WINNING NEW RIGHTS FOR LACTATING WORKERS
AN ADVOCATE’S TOOLKIT

NOVEMBER 2021
WINNING NEW RIGHTS FOR LACTATING WORKERS
AN ADVOCATE’S TOOLKIT

November 2021

The authors intend that this toolkit be a living document. It is important to us that it accurately reflect the diverse experiences of all impacted communities. As existing law and culture evolve, so should the policy solutions and ways we talk about health, economic security, and gender and racial equity. We welcome all feedback and suggestions for future content. Email policy@worklifelaw.org.

ABOUT THE CENTER FOR WORKLIFE LAW

The Center for WorkLife Law is an advocacy and research organization at UC Hastings Law that seeks to advance racial, gender, and class equity in the workplace and education. At WorkLife Law, we address inequality at a structural level by developing and implementing concrete, evidence-based interventions in schools and workplaces and changing public policy at the state and national levels. To learn more about WorkLife Law’s impact, visit worklifelaw.org.

Center for WorkLife Law, 2021. This work is licensed under a Creative Commons Attribution 4.0 International. Redistribution and adaptation is encouraged.
## CONTENTS

### I. WELCOME AND INTRODUCTION 4

### II. CURRENT LEGAL LANDSCAPE & POSSIBILITIES FOR CHANGE 6

- Break Time for Nursing Mothers law 7
- Pregnancy Discrimination Act 11
- State Laws 13

### III. DESIGNING YOUR LAW 16

- Deciding Which Type of Law to Pursue 16
- Drafting Your Bill 19
- Key Components of Break Time and Space Law 20
  1. Strong Enforcement Mechanisms 20
  2. Universal Employer Coverage 24
  3. Narrow Employer Exemptions 24
  4. Recognition of Diverse Physical Needs and Life Circumstances 25
  5. Functional Space Requirements 28
  6. Prohibition on Discrimination and Retaliation 29
  7. Promoting Racial and Class Equity by Making Breaks Affordable for All 29
- Model Statute: Gold Standard Break Time and Space Law 32
- Model Statute: Basic Break Time and Space Law 36

### IV. ADVOCACY 37

- Lobbying 101 37
- What Are the Rules for Nonprofit Lobbying? 37
- State and Local Lobbying Laws 39
- How Do I Get Started? 42
- Five Non-Lobbying Activities that Can Make a Difference 43
- Collecting Stories 45
- Building an Inclusive and Equitable Coalition 48
- Potential Allies 51

### V. MESSAGING 53

- General Messaging Tips 53
- Language Suggestions 57
- Talking Points in Support of Workplace Lactation Legislation 58
- Responding to Difficult Questions from Your Bill’s Opponents 63
- Sample Handout: FAQs On Needs of Lactating Workers 67
- Model Witness Testimony: Lactating Parent 69
- Letters to the Editor 78
- Social Media Toolkit 81

### VI. RESOURCE AND RESEARCH DIRECTORY 83

- Get Help Now For Lactating Workers 84

Acknowledgments 85
Endnotes 87
I. WELCOME AND INTRODUCTION

Most lawmakers know very little about breastfeeding and lactation, much less about the needs of lactating workers. Your involvement in the advocacy process as a breastfeeding advocate or lactation expert is critical to educating lawmakers and the public about why legal rights for lactating workers are important – for maternal and child health, health equity, family economic security, and the fair treatment of women in the workplace. This toolkit is designed to support you in your advocacy journey.

In 2019, the Center for WorkLife Law released *Exposed: Discrimination Against Breastfeeding Workers*. The report described the discrimination and lack of basic lactation supports faced by workers around the country. It showed that lactation discrimination is widespread and includes:

- Denying pumping break requests from employees who are in pain and leaking milk;
- Firing them just for asking for breaks;
- Refusing to provide privacy, leaving workers to pump milk with their breasts exposed to coworkers, clients, and the public in physically unsafe conditions; and
- Commenting on their bodies, comparing breastfeeding workers to animals, and mooing at them.¹

