

Promoting Workplace Breastfeeding Accommodations: Regulations, Best Practices, and the Critical Role of Title V Programs

Introduction

There is widespread evidence that supports breastfeeding as beneficial for both mothers and babies. Maternal and child health experts recommend breastfeeding immediately following birth for at least one year, with exclusive breastfeeding (breast milk without any external food and drink) for at least six months.¹ However, although most new mothers express an intention to breastfeed and 81 percent of babies born in the US start out being breastfed, only 22 percent are exclusively breastfed six months later.² Furthermore, by six months, only 49 percent are breastfed at all.³ There are a multitude of factors that contribute to this steep drop-off, one of them being return to the workforce after the birth of a child. Women across the socio-economic spectrum cite similar barriers to continuing breastfeeding until the baby's first birthday, one of which is a worksite environment that impedes a woman's ability to express breast milk.⁴ Given that mothers are the fastest-growing demographic within the U.S. labor force, there is a demonstrated need to establish workplace support for breastfeeding mothers.⁵

The Benefits of Breastfeeding



It is well-established that breastfeeding has many health benefits for mother and baby. The physical act of breastfeeding has been proven to promote bonding between mother and infant.⁶ In addition, breastfeeding has many short-term benefits, such as protecting infants against common childhood illnesses including pneumonia; diarrhea; and ear, skin, stomach, and respiratory infections.⁷ Breastfeeding may also have long-term benefits, such as reducing the risk of overweight and obesity throughout childhood.⁸ Breast milk offers the best nutrition for infants. Mother's milk has the optimal proportions of fat, sugar, water, and proteins that are needed for a baby's growth and development. Breast milk has immunological and anti-inflammatory properties that protect babies from illness and disease.⁹

Breastfeeding also has benefits for the mother, such as decreasing the risk of postpartum hemorrhage, breast cancer, ovarian cancer, type 2 diabetes, and postpartum depression.¹⁰ In addition, breastfeeding may reduce financial burden on the mother and her family unit. Infant formula can cost more than \$1,500 a year, while breast milk is free.¹¹ Breastfeeding has cost-saving implications for the overall health care system. Breastfed babies experience fewer sick child visits, prescriptions, and hospitalizations. It is estimated that \$13 billion in direct health care costs would be saved annually if 90 percent of women were able to breastfeed according to medical recommendation.¹²

The federal government has recognized the benefits of breastfeeding by passing federal legislation to promote breastfeeding accommodations in the workplace and improve breastfeeding duration rates. Enacted in 2010, the Patient Protection and Affordable Care Act (ACA) (P.L. 111-148) requires employers with more than 50 employees to provide women with adequate break time to express breast milk (also referred to as pumping) during the work day for one year after the child's birth.¹³ The law, codified in Section 7(r) of the Fair Labor Standards Act (FLSA), requires that employers provide a private, clean space to pump, as well as break times during the day for lactating women. The U.S. Department of Labor (DOL) provides guidance on the implementation of the law, including detailed information about which employees are covered under the law.¹⁴

The ACA and Breastfeeding Promotion

Women's Preventive Services

The ACA requires health plans to cover a specific package of benefits [the Essential Health Benefits (EHB) package], which includes women's preventive services. Among these services are comprehensive breastfeeding support and counseling, as well as access to breastfeeding supplies with no cost-sharing.¹⁵ Coverage for women's

preventive services was originally based on a set of recommendations made in 2011 by the National Academy of Medicine (formerly the Institute of Medicine).¹⁶ The inclusion of breastfeeding support, counseling, and supplies was reaffirmed in 2016 by the Women's Preventive Services Initiative, an effort led by the American College of Obstetricians and Gynecologists (ACOG).¹⁷

Comprehensive breastfeeding support and counseling are broadly defined as services offered by a trained provider who is available during and after pregnancy to promote successful breastfeeding initiation and duration. Additionally, all health plans are required to cover the cost of breastfeeding equipment. Health plans may have their own unique guidelines on whether breast pumps are manual or electric, whether mothers can own or rent, the length of the rental, and whether the breast pump will be issued before or after birth.¹⁸ Regardless of the terms, health plans must provide these services to women with no out-of-pocket costs.

