LEGAL PROTECTIONS FOR NURSING MOTHERS IN MINNESOTA

Webinar
Public Health Law Center
September 20, 2011

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Presenters

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- **Corey Davis**, J.D., M.S.P.H., Staff Attorney, National Health Law Program (NHeLP) and Public Health Law Network
- **Juliana Milhofer**, J.D., Pro Bono Attorney, Public Health Law Center
Benefits of Breastfeeding
Benefits of Breastfeeding

Dr. Rachel Lynch, M.D.
Community Pediatric and Adolescent Medicine
Mayo Clinic
September 20, 2011
Overview

• Infant Benefits of Breastfeeding

• Maternal Benefits of Breastfeeding

• Societal Benefits of Breastfeeding
Reduced Risk of Infectious Diseases in Breastfed Infants

- Decreased risk of upper and lower respiratory tract infections in infancy
- Decrease in otitis media
- Decreased risk of infections in the gastrointestinal tract during infancy
Mechanism for protection against infectious diseases

• Serum immunoglobulin A (sIgA)
  • When the breastfeeding mother is exposed to an antigen (a germ), her immune system reacts by making anti-microbial (anti-germ) proteins.
  • sIgA is one type of protein made by immune cells in the mammary gland
  • sIgA is then secreted in the milk
Mechanism for protection from infectious diseases

• This is ingested by the infant, giving him or her protection from that antigen (germ)
Mechanism of protection from infectious diseases

- sIgA and other anti-microbial proteins are found in the urine of breastfed babies.

- Decreased risk of urinary tract infection
Benefits for Preterm Infants

- Decreased risk of necrotizing enterocolitis
- Decreased risk of sepsis
Decrease in allergic disease

- Decrease in atopic dermatitis

- Lower risk of recurrent wheezing in the first 2 years of life
Analgesic effect

- Reduces response to pain during minor invasive procedures
  - Mechanism likely due to oxytocin and prolactin, leading to improved mother-infant bonding, reducing stress.
Other possible health benefits for infants

- Decreased rate of sudden infant death syndrome
- Reduced incidence of obesity
Other possible health benefits for infants

• Reduced incidence of diabetes mellitus

• Decreased overall risk of childhood cancer
Other possible health benefits for infants

- Improved cognitive development
- Improved visual development
Maternal Benefits of Breastfeeding

- Decreases risk of postpartum hemorrhage
- Lowers risk of ovarian and breast cancer
Maternal Benefits of Breastfeeding

• Speeds post-partum weight loss

• May decrease risk of osteoporosis in post-menopausal period
Societal Benefits of Breastfeeding

• Reduced health care costs
• Fewer missed work days for parent employees
• Environmentally friendly
  • Reduced cost of energy and use of natural resources for manufacture and transport of infant formula.
References


Federal Law

Health Care Reform and Nursing Mothers

Summary

Despite overwhelming evidence that breastfeeding and the exclusive provision of breast milk to infants improves health, saves money, and increases productivity, the percentage of American women who breastfeed remains far below that recommended by medical experts and governmental organizations. The necessity of returning to work combined with lack of supportive work environments, including appropriate time and space to express milk, is a significant contributing factor to low levels of exclusive breastfeeding in the United States.

The Patient Protection and Affordable Care Act (“ACA” or “the Act”) aims to improve access to health care and health outcomes through a number of mechanisms. While the bulk of the ACA’s impact is likely to come from provisions that improve access to health insurance, insurance and evidence-based care, many other provisions are likely to have a positive impact on individual and public health as well. Among these provisions is Section 4207.

Section 4207 is intended to make easier for the more than 55 percent of women with children under the age of two who participate in the labor force to initiate and continue breastfeeding and providing breast milk to their children. The section, which amends the Fair Labor Standards Act (“FLSA”), requires employers to provide both time and space for the employers’ employees who request breast milk to express breast milk. This change is expected to increase the likelihood that the employees will express breast milk.

Background

The benefits of breastfeeding and the exclusive feeding of breast milk to infants are widely recognized and well documented. Studies associate exclusive breastfeeding with a reduced rate of gastrointestinal and respiratory infections in infants, as well as a reduced risk of the future development of diseases including obesity, diabetes and certain types of cancer. Experts estimate that increasing the rate of exclusive breastfeeding among American mothers to 50 percent would save 900 lives per year, most of them infants. Maternal benefits include a reduced risk that mothers will later develop breast cancer and ovarian cancer.