As documented in *Exposed*, lactating workers facing discrimination suffer serious health consequences, including illness and painful infections, diminished milk supply, and weaning earlier than doctors recommend.² They also have faced devastating financial consequences; nearly three-fourths of lactation discrimination cases involved economic loss, and nearly two-thirds ended in job loss.³ Low-income workers, single mothers, and women of color face the greatest barriers and suffer the worst consequences, reinforcing dangerous disparities in breastfeeding rates and health outcomes.⁴
Existing laws don’t do enough to protect lactating employees from discrimination:

• Nearly one-quarter of women workers of childbearing age are excluded from the federal law that provides a right to lactation break time and space.5
• Just over half of all states have laws providing lactation protections, but many of the states with additional protections have break time and space laws that are unenforceable in court.6 Not surprisingly, employers frequently ignore them.7
• Only three of the fifty states prohibit employers from docking worker pay for time spent on lactation breaks, even though providing paid breaks is one of the most effective ways of ensuring low-wage workers – disproportionately people of color – are able to take them.8

Fortunately, due to the hard work of advocates, laws giving new rights to lactating workers have been passing around the country and are proven to work. Studies show that state-level workplace lactation laws have a positive impact on breastfeeding initiation and duration, particularly for Hispanic and Black women.9

This toolkit shares information, model language, and tools to aid your fight for better protections in your state, no matter where you’re starting. It is our hope that this toolkit will serve you as would a good nursing bra: by giving functional support, promoting access, and uplifting you in a way that makes your hard work a little easier.
II. CURRENT LEGAL LANDSCAPE & POSSIBILITIES FOR CHANGE

The United States has seen remarkable progress in legal rights for lactating workers in recent years. The federal Break Time for Nursing Mothers law passed in 2010 to require employers to provide break time and private space for expressing milk during the workday. Three years later, a federal appellate court issued a groundbreaking legal opinion that Title VII of the Civil Rights Act of 1964 makes it illegal to fire an employee because they are breastfeeding or ask to pump milk. Also during this time, a majority of states enacted their own laws to give increased rights to lactating workers by filling in some of the gaps left by federal law. This substantial progress on an accelerated timeline was possible because of the tireless work of committed advocates nationwide.

These advances changed the lives of countless families, and still more is needed. Protections for breastfeeding and lactating workers remain an incomplete patchwork, with major coverage gaps and enforceability problems. As of August 2021, advocates are fighting to close some of the gaps in the federal break time and space law by seeking passage of the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act. The passage of this legislation would be an incredible leap toward giving breastfeeding and lactating workers the protections they need.

But although the chances of passing federal protections have never been greater, work is still needed at the state level. Even if the PUMP Act passes, additional protections will be needed, especially around the affordability of breaks for the most marginalized workers. If the PUMP Act does not pass, the work of state-level advocates will be even more pressing.

This primer on existing legal rights for lactating workers explains where we’re starting at the national and state levels. It highlights how current law falls short, so we can decide what to fight for next.
BREAK TIME FOR NURSING MOTHERS LAW – WHAT’S COVERED, AND WHAT’S NOT?

Signed into law by President Obama in 2010 as part of the Patient Protection and Affordable Care Act, the Break Time for Nursing Mothers provision is the most widely recognized law protecting lactating workers. It requires employers to provide covered employees with reasonable break time as needed and a private place for expressing breast milk during the workday. The law also makes it illegal to retaliate against an employee who makes a complaint that their rights have been denied. This law was a landmark step for breastfeeding and lactating people, but it is far from perfect.

Who is Covered? The majority of workers are covered by the law, especially those paid by the hour, but due to an unintentional technicality, the law leaves out nearly one-quarter of women workers of childbearing age, as documented in Exposed: Discrimination Against Breastfeeding Workers. Millions of workers in a wide range of occupations were inadvertently excluded, including those in the top two pink collar jobs – nursing and teaching. The law also excludes many agricultural workers, tech workers, and airline crewmembers, among others. For a complete list and explanation of how these workers came to be excluded, see pages 25-28 of Exposed. These excluded workers would become covered by the law if the PUMP Act passes.