Community Efforts to Support Breastfeeding

The ACA established the Prevention and Public Health Fund (PPHF) to expand and sustain national investments in prevention and public health, to improve health outcomes, and to enhance health care quality. From October 2011 to March 2015, the PPHF supported the Best Fed Beginnings program, which successfully assisted 72 hospitals in obtaining a "baby-friendly" designation.¹⁹ In fiscal years 2012-2017, a portion of the PPHF was allocated to the U.S. Centers for Disease Control and Prevention (CDC) for community initiatives that support breastfeeding mothers and assist hospitals in breastfeeding promotion.²⁰

Workplace Accommodations

The ACA amends the FLSA to require that employers provide a reasonable break time and a place for hourly wage-earning and salaried employees to express breastmilk for up to one year after the child is born.²¹ The law

guarantees the employee a “reasonable” amount of time to express milk throughout the workday. In addition, employers are required to provide a private place that is not a bathroom and is shielded from view and free from intrusion for nursing mothers to express breastmilk. The guidance issued by DOL for employers includes standards for the following:

- Reasonable break time – frequency: The frequency and time nursing employees need to express breastmilk will vary. Factors driving these decisions include the age of the infant, the number of feedings in the infant’s schedule, and whether the infant is also eating solid food. In the early months of an infant’s life, nursing employees will typically need two to three breaks during an eight-hour shift.²²
- Reasonable break time – length: For most women, a pumping session is approximately 30 minutes in length.²³ However, as the DOL guidance suggests, the actual length of breaks for nursing employees will vary depending on additional factors, including the location of the private space and the necessary amenities (a sink or washing area, access to storage for the breastmilk, etc.).
- Appropriate space: Where practical, the law requires employers to make a room available for use by nursing employees to take breaks and express breastmilk. Where this is not practical, employers can meet this requirement by creating a space with partitions and curtains. For all spaces provided, employers should ensure that windows are covered and signs are designated to indicate that the space is in use, or they may provide a lock for the door. The space can be temporarily created and then converted; it does not need to be permanently dedicated to nursing mothers. Bathrooms and locker rooms that lack sufficient space between the toilet area

and the space reserved for expressing breastmilk do not meet the law’s requirements. At a minimum, the space must provide the nursing employee with a place to sit and a flat surface, other than the floor, on which to place her breast pump.²⁴ The regulation also requires employers to provide a place where expressed breastmilk can be reasonably stored. Employers are not required to provide refrigeration; however, they must allow employees to bring insulated food containers to work and they must provide a place to store the pump and the insulated containers while employees are at work.



Photo credit: United States Breastfeeding Committee

All employers, regardless of their size, are encouraged to comply with the “Break Time for Nursing Mothers” law, as FLSA section 7(r) is commonly known. Extending these services and protections to working women is an attempt to guarantee that all women and infants experience the many benefits of breastfeeding. Women with access to both adequate break time and a private, appropriate space to express breast milk are 2.3 times more likely to be exclusively breastfeeding at six months postpartum.²⁵

To help ensure mothers across the country have access to work environments that are

supportive of breastfeeding, AMCHP, with support from the W.K. Kellogg Foundation, launched the Workplace Breastfeeding Support Project in September 2016. The successes and challenges experienced by the state grantees are outlined below.

Implementing Workplace Breastfeeding Accommodations

Of women who were working prior to the birth of their first child, almost 60 percent returned to work within three months, and almost 80 percent within 12 months postpartum.²⁶ Given the high rate of maternal employment combined with the timing of when women return to work postpartum, worksites offer a salient opportunity to create policies and practices supportive of breastfeeding, and to improve breastfeeding duration rates.

Employers benefit significantly by providing lactation support. Studies indicate workplace lactation support programs have a return of \$3 for every \$1 invested into such programs.²⁷ Additionally, research suggests that corporations that provide lactation support can see a nearly 28 percent reduction in absenteeism and an almost 36 percent reduction in insurance claims for sick child visits to a health care provider.²⁸

Companies with lactation support programs enjoy higher rates of employee retention and productivity, as compared to companies without such programs. Employer breastfeeding support programs are also associated with job satisfaction, strong morale, and employee loyalty. These programs can also lower employee recruitment and training costs and reduce employee turnover, thus saving even more funds for the company.²⁹ The body of research on the benefits of expanding lactation services in the workplace can be helpful to states as they continue to make the business case for breastfeeding, particularly in a fluid policy environment.