Based on this evidence, expert panels and professional organizations including the American Academy of Pediatrics, the American Academy of Obstetricians and Gynecologists, the American Academy of Family Physicians and the World Health Organization recommend that infants be exclusively breastfed for the first six months of life. The Surgeon General of the United States has recently noted the benefits of breastfeeding to women, infants and employers.

The economic case for breastfeeding is strong. The United States Department of Agriculture has concluded that a minimum of $3.6 billion would be saved if the prevalence of exclusive breastfeeding increased from current rates to those recommended by the Surgeon General. A more recent study using

Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision

Effective March 23, 2010, the Patient Protection and Affordable Care Act amended the FLSA to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of her child. The amendment also requires that employers provide a place for an employee to express breast milk.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

(1) An employer shall provide—

A. a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk; and

B. a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

Robert Wood Johnson Foundation
Legal Protections for Nursing Mothers
An Overview of Federal Law

Corey Davis, JD, MSPH
Background

The evidence is overwhelming that:

• Breastfeeding is good for babies
• Breastfeeding is good for mothers
• Breastfeeding is good for business

Nevertheless, American mothers breastfeed at rates far below expert recommendations
Why?

A number of overlapping reasons:

• Culture
• Knowledge
• Lack of support
• Health care policies
• Time
• Embarrassment
• **Work and workplace policies**
## Race & Class

### Table 2. Provisional Breastfeeding Rates Among Children Born in 2007*

<table>
<thead>
<tr>
<th>Sociodemographic Factor</th>
<th>Ever Breastfed (%)</th>
<th>Breastfeeding at 6 Months (%)</th>
<th>Breastfeeding at 12 Months (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>United States</strong></td>
<td>75.0</td>
<td>43.0</td>
<td>22.4</td>
</tr>
<tr>
<td><strong>Race/ethnicity</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian or Alaska Native</td>
<td>73.8</td>
<td>42.4</td>
<td>20.7</td>
</tr>
<tr>
<td>Asian or Pacific Islander</td>
<td>83.0</td>
<td>56.4</td>
<td>32.8</td>
</tr>
<tr>
<td>Hispanic or Latino</td>
<td>80.6</td>
<td>46.0</td>
<td>24.7</td>
</tr>
<tr>
<td>Non-Hispanic Black or African American</td>
<td>58.1</td>
<td>27.5</td>
<td>12.5</td>
</tr>
<tr>
<td>Non-Hispanic White</td>
<td>76.2</td>
<td>44.7</td>
<td>23.3</td>
</tr>
<tr>
<td><strong>Receiving WIC†</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>67.5</td>
<td>33.7</td>
<td>17.5</td>
</tr>
<tr>
<td>No, but eligible</td>
<td>77.5</td>
<td>48.2</td>
<td>30.7</td>
</tr>
<tr>
<td>Ineligible</td>
<td>84.6</td>
<td>54.2</td>
<td>27.6</td>
</tr>
<tr>
<td><strong>Maternal education</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not a high school graduate</td>
<td>67.0</td>
<td>37.0</td>
<td>21.9</td>
</tr>
<tr>
<td>High school graduate</td>
<td>66.1</td>
<td>31.4</td>
<td>15.1</td>
</tr>
<tr>
<td>Some college</td>
<td>76.5</td>
<td>41.0</td>
<td>20.5</td>
</tr>
<tr>
<td>College graduate</td>
<td>88.3</td>
<td>59.9</td>
<td>31.1</td>
</tr>
</tbody>
</table>
Race & Class

• African American women tend to return to work earlier after childbirth than white women, and they are more likely to work in environments that do not support breastfeeding

• Non-white women are more likely to work in service and non-professional/non-managerial jobs
Federal Law

Affordable Care Act Section 4207 requires employer to provide:

• “reasonable break time... to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk”
Federal Law

Employer must provide:

• “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public” in which the mother can express the milk
Federal Law

Break need not be paid if the employee is completely released from work duties

• However, if the employer provides paid breaks to other employees and the nursing mother uses that time to express milk, she must be compensated in the same way other employees are compensated for break time
Federal Law

No preemption

• Where a state law provides greater rights to employees (for example, by providing compensated break time, break time for exempt employees, or break time beyond one year after the child’s birth), state law will control
Who is Covered

Workers covered by Section 7 of the FLSA

• In general, non-agricultural, non-salaried workers are covered

• In general, salaried workers are not covered

• Applies to ALL workers covered by Section 7
  • Applies regardless of citizenship status and whether mother has permission to work
Who is Covered

Employers with fewer than 50 employees exempt if complying would “impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business”

• NOT automatic
• Presumption against exemption
Related Federal Laws

• Employer cannot punish employee for filing complaint (29 U.S.C. § 215(a)(3))
  • This includes reporting undocumented employees to INS

• Employer cannot treat employee who takes breaks to nurse differently than employee who takes breaks for other personal reasons (42 U.S.C. § 1981a)
Penalties

• Federal judge can order employer to comply
• Fine for willful violation: up to $10,000
• Repeated violators: up to six months in federal prison
How to Report Violations

United States Dept. of Labor
1-866-4USADOL
1-866-4USWAGE
http://www.dol.gov/dol/contact/
181.939 NURSING MOTHERS.