What kind of space must the employer provide? The law requires employers to provide “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.” This room or lactation space should be available whenever the nursing employee needs to use it. The law doesn’t require additional construction; existing spaces can be used so long as they are private and available when needed. The Department of Labor has advised that for a lactation space to be functional as the law intended, the space should not be so far from the work area that accessing it during breaks is impractical and it should have a seat and a flat surface for the employee to place their pump, other than the floor.

The federal Break Time for Nursing Mothers law does not require providing a refrigerator, running water, or electricity, and the space need not be conveniently close to the employee’s workstation. The law is silent on employees’ rights to express milk at their workstation or while working.

How frequently must breaks be given? Employers must provide breaks to a nursing employee “each time such employee has need to express milk.” Frequency will vary based on the employee’s unique physiological needs that depend on factors such as the age of the baby, the number of feedings in the baby’s normal daily schedule, and whether the baby is eating solid food. Typically, lactating workers will need two to three breaks during an eight-hour shift.
How much time must be provided during the break? The law says that “reasonable” time must be provided. Having a flexible standard is important, because the length of time necessary to express milk varies from person to person. However, many employers do not understand how to determine whether a lactation break length is reasonable, and often try to restrict their employees’ breaks. The Department of Labor has noted that the act of expressing breast milk alone typically takes about 15 to 20 minutes, but there are other factors that will determine what is “reasonable,” such as how close an employee’s work area is to the lactation space and amenities like a sink and refrigerator; the efficiency of the breast pump; and the time needed to retrieve the pump, set it up, clean up, and store the milk.

Must the breaks be paid? Employees paid by the hour may—and typically do—have their pay reduced for time spent on lactation breaks. Federal law does not require paid lactation breaks, making them unaffordable for many low-wage workers, disproportionately people of color. Note, however, if an employee is already eligible for paid breaks and uses one to express milk, they must be paid in the same way that they and other employees would otherwise be paid for that time. Additionally, if the hourly employee is not completely relieved from all work duties during the milk expression break, the time must be counted as work hours for purposes of calculating minimum wage and overtime. For salaried employees, reducing compensation for time spent on lactation breaks may lead to legal violations. In other words, pumping breaks under the federal law are unpaid unless they occur while the employee is working or on a normally-paid break.

Is direct nursing covered? No. Employers are not required to provide time or space for directly feeding a child under the Break Time for Nursing Mothers law. Accommodations are required only for “milk expression,” referring to pumping or manual removal of milk.

What about cases of surrogacy, stillbirth, adoption, or feeding for longer than 1 year? The law requires break time only “for an employee to express breast milk for her nursing child for 1 year after the child’s birth.” Other scenarios are not covered, which can lead to painful consequences for families experiencing these life events. Note this provision of the law would be changed by the PUMP Act, if it passes.

What about gender-nonconforming parents? Although there is no official guidance from the Department of Labor on this question, the Center for WorkLife Law interprets the Break Time for Nursing Mothers law to provide legal rights to all lactating employees, regardless of gender identity. Despite the title of the law (“...Nursing Mothers”), the text of the law gives rights to all “employees” who need to express milk for their nursing child, which WorkLife Law interprets to include all forms of human milk feeding. Please see page 26 for information on gender and drafting your policy.
Does the law provide other reasonable accommodations? No. Due to health needs or the nature of their jobs, some lactating workers need accommodations beyond break time and space. Although other laws may provide it, the Break Time for Nursing Mothers law does not give a right to accommodations beyond break time and space. For more information, see page 15 of this Toolkit and Exposed.\(^\text{19}\)

How do employees learn about their rights under the law? Employers are not required to provide notice to employees about their rights, so long as they provide break time and space when a covered employee requests it. Without notice, employees are less likely to know their rights or exercise them.

When are employers excused? Employers with 50 or more employees are never excused from following the Break Time for Nursing Mothers requirements. Employers that have fewer than 50 employees must also comply in almost all cases. However, in the rare case where providing break time or space would impose an “undue hardship,” employers with fewer than 50 employees may be excused. An undue hardship is a significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business. The Department of Labor has shared its opinion that “this is a stringent standard that will result in employers being able to avail themselves of the exemption only in limited circumstances.”\(^\text{20}\) Based on the ease with which pumping accommodations can be provided and the range of creative solutions that exist in all industries, a true case of undue hardship is rare.