Despite the documented benefit of worksite lactation support for employers and

employees, many barriers for implementation and enforcement of workplace accommodations remain. Identified workplace barriers include lack of flexibility in the work schedule, lack of physical accommodations to pump or store milk, and adverse social norms.³⁰ As employers, state health departments can implement policies and programs that address these perceived barriers, ranging from providing physical space (other than a bathroom) to express and store breast milk, to establishing workplace breastfeeding policy regarding flexible scheduling and time allotments for breaks, and communicating these policies and procedures to employees via educational materials. These solutions not only provide an immediate solution to ensure that nursing mothers are able to access these workplace breastfeeding supports, but may model worksite breastfeeding accommodations for other employers in the state, and may contribute to a larger cultural shift in establishing breastfeeding-friendly worksites.

The AMCHP Workplace Breastfeeding Support Project

AMCHP supports Title V programs and their community partners by providing technical assistance to advance workplace breastfeeding accommodation. With support from the W.K. Kellogg Foundation, AMCHP provided five Title V and/or state breastfeeding coalitions with technical assistance and financial support to:

- Develop model policies for employers on workplace breastfeeding accommodation that can be adapted and replicated by other employers.
- Create model lactation spaces within the health department or support employers in creating a lactation space.
- Replicate best practices around workplace breastfeeding accommodation to increase breastfeeding rates.

Alaska: Alaska Title V combined grants from AMCHP and ASTHO (Association of State and Territorial Health Officials) to create the Alaska Workplace Breastfeeding Support Project, which encouraged Alaska workplaces to initiate or expand workplace breastfeeding accommodations efforts. As part of the project, in October 2016 Alaska released a public request for applications from employers seeking to advance breastfeeding and lactation support in their worksites. The University of Alaska at Anchorage was selected for this initiative, through which they received a lactation pod (a portable, private space with seating, shelving, and electrical and USB ports), as well as assistance in developing a workplace breastfeeding accommodation policy based on the ACA-FLSA requirements.

Arkansas: Arkansas Title V used its grant to provide training to Arkansas employers on the benefits associated with providing private accommodations to breastfeeding mothers to express breast milk at work and about Arkansas laws related to workplace lactation accommodations. The state also used the funds to purchase items for nine Arkansas employers to create comfortable spaces for breastfeeding mothers. These items included glider seating, privacy screens, small refrigerators, and insulated storage bags. These nine employers included two court system offices, a medical center, a WIC clinic, and a high school.

Georgia: Georgia Title V used its grant to create a sub-grant program to increase workplace lactation within the statewide public health districts. The Georgia Department of Public Health (DPH) has 18 public health districts throughout the state, all of which were encouraged to apply for funding through the sub-grant program. Eight applications were received, and two public health districts were awarded funds to equip and furnish a private lactation space for nursing mothers. DPH is providing ongoing technical assistance regarding lactation room supplies and workplace support policies to the two district health departments. The lactation rooms are

currently being constructed and expected to be fully operational by fall 2017.

Illinois: Illinois Title V used its grant to establish official model lactation spaces within the Illinois Department of Public Health offices, located in Springfield and Chicago. The spaces are equipped with recliners, breast pumps, breast pads, storage bags, health educational materials, and a refrigerator for breast milk storage. Illinois also plans to put a suggestion box in the lactation space, set up an official listserv for women utilizing the room, and regularly survey them about the materials in the room.

North Dakota: North Dakota Title V used its grant to support the efforts of three local public health units (LPHUs) in workplace accommodations for nursing mothers within their jurisdictions. The LPHUs worked with businesses to achieve 'Infant Friendly Designation', which is specific to North Dakota and indicates that the business has proper breastfeeding supports for mothers. The LPHUs also used the mini-grant funds for widespread outreach and promotion of the benefits of workplace breastfeeding, particularly by placing monthly advertisements in magazines, newspapers, newsletters, on the radio, and on Facebook. In addition, the funds were used to support a breastfeeding training program for child care providers.

States participating in the mini-grant program cited several barriers to project implementation, including securing external stakeholder buy-in. For example, when the grantees began engaging businesses in the project, they were sometimes met with disinterest, or the businesses expressed lack of capacity and resources to participate in the project. One state also experienced resistance from the general public when it launched a social media campaign on the importance of workplace accommodations for breastfeeding. Another state reported that businesses do support breastfeeding, but they did not want the support to be publicized to the community. These challenges highlight the need for a

multisectoral approach to workplace support for breastfeeding that includes use of non-traditional public health avenues for outreach, promotion, and education, and addressing the underlying need of normalizing breastfeeding amongst the general public.

