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INTRODUCTION

Section 4207 of the Patient Protection and Affordable Care Act (ACA) revises the Fair Labor Standards Act (FLSA) by requiring employers to provide nursing mothers with 1) reasonable break time to express milk for one year after her child's birth each time such employee has need to express breast milk; and 2) a private space, other than a bathroom, that is shielded from view and free from intrusion of others, to express breast milk. This legislation has significant impact on worksite accommodations for nursing mothers. In the United States, over one-third of all mothers working outside the home have children younger than two years of age. Many of these mothers desire and intend to exclusively breastfeed until their babies reach six months of age, at minimum. However, according to the Centers for Disease Control and Prevention, while 75 percent of mothers in the United States breastfeed from the start, only 22% of babies are still breastfed by the twelve-month mark.

There are many reasons why nursing mothers are unable to breastfeed for as long as they desire and returning to work is a primary factor (Wenjun, & Acosta, 2002). When working mothers receive workplace support, such as adequate space and time to express milk, support from supervisors and colleagues, and education, they are often able to continue to successfully breastfeed their child. Another complicating factor is lack of privacy in the workplace, as well as the commonly held fear that nursing mothers will be perceived as less productive if they choose to express breast milk during the workday. The ACA addresses these concerns.

The American Academy of Pediatrics recommends breastfeeding exclusively for at least the first six months after birth and, ideally, until or after the child is twelve months of age. The World Health Organization, the U.S. Surgeon General's Office, and the American Academy of Family Physicians agree. For example, the Surgeon General released a Call to Action in 2011 to support breastfeeding. Several action items were directed toward employment, such as ensuring that employers establish and maintain comprehensive, high-quality nursing mothers support programs for employees. In addition, the Healthy People Initiative, managed by the Office of Disease Prevention and Health Promotion at the Department of Health and Human Services (HHS), includes a goal for increasing the number of workplaces that provide nursing mothers support services from 25% to 38% of workplaces.

Continued breastfeeding offers a variety of noted benefits for mothers, their babies, and their employers. The ACA facilitates the continuation of breastfeeding and helps nursing mothers to better integrate their work and family needs. Many agencies go beyond the requirements of the legislation to actively support nursing mothers through various programs, resources, and facilities.

DEFINITIONS

Breastfeeding

It is difficult to assign a single definition to the term “breastfeeding,” because there are multiple behaviors that constitute breastfeeding. The term may be used in reference to full breastfeeding, partial breastfeeding, token breastfeeding, or exclusive expression of milk using a breast pump (Labbok & Krasovec, 1990). Moreover, within the categories of full and partial breastfeeding are further subtopics. Full breastfeeding is understood to be either exclusive breastfeeding (no other liquid or solid is given to the baby) or almost exclusive breastfeeding (vitamins, water, or other liquids are given to the baby occasionally in addition to breastfeeding). Partial breastfeeding includes varying levels of breastfeeding. Token breastfeeding refers to breastfeeding that is not for nutritive purposes. Rather, it is breastfeeding conducted for comfort and consolation to the infant. Token breastfeeding is minimal, infrequent, and irregular. The final category of breastfeeding is exclusive pumping. Some women may choose to exclusively pump breast milk for a variety of reasons. For example, it is sometimes more difficult to nurse babies with cleft palates or those born prematurely, or the mothers had early difficulties getting the baby to latch at the breast.

Workplace Support

As the Nation’s largest employer, the Federal Government strives to be a groundbreaker in the development of wellness programs and policies, including support for breastfeeding. The level of support provided to nursing mothers currently varies across workplaces. Support for breastfeeding in the workplace is defined by a variety of characteristics. These may include offering benefits and services to employees; educating employees about breastfeeding; providing time and space for nursing mothers to express breast milk; allowing flexible schedules for break time; providing mothers with the option to telework or work part-time; providing access to or resources for childcare; providing breast pumps or discounts to purchase breast pumps; offering lactation services and consultants; and providing an effective nursing mother’s program and facility. OPM urges agencies to support all nursing mothers to the fullest extent possible.

Private Space

A room for nursing mothers is private space a nursing mother can use to express milk. This space must be shielded from view and free from intrusion of others. A nursing mother’s room must be functional, with a private space with a place to sit and a flat surface, other than the floor, to place the breast pump and other supplies. Although there are no size or permanency requirements, these rooms should provide access to electricity for the use of a breast pump, as well as good lighting, a comfortable temperature, and proper ventilation. Further, a room for nursing mothers should be clean and agencies should provide cleaning wipes and paper towels. Nursing mother’s rooms with exceptional accommodations may include a breast pump provided

by the agency, refrigerator, microwave for sterilization of breast pump parts, comfortable chair, table, clock, mirror, and sink.

