

*Supportive Workplace Policies Are Critical for Nursing Mothers*

Written Statement of  
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and  
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for  
“Hearing on Health Care Law’s Impact on Jobs, Employers, and the Economy”

Committee on Ways and Means  
U.S. House of Representatives  
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**The Affordable Care Act (ACA) gives millions of nursing moms the support and protection they need. The law is an important step in making sure the nation’s workplaces meet the needs of working women and their families.** The National Partnership for Women & Families and the United States Breastfeeding Committee would like to clarify the scope of this important new provision in the law and address some misconceptions expressed during the Ways and Means Committee hearing.

Every year roughly four million women give birth in the United States,<sup>1</sup> and more than 75 percent of them choose to breastfeed.<sup>2</sup> Study after study has shown that breastfeeding has tremendous value in protecting both mothers and children from a number of acute and chronic diseases and conditions.<sup>3</sup> And research shows that employer support—which could include breastfeeding education, counseling, private lactation rooms, and breast pumps—makes a tremendous difference in a woman’s ability to breastfeed. According to one study, such supports helped as many as 98 percent of working mothers start breastfeeding, and 58 percent continued for six months or longer.<sup>4</sup> There is no question that these policies work.

Unfortunately, a lack of supportive workplace policies and laws has forced too many nursing mothers to quit breastfeeding (or never start). Some new mothers have found their employers to

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<sup>1</sup> Centers for Disease Control and Prevention. (2010). *FastStats: Births and Natality*. Retrieved 19 January 2011, from <http://www.cdc.gov/nchs/fastats/births.htm>.

<sup>2</sup> Centers for Disease Control and Prevention. (2010). *Breastfeeding Report Card, United States: Outcome Indicators*. Retrieved 19 January 2011, from <http://www.cdc.gov/breastfeeding/data/reportcard2.htm>

<sup>3</sup> Bartick, M. & Reinhold, A. (2010, May). The Burden of Suboptimal Breastfeeding in the United States: A Pediatric Cost. *Pediatrics*, 125(5), e1048-e1056.

<sup>4</sup> Drago, R., Hayes, J., & Yi, Y. (2010). *Better Health for Mothers and Children: Breastfeeding Accommodations under the Affordable Care Act*. Institute for Women’s Policy Research Publication. Retrieved 18 January 2011, from <http://www.iwpr.org/pdf/B292.pdf>.

be outright hostile, while others simply face work environments that offer nowhere private or sanitary to express breast milk.<sup>5</sup>

**Congress and the Obama administration have taken a key first step to improve workplace laws for nursing mothers.** For the first time, federal law now explicitly protects nursing mothers in the workplace. Section 4207 of the Patient Protection and Affordable Care Act gives covered female employees **the right to reasonable break times and a private location, other than a bathroom, to express milk at work.**<sup>6</sup> This means that employers must provide nursing mothers a reasonable amount of break time and functional space to express milk. This provision applies to employers of all sizes but, in certain limited instances, those with fewer than 50 total employees may not have to comply with the law if they face undue hardship in meeting these basic requirements. The Department of Labor (DOL) is in the process of developing guidance on this issue and has published a Request for Information.<sup>7</sup>

Although we cannot know the exact contours of the requirements set by this provision of the law until that guidance is completed, we believe that the overwhelming majority of employers will have absolutely no difficulty complying. Indeed, the provision simply builds on the laws that several states have already established—laws that are familiar to employers. Fourteen states and the District of Columbia already require private employers to provide nursing employees with reasonable break time and/or a place other than a bathroom to express milk at work. In addition, employers with FLSA-covered employees should already have policies in place regarding break times.

Unfortunately, there is a substantial amount of misinformation about the scope and application of the provision. For example, at the Ways and Means Committee hearing, Representative Lynn Jenkins expressed concern that an employer would have to provide a lactation room if it had only three male employees at a worksite and no nursing mother. The DOL has already clearly indicated that it does not intend to impose this requirement on employers. In fact, in the *Frequently Asked Questions* the DOL has provided to the public about the law, it specifically addresses this issue:

**Do employers have to provide a lactation space even if they don't have any nursing mother employees?**

ANSWER: No. The statute requires employers to provide a space for a nursing employee “each time such employee has need to express the milk.” If there is no

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<sup>5</sup> Belkin, L. (2010, April 9). Motherlode: New Rules About Breast Pumps at Work. *New York Times*. Retrieved 7 February 2011, from <http://parenting.blogs.nytimes.com/2010/04/09/new-rules-about-breast-pumps-at-work/?pagemode=print&scp=3&sq=lisa%20belkin%20breast-feeding&st=cse>.

<sup>6</sup> U.S. Department of Labor, Wage and Hour Division. *Fact Sheet #73: Break Time for Nursing Mothers under the FLSA*. Retrieved 7 February 2011 from <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.

<sup>7</sup> U.S. Department of Labor. (2010, December 21). Reasonable Break Time for Nursing Mothers. *Federal Register*, 75(244), 80073-80079. Retrieved 7 February 2011, from <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=24540&Month=12&Year=2010>

employee with a need to express breast milk, then the employer would not have an obligation to provide a space.<sup>8</sup>

The National Partnership for Women & Families and the United States Breastfeeding Committee strongly support workplace policies that allow women to continue breastfeeding, and we applaud Congress and the President for adopting language in the ACA to promote breastfeeding. Workplace breastfeeding support is a “win-win-win” for employers, mothers and babies. Employers that support nursing mothers not only help their employees transition back to work, but also reduce turnover, absenteeism and health care costs, and increase employee satisfaction, loyalty and productivity.<sup>9</sup>

When new mothers’ needs are met, they are better able to meet the dual demands of work and motherhood. Those who choose to breastfeed need break time and a private space to express milk when they return to work. For the thousands of working mothers who have had to rush to their cars during a lunch break, hide in a bathroom stall or closet, or negotiate for break time with an unsympathetic employer, the new protections are life-changing and long overdue. We hope that Representative Jenkins and all members of the Ways and Means Committee will stand up for new mothers who choose to breastfeed and voice their support for this new provision and all protections like it that make it easier for mothers to be both good caregivers and family breadwinners.

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<sup>8</sup> U.S. Department of Labor, Wage and Hour Division. *Frequently Asked Questions – Break Time for Nursing Mothers*. Retrieved 7 February 2011, from <http://www.dol.gov/whd/nursingmothers/faqBTNM.htm>

<sup>9</sup> U.S. Department of Health and Human Services. *The Business Case for Breastfeeding*. Rockville, MD: U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau; 2008. Retrieved 7 February 2011 from <http://www.usbreastfeeding.org/LinkClick.aspx?link=Position-Statements%2fWorkplace-Statement-2011-USBC.pdf&tabid=36&mid=378>.

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