s adoption in 2008, an average of zero (0) cases per year. Likewise, we did not identify a single case filed in Vermont since the statute’s adoption in 2008, an average of zero (0) cases per year.

<sup>37</sup> See U.S. Dep’t of Health and Human Serv., Office on Women’s Health, *Lactation break time and space in all industries*, <https://www.womenshealth.gov/supporting-nursing-moms-work/lactation-breaktime-and-space-all-industries>.

<sup>38</sup> U.S. Dep’t of Health and Human Serv., Maternal Childcare Bureau, *The Business Case for Breastfeeding* (2008), [https://www.womenshealth.gov/files/documents/bcfb\\_business-case-for-breastfeeding-for-business-managers.pdf](https://www.womenshealth.gov/files/documents/bcfb_business-case-for-breastfeeding-for-business-managers.pdf).

The PUMP for Nursing Mothers Act would encourage widespread employer compliance by allowing employees who have been fired or harmed in violation of their right to reasonable break time and space to pursue “legal or equitable relief,” a remedy that has long been available to employees facing other forms of retaliation under the FLSA.

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The PUMP for Nursing Mothers Act would ensure that all breastfeeding employees have the full protection of the law and ability to meet their basic needs while away from their nursing babies during the workday: reasonable break time and private space to express milk without fear of retaliation. It is a simple solution that promotes maternal and child health, as well as the economic security of women and families.

Sincerely,

Liz Morris

A handwritten signature in black ink, appearing to read "Liz Morris". The signature is fluid and cursive, with a large initial "L" and "M".

Deputy Director, Center for WorkLife Law

## Breastfeeding Discrimination Exposed

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A POLICE OFFICER FACED A SERIOUS INFECTION, INSULTS, POSSIBLE ASSAULT, AND A “FILTHY, MOLDY” BREAK ROOM

*“We’re not asking for anything huge, just privacy and time to express milk for our children while we’re working long hours.”* (PAGE 12)

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KINDERGARTEN TEACHER: “MY BOOBS WERE SO FULL THAT I JUST BEGAN LEAKING EVERYWHERE”

*“I started thinking, I’m here teaching these babies basic life skills and I don’t even have the time to provide my own baby with food for survival.”* (PAGE 27)

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U.S. AIR FORCE AIRMAN IN NEED OF PUMPING BREAKS TOLD SHE SHOULDN’T GET TIME TO “PLAY WITH HERSELF”

*“A lot of people, maybe not a majority, but a noisy minority, think women should have to get out if they want children, but no one suggests men don’t become fathers while they are in the military.”* (PAGE 16)

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FIRE DEPARTMENT EMT FACED RETALIATION FOR ASKING TO PUMP: “I BECAME THE BLACK SHEEP”

*“There were days I was afraid I’d get fired, or get messed with on the job. Some days I felt super strong, thinking I can do this and they shouldn’t be treating women like this.”* (PAGE 33)

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PRISON NURSE FORCED TO SMUGGLE IN BREAST PUMP, PIECE-BY-PIECE, AS “CONTRABAND”

*“It was just such a struggle. Being a nurse and in a prison just felt like a double whammy.”* (PAGE 18)

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COWORKERS COULD GO TO DUNKIN’ DONUTS, BUT SHE COULDN’T GO ACROSS THE STREET TO NURSE HER NEWBORN SON

*“They didn’t seem to care about any of the health risks to me or my son.”* (PAGE 30)

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EMERGENCY ROOM NURSE LEAVES JOB OF SIX YEARS AFTER “BULLYING” JEOPARDIZES HER ABILITY TO BREASTFEED

*“I knew breastfeeding my child was important to me. That was a sacrifice I was willing to make for my child.”* (PAGE 15)

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HUMAN RESOURCES PROFESSIONAL FORCED TO PUMP ON THE TOILET

*After she quit and took a more supportive job: “I felt human. I felt respected and honored.”* (PAGE 41)

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POLICE OFFICER FORCED TO CHOOSE BETWEEN BREASTFEEDING AND HER BULLET PROOF VEST RESIGNS AND MAKES LEGAL HISTORY.

*“All I ever wanted when I took a stand was to protect the next working mother who chooses to breastfeed.”* (PAGE 38)