

THIS BILL IS APPROVED

I write to you on behalf of the Association of the Bar of the City of New York's Committee on Sex and Law to strongly urge you to vote in favor of A.00252, which would require employers to permit nursing mothers to express breast milk in the workplace. This bill is vitally important for promoting and protecting the health and well-being of children and women, at very little or no cost to employers, and potential long-term savings in healthcare and sick day costs.

The bill would provide mothers with reasonable unpaid break time, or allow them to use paid break time or meal time each day, to express breast milk for up to three years following a child's birth. It would also require employers to make reasonable efforts to provide a space in close proximity to the work area where an employee can express breast milk in private. Finally, the bill would prevent employers from discriminating against employees who choose to express breast milk in the workplace.

The Benefits of Breastfeeding

It is beyond dispute that breast milk is the best and most complete source of nutrition for infants. Indeed, both the American Academy of Pediatrics¹ and the U.S. Surgeon General² recommend that babies be fed exclusively with breast milk for the first six months of life, because it contains the ideal combination of carbohydrates, proteins, and fats, as well as the digestive enzymes, minerals, vitamins, and hormones that infants require.³ Breast milk also contains valuable antibodies from the mother that help the baby resist infections.⁴ Those antibodies can never be added to formula,⁵ which lacks more than two hundred components of human milk.⁶ In short, breast milk contains all of the nutrients a child needs for optimal health, growth, and development, many of which can only be found in breast milk.

In addition, breastfeeding provides enormous health and economic benefits to women. Numerous studies have shown that breastfeeding mothers have a lower risk of reproductive cancers, including ovarian and uterine cancers, and that breastfeeding may reduce the risk of breast cancer.⁷ Breastfeeding also saves families hundreds or thousands of dollars per year on formula and visits to health care providers.⁸ In fact, total medical care expenditures are approximately twenty percent lower for breastfed infants than for formula-fed babies.⁹

Breastfeeding also provides benefits to employers. Studies show that because breastfed babies are healthier, their parents are less likely to miss work caring for a sick child.¹⁰

Having healthy babies raises productivity by increasing worker satisfaction and decreasing absenteeism. In addition, the employer potentially benefits from lower medical costs as a result of the child's need for fewer doctor's visits.¹¹

The Need to Express in the Workplace

Breastfeeding mothers who work must express breast milk during working hours in order to maintain their milk supply and provide milk for their children. Simply put, a lactating woman who cannot pump breast milk at work may be forced to stop nursing her child. Expressing milk takes very little time. Most women need no more than fifteen to twenty minutes two or three times a day. This is less time than most smokers use for cigarette breaks.

Almost sixty percent of American women are employed, and women constitute forty-six percent of the civilian workforce.¹² According to one survey, many women discontinue breastfeeding sooner than they would like, citing the lack of societal and workplace support as key factors limiting their ability to breastfeed.¹³ No woman should be compelled to compromise the health of her child in order to make a living.

Numerous states, including California,¹⁴ Connecticut,¹⁵ Georgia,¹⁶ Illinois,¹⁷ Minnesota,¹⁸ Rhode Island,¹⁹ Tennessee,²⁰ and Virginia,²¹ have enacted legislation similar to the proposed bill. In addition, more than eighty countries have laws requiring employers to provide mothers space to nurse their children in the workplace,²² with about half of those countries counting nursing breaks as paid work time.²³ More than twenty countries have enacted laws requiring employers to provide a private room for nursing.²⁴ Like these states and countries, and the many corporations that have adopted in-house programs to support lactating employees,²⁵ New York has a strong interest in ensuring that new mothers can return to the workforce without compromising the health of their children.

“Reasonable Efforts”

The bill would require employers only to provide unpaid break time, or paid break time to which the employee is already entitled, and make “reasonable efforts” to provide a space where an employee can express breast milk in private. These requirements impose very little burden, if any, on employers. “Reasonable efforts” would not include a requirement that an employer make significant structural alterations or allow undue or excessive disruption of the employer's operations. When weighed against the benefits employers would likely receive in employee attendance, productivity, and health care costs, the “reasonable efforts” requirement is minimal.