How is the law enforced? The U.S. Department of Labor’s Wage and Hour Division is responsible for enforcing the Break Time for Nursing Mothers law. The agency can investigate and mediate disputes, but it does not have authority to issue employer penalties, even when a business has violated the law intentionally or repeatedly.\(^\text{21}\) If the employer refuses to follow the agency’s recommendation to comply and the employee has lost wages or their job, the agency may file a lawsuit in federal court seeking lost wages and reinstatement.\(^\text{22}\) Likewise, if an employee is retaliated against for complaining about legal violations, the agency or the harmed employee may file a lawsuit for monetary damages.\(^\text{23}\) Without the power to issue penalties or seek broad monetary damages in court when employers fail to provide break time or space, the agency’s enforcement power is far weaker as compared to other worker-protective laws.

More problematic, though, is the lack of power individual employees have to enforce their own rights. Even when clear violations occur - when an employee is fired outright for simply asking for pumping breaks - the Break Time for Nursing Mothers law cannot be counted on to deliver justice. Employees are often barred from filing lawsuits in court, and even when they are allowed, employees are permitted to seek only unpaid wages.\(^\text{24}\) This is a meaningless remedy for an employee who has suffered diminished milk supply, painful infection, embarrassment, poor health outcomes, extended leave, or job loss - not unpaid wages.\(^\text{25}\) As described below under “How
is the Law Enforced?”, an effective enforcement remedy is important for individuals seeking justice on their own behalf, but a strong enforcement mechanism is also critical for encouraging employer compliance. Indeed, the absence of effective enforcement may explain why the Break Time for Nursing Mothers law has suffered from widespread employer noncompliance.26

Where can I learn more about the Break Time for Nursing Mothers law? The Center for WorkLife Law’s Exposed report27; the Department of Labor’s 2010 Request for Information, which states in detail the agency’s initial interpretation of the law28; and the Department of Labor’s resource page, which includes employer FAQs and other useful resources.29
The Pregnancy Discrimination Act is a part of Title VII, the national employment anti-discrimination law. It prohibits discrimination against employees because of sex, pregnancy, childbirth, and related medical conditions. This final category – “medical conditions” related to pregnancy and childbirth – includes discrimination against breastfeeding and lactating employees.30

Who Is Covered? The law covers all lactating employees, so long as their employer has 15 or more employees.

What Protections are Provided? The Pregnancy Discrimination Act does two things: (1) it prohibits discrimination based on breastfeeding or lactation, and (2) it requires employers to treat lactation-related needs the same as other employee needs, which in some cases means employers must provide accommodations for lactation.

What kind of discrimination is prohibited? At its core, the right to be free from discrimination is the right not to be treated worse than other employees because of nursing, pumping, or lactation. This includes negative employment actions like firing, demoting, failing to hire or promote, or sexually harassing because of lactation. It also includes employer policies or practices that have a significant negative impact on lactating employees but don’t have a business necessity justifying them. For specific examples of unlawful discrimination under the Pregnancy Discrimination Act, see page 35 of Exposed.31

When must an employer provide lactation accommodations? Unfortunately for lactating workers and their employers, this is unnecessarily complicated. The Pregnancy Discrimination Act requires of employers that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work . . .”32 The U.S. Supreme Court interpreted this convoluted standard in 2015,33 but in practice, its meaning remains murky and not widely understood. Essentially, employers have an obligation under many circumstances to make accommodations for employees who need them for breastfeeding or lactation, not as a standalone right, but to ensure lactating employees are being treated the same as other employees who are receiving accommodations.

The right to lactation accommodations under the Pregnancy Discrimination Act, therefore, hinges on how a particular employer treats other non-lactating employees. The Equal Employment Opportunity Commission has explained that lactating employees “must have the same freedom” to address lactation-related needs as other employees have to address their own non-lactation-related needs.34 For example:
• If an employer allows employees to temporarily transfer to a desk position when needed to address non-lactation medical conditions, then it must allow lactating employees to transfer under similar circumstances.
• If an employer allows employees to change their schedules for routine doctor appointments, then it must allow lactating employees to do the same for lactation-related needs.
• If an employer allows employees to take breaks as-needed for meals, smoking, or other personal reasons, it cannot prevent a nursing employee from using her break time as-needed to express milk.35

The problem with this comparative approach is that if there is not a policy or practice of providing accommodations to other employees, then a lactating employee may be out of luck.36 An employer that treats all employees poorly by refusing to accommodate any health or personal needs might be excused from accommodating lactating workers too.37 Due to the complicated legal standard, employees often have a difficult time proving their case.