An employer must provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child. The break time must, if possible, run concurrently with any break time already provided to the employee. An employer is not required to provide break time under this section if to do so would unduly disrupt the operations of the employer.

The employer must make reasonable efforts to provide a room or other location, in close proximity to the work area, other than a toilet stall, where the employee can express her milk in privacy. The employer would be held harmless if reasonable effort has been made.

For the purposes of this section, "employer" means a person or entity that employs one or more employees and includes the state and its political subdivisions.

History: 1998 c 369 s 1

145.905 LOCATION FOR BREAST-FEEDING.

A mother may breast-feed in any location, public or private, where the mother and child are otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast-feeding.

History: 1995 c 407 art 2 s 83
LEGAL PROTECTIONS FOR NURSING MOTHERS IN MINNESOTA

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September 20, 2011
LEGAL PROTECTIONS FOR NURSES MOTHERS IN MINNESOTA

NURSING MOTHERS HAVE LEGAL PROTECTIONS IN THE WORKPLACE AND IN PUBLIC

May 2011

In Minnesota, over 80% of women breastfeed their newborn infants and more than 50% still breastfeed six months after birth. This is higher than the national average, where 75% of women were breastfed and only 40% breastfed at six months. While many states have laws protecting nursing mothers in the workplace, Minnesota has some of the strongest laws in support of breastfeeding. In Minnesota, nursing mothers have legal protections in the workplace, as well as in public locations like parks, restaurants, or stores. This fact sheet provides an overview of the Minnesota and federal laws that protect nursing mothers in the workplace and in public.

Affordable Care Act: employees are required to provide nursing mothers with reasonable and appropriate space and time to express milk. Employers must allow employees to use other break times for these purposes.

“Minnesota has some of the strongest laws in support of breastfeeding”

Under Minnesota law, employees who work for an employer with one or more employees are covered. Under federal law, only employees who are covered under the Fair Labor Standards Act are covered. The requirements under the federal law apply regardless of the employer’s status or whether or not the employer is legally required to work in the United States. Undocumented workers should consult an attorney for information on their specific situation.

Q: What is the time and space required by my employer to provide me to express milk?

A: Under Minnesota law, employers are required to provide a private and sanitary place for employees to express milk. Employers must allow employees to use other break times for these purposes.

Q: Which employees are covered under Minnesota law?

A: Under Minnesota law, employees who work for an employer with one or more employees are covered. Under federal law, only employees who are covered under the Fair Labor Standards Act are covered. The requirements under the federal law apply regardless of the employer’s status or whether or not the employer is legally required to work in the United States. Undocumented workers should consult an attorney for information on their specific situation.

Q: How many breaks will I be allowed to take, and will I get paid for break times taken to express milk?

A: Under federal law, the break time must be provided “each time” the employee has a need to express milk. The number of breaks will vary from woman to woman. Under both Minnesota and federal law, an employer is not required to compensate an employee who is receiving reasonable break time for the purpose of expressing milk, unless that break time occurs during a paid break.

Q: What if I encounter difficulties in obtaining break time or space to express milk in the workplace?

A: Understanding the law can be complicated for both you and your employer. Therefore, it may be helpful to contact someone for ideas on how to talk to your employer about arranging a time and space to express milk in the workplace.

Q: What additional resources are available to help me understand the break time requirements for nursing mothers?

A: The federal government has a fact sheet and a list of frequently asked questions to assist nursing mothers in understanding the federal law. The website is www.dol.gov/wkdd/nursingmothers. The Minnesota Breastfeeding Coalition’s website is www.mbnurse.org.

Q: In addition to workplace protections, does Minnesota law allow breastfeeding in public?

A: Yes. Minnesota law allows breastfeeding in any location, public or private, where the mother and child are allowed to be. A mother may breastfeed her child anywhere even if the ripple or breast is uncovered while breastfeeding.

Q: Are there any additional benefits programs that assist nursing mothers?

A: Yes. The Women, Infants and Children (WIC) program provides foods, health care referrals, and nutrition education to eligible pregnant women, new mothers, babies, and young children.