Remaining Barriers to Successful Breastfeeding in the Workplace

Exclusions from the Law

Some breastfeeding advocates argue that the ACA did not go far enough in its workplace breastfeeding policies. For example, employers with fewer than 50 employees can seek an exemption from the FLSA requirements if compliance would place an undue financial hardship on the employer.* In addition to these employer qualifiers, not all employees are covered by the provision. As it is written, the FLSA applies only to nonexempt employees, or those who typically work for an hourly wage.³¹ Similarly, if nursing employees are completely relieved of their duties while taking a break to nurse or pump, the law does not require employers to compensate an employee for this time. The ACA, however, does not preempt state laws from providing greater protection to employees; for example, state laws may require employers to provide compensation for break time. The DOL asserts that a nursing employee may have a claim for disparate treatment under Title VII of the Civil Rights Act of 1964 should an employer treat the nursing employee differently than employees who take breaks for other personal reasons.³²

Compliance Issues

For those employers with more than 50 employees who are required to adhere to the ACA's breastfeeding provisions, compliance remains an issue. Even in situations in which a company has a strong corporate policy regarding nursing/pumping at work, compliance is not assured. This is particularly

true for companies with satellite offices or franchises where the degree to which the policy is followed can vary site-to-site.³³ Since 2011, DOL has conducted 238 investigations related to noncompliance with the ACA's breastfeeding provisions. These investigations have resulted in 161 violations, including not providing adequate break time, denying women a clean and private space to pump and/or breastfeed, and harassment.³⁴ Aside from employer compliance with the ACA's breastfeeding protections, insurance plan noncompliance is another ongoing issue that may impact a woman's ability to pump or breastfeed.³⁵

Workplace Culture

Another barrier to successful breastfeeding in the workplace is lack of support from co-workers and supervisors. When breastfeeding women face bullying or other divisive comments from their colleagues, it can create a hostile work environment. Such environments may cause women to discontinue breastfeeding earlier than anticipated.

Threats to the ACA and the Workplace Breastfeeding Accommodation

If the ACA is fully or partially overturned, millions of Americans could lose access to health insurance and preventive services such as breastfeeding support and supplies. Additionally, a full repeal would mean the elimination of the "Break Time for Nursing Mothers" provision. As long as the workplace breastfeeding accommodations remain enshrined in the FLSA, the federal measure will preempt any state law affording less protection. If the measure is repealed, however, individual state laws, which vary widely in terms of breastfeeding worksite protections, will once again be in effect.[†]

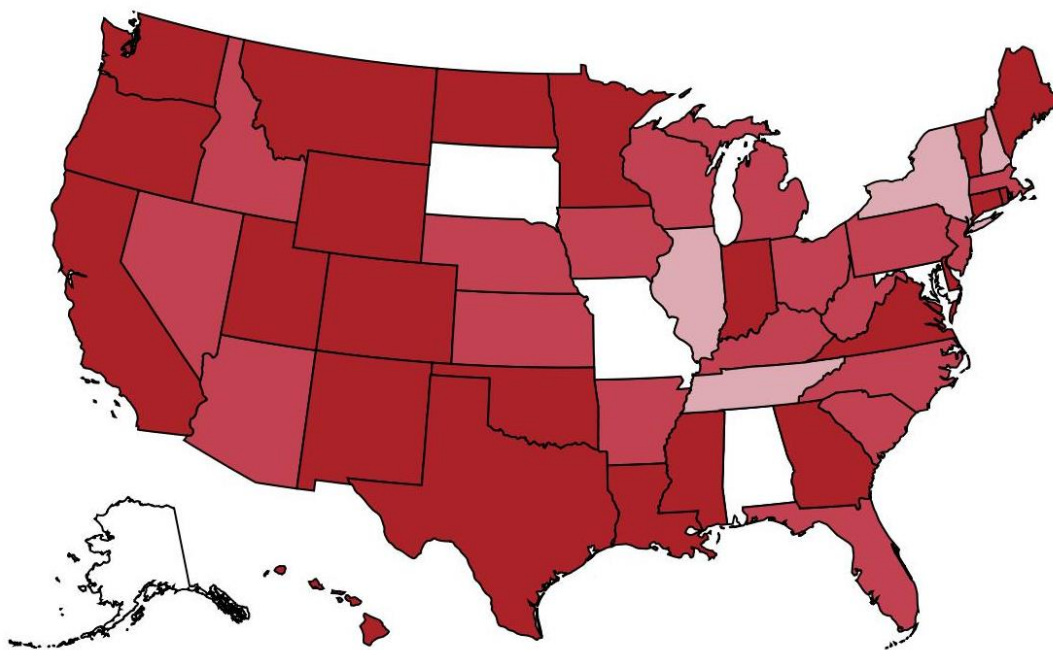
* Undue hardship is defined as "causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business."