How is the Law Enforced? The Equal Employment Opportunity Commission (EEOC) has broad authority to prosecute violations of the Pregnancy Discrimination Act; however in practice, due to limited resources, it files lawsuits in only an extremely limited number of cases.38

After filing a timely complaint with the EEOC, private individuals have a right to file their own lawsuits in court. Employers that violate the law can be held financially responsible for the range of harms they cause. The risk of costly settlements or jury awards often motivates employers to follow the law. However, in practice, lactation accommodation cases can be challenging to prove due to the complicated legal standard. Workers would benefit from a clear, explicit right to receive critical workplace accommodations.
STATE LAWS
WHAT’S COVERED, AND WHAT’S NOT?

In the absence of universal, clear, and enforceable workplace lactation rights at the national level, it has been left up to individual states to cover the gaps.

What Protections are Provided and Where?
As of August 2021, 34 states, Puerto Rico, and the District of Columbia have enacted some form of legislation to provide rights to lactating workers. However, not all laws are created equal. State laws vary widely, from laws requiring that public school boards maintain lactation policies, to laws giving every employee in the state a right to break time, space, and other reasonable accommodations needed for lactation.

As of August 2021, 14 states, Puerto Rico, and the District of Columbia have laws directly requiring employers to provide break time and space for milk expression; 3 more states have laws requiring employers to provide space, but not breaks. Thirty (30) states have laws requiring that reasonable accommodations be made for lactating workers. Only 11 states give a right to break time, space, and reasonable accommodations.

Many of these state laws look similar to the federal Break Time for Nursing Mothers provision by providing a standalone right to receive lactation break time and space. However, over half of states have a different kind of law, either instead or in addition to lactation breaks and space. These laws, often called “pregnant workers fairness acts” require employers to provide reasonable accommodations for an employee when they request changes at work because of pregnancy and related conditions, including lactation. This may include break time and space, but it may also include other accommodations to help a lactating worker meet their needs to stay healthy, feed their child, or continue producing milk. Pregnant workers fairness laws usually include a list of examples of reasonable accommodations that employees can request, but each worker can ask for whatever accommodation works for them. For examples of common reasonable accommodations for lactation see the chart below on page 15.

The majority of states have pregnant workers fairness laws, and most of those laws explicitly protect lactating workers. The laws that don’t mention lactation can be easily interpreted to require lactation accommodations because they require employers to accommodate medical or other conditions related to pregnancy and childbirth.
How are State Laws Enforced? Enforcement of state-level break time and space laws and pregnant workers fairness acts varies from state to state. The good news is nearly all pregnant workers fairness acts have both public agency enforcement and allow private individuals to file lawsuits in court. However, 9 of the 14 standalone break time and space laws suffer from the same flaw as the federal Break Time for Nursing Mothers law – private individuals cannot seek justice in a court of law when their rights have been violated. Four (4) of the 14 laws have no agency enforcement. This is an unfortunate gap that needs to be closed if we are to have widespread compliance. For more information on the importance of enforceable laws, and strategies for making your state’s law enforceable, see Strong Enforcement Mechanisms on page 20.
EXAMPLES OF REASONABLE ACCOMMODATIONS FOR LACTATING WORKERS

Pregnant workers fairness laws usually include a list of examples of reasonable accommodations that employees may request. These lists are only examples, and each worker can ask for the accommodation that works for them.

Common reasonable accommodations include:

- More frequent or longer breaks
  * Including break time to express milk, or to eat and drink more frequently.

- A location to express milk

- Job restructuring
  * For example, allowing an employee to work from home while establishing infant feeding.

- Modified work schedules
  * For example, allowing a worker to start their day later so that they can nurse their infant in the NICU one more time before going to work.

