

PEDIATRICS PERSPECTIVES

Reasonable Break Time for Nursing Mothers: A Provision Enacted Through the Affordable Care Act

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KEY WORDS

breastfeeding, human milk, Affordable Care Act, infant nutrition, maternal employment

ABBREVIATION

FLSA—Fair Labor Standards Act

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On March 23, 2010 President Obama signed into law the Patient Protection and Affordable Care Act, which included an amendment to Section 7 of the Fair Labor Standards Act (FLSA).¹ This amendment requires employers to provide reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth, each time the employee has a need to do so. Employers are also required to provide a place, other than a bathroom, shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. Some elements of the "reasonable break time law" are listed in Table 1.^{2,3}

Why did the law specify that the workplace should offer a location other than a bathroom? Bathrooms often lack privacy, electrical outlets for breast pumps, and adequate space for the mother to sit. More important, providing your baby's next meal in an unsanitary setting can be not only unhealthy but also humiliating.

Developing breastfeeding support for working women has been described as a beneficial practice for both the employees and their employers.^{4,5} For a small investment, the employer stands to gain by retaining more satisfied, experienced, and loyal employees; having parents take fewer days of leave to care for their sick infants; and incurring lower health care and insurance premium costs. Despite this, to be more accommodative, the new break time legislation offers an exemption to employers with <50 employees only "if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to its size, financial resources, nature, or structure of the employer's business."^{2,3} Such employers need to receive exemption approvals from the Wages and Hour Division of the US Department of Labor.

Whether the full implementation of this law has a potential to improve all components of the national breastfeeding statistics is unknown, in part because the legislation is new and many health care providers, employers, and employees are unaware of the law. Specific studies should be carried out to demonstrate the effect of compliance with this law on regional and national breastfeeding statistics.

According to the *Breastfeeding Report Card, United States 2013*, issued by the Centers for Disease Control and Prevention, for infants born in 2010 the national rates (Table 2) and state-specific breastfeeding initiation rates have reached an all-time high.⁶ However, the report also notes that breastfeeding rates drop during the postpartum months in all

TABLE 1 Select Elements of the Reasonable Break Time for Nursing Mothers Legal Provisions

Elements	Specifics
Time and location of breaks	Provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. A bathroom, even if private, is not a permissible location. The location must be functional as a space for expressing breast milk. A temporarily created space is sufficient, provided it is shielded from view and free from any intrusion by co-workers and the public.
Coverage and compensation	Employers with <50 employees are not subject to the break time requirement if compliance with the provision would impose an undue hardship. “Undue hardship” is determined by looking at the difficulty or expense of compliance for the employer. Employers are not required to compensate nursing mothers for breaks taken for the purpose of expressing milk. If employers already provide compensated breaks, and an employee uses such times to express milk, she must be compensated in the same way that other employees are compensated for break times. The employee must be completely relieved from duty, or else the time must be compensated as work time.
Fair Labor Standards Act prohibitions on retaliation	It is a violation to discriminate against any employee because such employee has filed any complaint under or related to this act. Employees are protected regardless of whether the complaint is made orally or in writing.

Abridged from the Fact Sheet #73, Wages and Hour Division, US Department of Labor,² which also provides more information about the FLSA, answers to frequently asked questions, and links to other related documents. Full text of the FLSA regulation is available in the December 21, 2010, issue of the Federal Register.⁵

TABLE 2 Breastfeeding Report Card for the US Provisional Data for 2010 Births and Healthy People 2020 Goals^{6,7}

	Ever Breastfed	Breastfed at 6 mo	Breastfed at 12 mo	Exclusively Breastfed at 3 mo	Exclusively Breastfed at 6 mo
United States ^a	76.5	49.0	27.0	37.7	16.4
Healthy People 2020 Goals	81.9	60.6	34.1	46.2	25.5

^a On average, the state-specific rates reported here have a margin of error of ± 8.4 percentage points, based on a 95% confidence interval.

regions of the country, and more significantly, dramatic disparities continue to exist in all components of breastfeeding statistics among the states.⁶ It

is possible that in states with high rates of maternal employment, the implementation of this new legislation to the extent that is possible may help

improve regional breastfeeding rates, which may come close to achieving the Healthy People 2020 goals (Table 2). This assumption is based on reports which show that early return to work is one of the major factors impeding both initiating and continuing breastfeeding.^{4,5}

What is the value of knowing at least some components of this seemingly obscure legislation? I believe that with the knowledge of this legislation, obstetricians, pediatricians, general practitioners, lactation consultants, nurses, and midwives may initiate a dialogue with working women during counseling about their intentions to initiate or continue to breastfeed through the infant's first year of life. It is possible that women can also choose to engage their employers in productive conversations for developing mutually agreeable solutions to help them continue to breastfeed and to keep their jobs. Such dialogues may lead the employer to seek specific compliance assistance from the Wages and Hour Division of the Department of Labor.⁴

Along with the full implementation of the FLSA law, if a more sympathetic, accommodating, and supportive work environment is fostered, it will not only help to improve employee morale but also encourage breastfeeding through the first year. Collectively, these efforts can have public health impact.

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