† The ACA's breastfeeding provision has historically enjoyed bipartisan support and was not subject to repeal in the American Health Care Act of 2017.

State Legislative Efforts to Sustain Workplace Breastfeeding Accommodations

In response to the growing body of research on the health and economic benefits of breastfeeding, state-level activity to support nursing mothers began before the passage and enactment of the ACA. Many states have laws in place that protect women who breastfeed in public from harassment, exempt breastfeeding from public indecency or lewd conduct laws, and exempt nursing mothers from jury service.³⁶ Additionally, 28 states, Washington, D.C., and Puerto Rico have laws in place to provide workplace breastfeeding accommodations for nursing mothers similar to those in the ACA (see map).³⁷

Title V and State-Based Protections for Workplace Breastfeeding Support



- Did not select NPM #4 (Breastfeeding) OR enact state legislation to promote breastfeeding accommodations
- Enacted state legislation to promote breastfeeding accommodations ONLY
- Selected NPM #4 (Breastfeeding) ONLY
- Selected NPM #4 (Breastfeeding) AND enacted state legislation to promote breastfeeding accommodations

The Role of Title V

Title V programs embrace their role as leaders in improving breastfeeding initiation and duration rates in their states. In 2016, 50 states/jurisdictions selected National Performance Measure #4 – A) percent of infants who are ever breastfed and B) Percent of infants breastfed exclusively through six months – as a priority for their block grant activities. Additionally, four states (Delaware, Missouri,

Ohio, and Tennessee) created a state-based performance measure around breastfeeding. State Title V programs play an important role in helping employers create breastfeeding accommodation for their employees, as well as empowering breastfeeding women to advocate for workplace support policies and programs.

State Title V programs are encouraged to take action to advance workplace breastfeeding accommodation in their states. Specifically, they can:

- Work within their own agencies to establish ACA-compliant, breastfeeding-friendly worksites for state health department staff, and model workplace support for other public agencies;
- Collaborate with other statewide breastfeeding partners and advocates, such as breastfeeding coalitions and task forces;
- Provide training and resources to employers within the state to guide implementation of regulations on reasonable break time for nursing mothers;
- Create action learning collaboratives for employers within the state and provide technical assistance and resources to selected employers;
- Create an infant-friendly or baby-friendly designation for worksites to promote a positive breastfeeding workplace culture, and incentivize local businesses to obtain this certification;
- Convene a workgroup within the state health department to collaborate on the mission to increase statewide workplace lactation accommodation.

Conclusion

The three prongs of the ACA breastfeeding provision – the inclusion of breastfeeding support and supplies in the women’s preventive services package, PPHF financing of breastfeeding promotion, and the workplace accommodation rules – form a robust federal policy in support of breastfeeding. More work needs to be done, however, to remove the access barriers women throughout the country experience when trying to exercise their right to pump or breastfeed at work. Eradicating these barriers must be a joint effort among public health, breastfeeding advocates, health care clinicians, employers, and state and federal policymakers.

Resources

- **National Conference of State Legislatures:** [Breastfeeding State Laws](#)
- **National Women’s Law Center:** [New Benefits for Breastfeeding Moms](#)
- **National Women’s Law Center:** [State of Breastfeeding Coverage](#)
- **U.S. Breastfeeding Committee:** [Federal Workplace Law](#)
- **U.S. Centers for Disease Control and Prevention:** [How Employment Can Support Breastfeeding](#)
- **U.S. Centers for Disease Control and Prevention:** [Support for Breastfeeding in the Workplace](#)
- **U.S. Department of Health and Human Services, Office on Women’s Health:** [Time and Space Solutions for Employers](#)
- **U.S. Department of Health and Human Services, Office on Women’s Health:** [The Business Case for Breastfeeding](#)

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AMCHP Staff Contact Information

This fact sheet is part of a series of AMCHP tools, documents and resources on implementation of the Affordable Care Act and its impact on maternal and child health populations. For more information, please visit www.amchp.org. All AMCHP staff can be reached via phone at (202) 775-0436.

End Notes

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