Non-Discrimination

New York has a long history of tolerance and respect for persons, and abhorrence for discrimination and prejudice. Although New York does exempt breastfeeding from public indecency laws, current law does not protect women who are discriminated against for pumping breast milk in the workplace.²⁶ Just as it is illegal to discriminate on the basis of sex or pregnancy, employers should not be permitted to discriminate against women who express breast milk at work in order to feed their infants.

Based on the foregoing, on behalf of the Association of the Bar of the City of New York and its Committee on Sex and Law, I respectfully urge the passage of A.00252.

Very truly yours,

Leslie A. Rubin
Chair, Committee on Sex and Law

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1. American Academy of Pediatrics, Breastfeeding and the Use of Human Milk Policy Statement, 100 Pediatrics 1035 (1997), found at www.aap.org/policy/re9729.html (Dec. 1997).
 2. HHS Blueprint for Action on Breastfeeding, Department of Health and Human Services Office on Women's Health ("HHS Blueprint"), found at www.4women.gov/breastfeeding.
 3. Id.
 4. Id. at 10.
 5. Id.
 6. See Susan Love, M.D, Dr. Susan Love's Breast Book 34 (Perseus Publishing 2000).
 7. HHS Blueprint at 10-11; <http://www.lalecheleague.org/NB/NBJulAug01p124.html>. See also Liz Galst, Babies Arent' the Only Beneficiaries of Breast Feeding, N.Y. Times, June 22, 2003, at WH4 (listing the numerous maternal health benefits of breastfeeding, including decreased postpartum bleeding, improved bone re-mineralization, and speedier return to pre-pregnancy weight).
 8. HHS Blueprint at 11.
 9. Id.

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10. HHS Blueprint at 11. See also Janet Gemignani, Easing New Moms' Return to Work - Lactation Programs for Female Employees (Dec. 1997), located at www.findarticles.com/p/articles/mi_m0903/is_n12_v15/ai_20435035 (describing a joint study in which the Los Angeles Department of Water and Power and the Aerospace Corporation found that mothers' absenteeism was reduced by 28 percent and sick child health care claims were cut by 36 percent as a result of their lactation programs).
 11. HHS Blueprint at 11.
 12. Women's Bureau, U.S. Dept. of Labor, Twenty Facts on Women Workers, in Facts on Working Women (Mar. 2000), found at <http://www.dol.gov/dol/wb/public/wbpubs/fact98.htm>.
 13. West's RCWA 43.70.640, WA ST 43.70.640
 14. West's Ann. Cal. Labor Code § 1030, CA LABOR § 1030.
 15. C. G. S. A. § 31-40w, CT ST § 31-40w
 16. Ga. Code Ann., § 34-1-6, GA ST § 34-1-6
 17. 820 I.L.C.S. 260/10, IL ST CH 820 § 260/10
 18. M. S. A. § 181.939, MN ST § 181.939
 19. RI ST § 23-13.2-1
 20. TN ST § 50-1-305
 21. West's RCWA 43.70.640, WA ST 43.70.640.
 22. International Labour Organization, Report V(1) Maternity Protection at Work (International Labour Conference 87th Session 1999), found at www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm ("ILO Report").
 23. Id. See, e.g., French Labor Code, Articles L224-2 to L224-4 for the law and Articles R224-1 and R224-2 for the regulations regarding the time and space required for nursing breaks, found at www.legifrance.gouv.fr.
 24. See ILO Report.
 25. Janet Gemignani, Easing New Moms' Return to Work - Lactation Programs for Female Employees, found at www.findarticles.com/p/articles/mi_m0903/is_n12_v15/ai_20435035.
 26. See Martinez v. NBC, Inc., 49 F. Supp.2d 305 (S.D.N.Y. 1999) (holding that lactation or breast pumping is not a disability within meaning of the Americans with Disabilities Act, and

that plaintiff was not similarly situated to male employees, as required for a *prima facie* case of “sex-plus” discrimination).