Q: What if I am unable to resolve the problem with my employer?

A: To file a complaint or report a violation under Minnesota law, contact the Minnesota Department of Labor and Industry at 651-284-5605 or toll-free at 1-888-342-5354. To file a complaint or report a violation under federal law, visit the U.S. Department of Labor’s Wage and Hour Division website at www.dol.gov/wac/helplines.htm or contact the local District Office at 612-370-3341.

For related publications, visit www.publichealthlawcenter.org.
## Statistics

<table>
<thead>
<tr>
<th>Minnesota</th>
<th>Nationwide</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 80% of women breastfeed their newborn infants</td>
<td>Approx. 75% of women have ever breastfed</td>
</tr>
<tr>
<td>More than 50% still breastfeed six months after birth</td>
<td>Only about 44% breastfeed at six months</td>
</tr>
</tbody>
</table>

**Source:** Breastfeeding Report Card – United States 2011, Centers for Disease Control and Prevention (CDC)
Laws Related to Breastfeeding

Breastfeeding and the Workplace
- 24 states, the District of Columbia and Puerto Rico

Breastfeeding Allowed in Public
- 45 states, the District of Columbia and the Virgin Islands

Breastfeeding Exempt from Public Indecency Laws
- 28 states, the District of Columbia and the Virgin Islands

Minneapolis law protects nursing mothers in all of these areas

Source: National Conference of State Legislatures – Breastfeeding Laws
Breastfeeding in Public

A mother can breastfeed in any location, public or private, where the mother and child are allowed to be.

Not a violation of Minnesota’s indecent exposure laws

MINN. STAT. § 145.905; MINN. STAT. § 617.23, subd. 4
Expressing Milk in the Workplace

Minnesota Law Requires

- Reasonable time
- Appropriate space

MINN. STAT. § 181.939
Employer must provide:

- Reasonable unpaid break time, at the same time as other break times (if possible)

Employer must make reasonable efforts to:

- Provide a room, in close proximity to work area, other than a toilet stall, where employee can express milk in privacy
An employer must provide:

- Reasonable unpaid break time, at the same time as other break times (if possible)
- A space (not a bathroom) shielded from view, near your work area (if reasonable), and free from intrusion
Exemptions

**Break Time**

- “Unduly Disrupt” operations of employer

**Location**

- “Reasonable effort” made to provide room or other location
Which Employees are Covered?

- Employees who work for an employer with one or more employees are covered
Advance Notice

- Advance notice of intent to take breaks at work to express milk
- Will give employers time to plan for employee’s absence during their break times
Number of Breaks

Number of breaks not specified

Number of breaks will vary from woman to woman
Compensation

- Employer NOT required to compensate an employee receiving reasonable break time

  **Note:** Unless that break time occurs during a paid break

MINN. STAT. § 181.939
Tax Benefits

Breast pumps and supplies that assist lactation can be included as medical expenses for flexible spending accounts and as a tax deduction in limited circumstances.

Source: Publication 502, Internal Revenue Service
Issues Obtaining Time & Space
What to Do?

- Contact someone for ideas on how to talk to employer about arranging:
  - Time
  - Space
- Resources
Unable to Resolve Issue with Employer - Minnesota Law

Filing a Complaint or Reporting a Violation under Minnesota Law

Contact the Minnesota Department of Labor and Industry

- (651) 284-5005, or
- Toll-free at 1-800-342-5354
Lactation/Breastfeeding Policies & Programs
Developing a Policy/Program for your Workplace

Develop a lactation/breastfeeding policy or program for your workplace that includes:

- **Support for Breastfeeding**
- **Employer Responsibilities**
  - Staff Support
  - Time and Space
- **Employee Responsibilities**
  - Communication with supervisor
  - Maintenance of milk expression areas
  - Storage of milk

*Source:* Business Case for Breastfeeding - U.S. Department of Health and Human Services, Office on Women’s Health
Example of Lactation/Breastfeeding Policy or Program

Le Sueur County Public Health

- Lactation/Breastfeeding Policy
- Lactation Room
Resources to Understand the Break Time Requirement for Nursing Mothers

- **U.S. Department of Labor**
  - Fact Sheet #73: Break Time for Nursing Mothers under the FSLA [http://www.dol.gov/whd/regs/compliance/whdfs73.htm](http://www.dol.gov/whd/regs/compliance/whdfs73.htm)

- **The Public Health Law Center**

- **Public Health Law Network**
For questions regarding the legal protections for nursing mothers in Minnesota, please contact the Public Health Law Center.

- Phone: (651) 290-7506
- Email: publichealthlaw@wmitchell.edu