- Temporary transfers to less strenuous or hazardous work, light duty
  * For example, temporarily working in an alternate position to avoid exposure to smoke, radiation, or other toxins that can contaminate human milk.

  * For example, taking a desk position at headquarters when it is not feasible to take pumping breaks while working out of the office.
### III. DESIGNING YOUR LAW

#### DECIDING WHICH TYPE OF LAW TO PURSUE

State-level protections for nursing workers typically come in two forms: “pregnant workers fairness laws” that require employers to provide reasonable accommodations for lactation, and standalone break time as space laws, see State Laws What’s Covered, and What’s Not?. Deciding which type of law to pursue depends on the laws already in place in your state, the strengths (or weaknesses) of those laws, and political realities on the ground.

Ideally, lactating workers will have the protection of both a standalone break time and space law and a pregnant workers fairness act, as each provides unique rights and neither is a perfect substitute for the other. In states that have both types of laws, workers are protected by both at the same time, in addition to the federal laws described above (to the extent they apply).

Consider conducting a Racial Equity Impact Assessment at the beginning of your process to evaluate how various policy options would impact different racial and ethnic groups. This exercise helps ensure your chosen legislation does not reinforce systemic racism, but instead addresses existing inequalities in who is able to breastfeed.
Advocates deciding what to pursue may wish to consider how these two types of laws compare:

**Type of Protections**

Standalone break time and space laws have the benefit of providing a clear right to the fundamental accommodation needed by most lactating workers: break time and space. The most protective laws require that lactation breaks be paid, so workers don’t have to choose between their wages and their family’s wellbeing. Pregnant workers fairness laws have the benefit of flexibility. These laws require employers to provide accommodations to address lactation-related needs in general. Typically, this includes unpaid break time and private space, so long as the other requirements of the law are satisfied (see below), but employers may also have to meet other lactation needs that arise. For example, a worker with recurring breast infections may need to take time off to visit the doctor, or permission to work remotely until the infection subsides. An employee may ask for a modified uniform if their normal uniform is restrictive across the breasts, jeopardizing milk production. These examples represent the type of changes that can be considered reasonable accommodations, but the options are endless—so long as the request is reasonable and does not impose an undue burden on the employer, a lactating employee can ask for whatever changes they need.

**Enforcement**

Almost all existing pregnant workers fairness laws have the major benefit of being enforceable. While we hope future laws based on the models in this toolkit will break the trend, most current standalone break time and space laws cannot be effectively enforced. Pregnant workers fairness laws, on the other hand, typically have an effective enforcement mechanism that employees can use to seek justice if they aren’t provided the accommodations they need. See our section on enforcement on page 20.

**Employer Size**

Standalone break time and space laws typically apply to employers of all sizes, as compared to pregnant workers fairness laws, which usually do not apply to the smallest businesses. As a result, standalone break time and space laws tend to cover more lactating workers.
Medical Certification

Standalone break time and space laws, unlike many pregnant workers fairness laws, do not allow employers to require certification from a health care provider to establish the employee’s need for lactation break time and space. Administrative requirements like providing medical certification can derail a nursing employee who learns of the requirement only upon return to work—with their next pumping break just hours away. Moreover, the expense and time required to obtain medical certification presents a challenge for many new parents, particularly low-wage workers and those who lack health insurance. The strongest laws do not require medical notes for break time and space accommodations, or other accommodations when the need is apparent.

Undue Hardship

Pregnant workers fairness laws typically offer undue hardship exemptions to employers of all sizes, excusing them from providing a reasonable accommodation when they can demonstrate that doing so would impose a significant difficulty or expense on the business. On the other hand, standalone break time and space laws are more likely to provide an undue hardship option only to small employers.

Legislative Fix: Paid Leave

1 in 4 mothers in the U.S. returns to work just 10 days after giving birth, when breastfeeding is just being established, and most are working within months. Women with longer leaves are more likely to start breastfeeding and breastfeed longer, but few can take as long as they need due to a lack of paid parental leave.