LEGISLATIVE BACKGROUND

The Affordable Care Act added a new subsection (r) to section 7 of the Fair Labor Standards Act (FLSA), requiring employers to provide nursing mothers with:

- 1) a reasonable break time to express milk for one year after her child's birth each time such employee has need to express breast milk; and
- 2) a private space, other than a bathroom, that is shielded from view and free from intrusion of others, to express breast milk.

Subsection (r) applies only to employees who are non-exempt from Section 7 of FLSA. However, on December 20, 2010, President Obama delegated his authority to regulate the conduct of Executive Branch employees (see 5 U.S.C. 7301) with reference to this topic to the U.S. Office of Personnel Management (OPM), to provide appropriate workplace accommodations for Executive branch civilian employees who are nursing mothers. In accordance with this authority, Director John Berry, in a memorandum dated December 22, 2010, established that it is the policy of the Federal Government to apply the same procedures specified in subsection 7(r) of the FLSA to Executive Branch civilian employees who are exempt from section 7 of the FLSA, as well.

Time for Breaks

As implemented for the Executive Branch, agencies should provide nursing mothers with a reasonable break time to express breast milk whenever needed throughout the workday. The frequency and duration of time necessary to express breast milk may vary depending on the needs of the nursing mother.

Location of Breaks

Agencies should provide nursing mothers with a private space, other than a bathroom, that is shielded from view and free from intrusion of others to express breast milk. While the space does not need to be exclusively dedicated to this purpose, a temporary space that meets the other requirements listed above is appropriate.

Compensation

The legislation does not require employers to compensate nursing mothers for breaks taken to express breast milk. However, if a nursing mother chooses to use an established compensated

break time as a time to express breast milk, then she must be compensated as she normally would.

For more information, please see:

The United States Department of Labor fact sheet:

<http://www.dol.gov/whd/regs/compliance/whdfs73.htm>

The Office of Personnel Management Memorandum, as well as answers to frequently asked questions regarding break time and space for nursing mothers:

<http://www.dol.gov/whd/nursingmothers/NMothersFederalEmplmnt.pdf>

BENEFITS

Supportive breastfeeding policies and practices in the workplace not only benefit the working mother but also provide a number of benefits to the baby *and* the employer. Listed below are some of the benefits for each of the three groups.

For Agencies

Supportive breastfeeding policies and practices in the workplace can positively impact an agency's mission. Some benefits agencies may experience include the following:

- ***Productivity*** – Agencies that support their employees' use of this program facilitate greater workplace productivity. When such support is established, employees who breastfeed tend to have fewer absences and fewer instances of tardiness (than mothers who do not nurse their infants) because their infants are more resistant to sickness.
- ***Organizational Loyalty*** – Employees often feel increased loyalty to the agency because the implementation of an effective support program demonstrates that the agency supports the employee, her family, and her health.
- ***Recruitment and Retention*** – Worksite support programs serve as an attractive recruitment tool for employing top-notch candidates. These programs can facilitate positive public relations, which improve the agency image and its ability to recruit employees of the highest caliber. Agencies that offer effective programs often have higher retention rates of female employees. Such agencies have demonstrated a 94.2 percent retention rate of female employees, compared to the national average of 59 percent (Gartner, Morton, Lawrence, Naylor, O'Hare, Schanler, & Eidelman, 2005).

- **Job Satisfaction** – Having effective programs demonstrates support for employees and their health. Agencies that display support for their employees facilitate greater workplace satisfaction. There is improved morale in the workplace as well as a greater feeling of unity and closeness (Slavit, 2009).

For Mothers

Supportive breastfeeding policies and practices in the workplace provide significant benefits to nursing mothers, including the following:

- **Productivity** – Nursing mothers who use these programs and facilities in the workplace often demonstrate higher productivity than new mothers who do not (Berger, Hill, & Waldfogel, 2005). This is frequently attributed to a lessened emotional and psychological burden associated with being away from the baby, as well as higher energy and greater optimism.
- **Fewer Distractions** – Nursing mothers who are able to express breast milk in the workplace are better able to concentrate during the workday. A breast infection and/or a drop in her ability to produce milk can result if a mother is unable to express breast milk each time she feels the need to do so.
- **Absenteeism** – Nursing mothers who use these programs and facilities exhibit lower absenteeism (Slavit, 2009). Both mothers and fathers take fewer sick days for children's illnesses because infants who are breastfed are often healthier and better protected from various sicknesses and infections.
- **Overall Health** – There are several noted benefits to a mother's health if she nurses her child, including lower risks of breast and ovarian cancer, as well as a lower risk of diabetes (Labbok & Krasovec, 1990).

For Babies

Supportive breastfeeding policies and practices in the workplace have immediate and long-term benefits for the children of female employees who breastfeed. Some of these benefits include:

- **Health** – Babies who are breastfed experience positive impacts on their health as adults as well as better immune system development and functioning. Breastfeeding passes on antibodies to babies, which help protect their immune systems from disease. Breastfed babies tend to have fewer and less severe instances of certain short-term illnesses, including bacterial meningitis, diarrhea, ear infections, respiratory infections, urinary

- Access to a refrigerator to store milk, with freezer section, if possible, to freeze ice packs
- Access to electricity
- Multi-user hospital grade breast pumps provided for quick and efficient pumping
- Access to cleaning supplies (e.g., paper towels and cleaning wipes)
- Natural lighting in the provided space
- The room is kept at a comfortable temperature to ensure that nursing mothers can initiate milk flow
- A sign-up sheet, either online or posted, for use of the nursing mother's room

Best Practices

- A clean, permanent nursing mother's room created for the use of nursing mothers (assuming there are enough nursing mothers to warrant one)
- A room that locks from the inside (which still allows entry from Emergency Response Personnel) or other way to secure the room from intrusion while being used. A sink with hot and cold running water with high neck faucet and handle(s) and separate taps to control temperature of the water
- A refrigerator with a freezer section to freeze ice packs provided exclusively for the storage of breast milk
- Access to electricity
- Multi-user hospital grade breast pumps for quick and efficient pumping
- A daily cleaning regimen, provided by the agency
- Comfortable seating (e.g. ergonomic chairs, recliners)
- Soft lighting and calming décor
- Access to pregnancy and breastfeeding pamphlets, books, videos, and other resources
- Natural lighting in the provided space
- A sign-up sheet, either online or posted, for use of the nursing mother's room
- A comfortable temperature to ensure that nursing mothers can initiate milk flow

- A microwave for the sterilization of materials and supplies
- Contact information for consultants and guidance counselors
- Posted information on events and classes for one or both parents
- Prenatal education during lunch breaks for both mothers and fathers (i.e., “lunch and learns”)
- Breastfeeding literature for nursing mothers that addresses common issues (e.g., maintaining milk supply)
- Prenatal and breastfeeding education for co-workers to demonstrate the necessity and benefits of pumping in the workplace
- A handbook for management that details the policy of the nursing mother’s program
- A program manager or point of contact who is available and easily accessible for information regarding the nursing mother’s program
- Opportunities for feedback to the agency from employees about the nursing mother’s program and/or rooms
- A full-length mirror to allow mothers to check/adjust their clothing before leaving the nursing mother’s room
- A clock
- A bulletin board for posting pumping schedules, notices, and photos of the mother’s babies which can encourage milk flow
- Hooks to hang mothers’ bags of attachment kits and additional items needed when using the room

FEDERAL AGENCIES WITH SUCCESSFUL WORKSITE PROGRAMS

Many Federal agencies are working towards implementing outstanding programs in their workplaces. Some Federal agencies have already succeeded in doing so and have been recognized as having outstanding programs and facilities available to nursing mothers:

National Security Agency:

- Exceptional, award-winning program in existence since the 1980s
- Breast pumps are available, as well as refrigerators and microwaves
- Over 150 women are enrolled in the program at any given time
- Over 25 on-site rooms with individual room points of contact to ensure smooth operation
- Supervisors and employees work together to provide feedback regarding the program and improve as necessary, including an annual program survey
- Monthly Nursing Mothers Program overview sessions for soon-to-be or recently returned nursing mothers
- Robust Nursing Mothers Program website and Nursing Mothers Network blog and email aliases
- Twenty-four hour access with cipher locks
- Telephone to call 911 or receive emergency calls
- Prenatal educational kits that include breastfeeding information
- Lending Library with many materials regarding breastfeeding, as well as parenting
- Live, online, and DVD educational seminars on topics such as nutrition during pregnancy and breastfeeding
- Expectant and new parent open house
- Preservation-free flu shots that are offered to expectant and nursing mothers exclusively

National Institutes of Health:

- On-site prenatal breastfeeding education classes (“How to Get Started with Breastfeeding?” and “Breastfeeding and Return to Work”)
- Telephone support for those on maternity leave seeking advice and solutions to problems
- Return-to-work consultation

On-site rooms equipped with breast pumps for employees, contractors, and visitors

- On-site lactation consultants
- Room schedule and sign-up access
- Cleaning supplies provided in each room
- Information on the statistics and benefits of breastfeeding

Department of Energy Headquarters:

- Demonstrates support for mothers returning to work who wish to continue to breastfeed their baby
- Advocates for nursing mothers who wish to take breaks during the workday to express breast milk
- Provides a separate room within each of its health clinics
- Provides assistance or consultation for nursing mothers; one nurse is a Certified Lactation Specialist

The Congressional Program:

- A policy for the utilization of the rooms includes a sign-up for three-month increments to maintain accountability and keep a record of usage
- Twenty-four-hour access with a security code to private rooms
- Hand air dryers, paper towels, and antibacterial wipes provided to assist with cleaning

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