Four out of every ten women of childbearing age are not covered by the Family and Medical Leave Act (FMLA), the federal law that gives the right to job-protected unpaid family leave for up to 12 weeks. Even for those who are covered, taking sufficient leave can be unaffordable. As of August 2021, the United States stands alone as the only industrialized country with no national paid family leave policy. Lactating workers and their families need a comprehensive, universal paid family leave policy, so they are able to firmly establish infant feeding before returning to the workforce.
DRAFTING YOUR BILL

As you advocate for improved workplace lactation laws, you may have the opportunity to propose draft legislation to a friendly lawmaker, or to weigh in on legislation being considered by lawmakers. You may decide to pursue a standalone break time and space law, a pregnant workers fairness act, or amendments that strengthen existing law.

A coalition of women’s advocacy organizations, business groups, employee-rights groups, healthcare providers, and religious and spiritual leaders have realized great success in advocating for pregnant workers fairness laws in states across the country in recent years. Many of these laws provide robust protections for pregnant people, as well as lactating workers, and can serve as models for future legislation. At the federal level, a bill called the Pregnant Workers Fairness Act has robust bipartisan support in both the U.S. House of Representatives and Senate. Breastfeeding and lactation advocates wishing to learn how to support these efforts may contact the Center for WorkLife Law.

There are fewer real-world examples and discussions around what makes a strong lactation break time and space law. This section of the toolkit fills that gap by providing the seven key components of standalone break time and space laws, as well as model legislation you may wish to consider, either when drafting a new law or strengthening an existing one.

While this toolkit does not cover paid leave advocacy, breastfeeding advocacy organizations like the U.S. Breastfeeding Committee are leading the fight by organizing lactation advocates in support of a federal paid leave law.

For assistance drafting policies that support lactating students, visit PregnantScholar.org/contactus.
KEY COMPONENTS OF BREAK TIME AND SPACE LAW

The strongest laws address 7 key components. The discussion below will help you to center them when considering potential legislation.

To see these components come to life in bill format, this toolkit also includes two model policies: a Gold Standard Model Policy and a Basic Model Policy. The Gold Standard Model Policy provides strong protections under each of the 7 key components of a standalone break time and space law, while the Basic Model Policy provides only the bare minimum break time and space protections that lactating workers need.

Seven key components of a strong lactation break time and space law:

1. Strong Enforcement Mechanisms
2. Universal Employer Coverage
3. Narrow Employer Exemptions
4. Recognition of Diverse Physical Needs and Life Circumstances
5. Functional Space Requirements
6. Prohibition on Discrimination and Retaliation
7. Promoting Equity by Making Breaks Affordable for All

1. Strong Enforcement Mechanisms

No law will be effective unless it is enforceable. Research shows that strong enforcement motivates employers to follow the law and increases lactation rates. One study that examined eight different types of breastfeeding-support laws found that the single most impactful law that increased breastfeeding rates at six months postpartum was a workplace pumping law with an enforcement mechanism. Children in states that passed enforceable laws were over 3 times more likely to ever breastfeed and over 2 times more likely to breastfeed for at least six months as a result.43

Despite the clear link between robust enforcement and workplace supports that increase breastfeeding rates, the majority of state-level break time and space laws have ineffective enforcement provisions. Ideally, advocates can seek amendment of these existing laws, perhaps as part of a legislative package strengthening protections in other ways, similar to efforts at the federal level.44 For advocates seeking to pass their state’s first lactation law, it is important to stay focused on enforcement from the start.
## AT A GLANCE: ENFORCEABILITY OF BREAK TIME & SPACE LAWS

<table>
<thead>
<tr>
<th>STATE</th>
<th>AGENCY ENFORCEMENT?</th>
<th>PRIVATE LAWSUIT?</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARKANSAS</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>CALIFORNIA</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Cal. Lab. Code §§ 1030-1033</td>
<td></td>
<td></td>
</tr>
<tr>
<td>COLORADO</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>CONNECTICUT*</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>GEORGIA</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>HAWAII</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>ILLINOIS</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>INDIANA*</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>MAINE</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>26 M R.S.A. § 604.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MINNESOTA</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>M.S.A. § 181.939.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NEVADA</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>NEW YORK</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>N.Y. Lab. Law § 206-c.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OREGON</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>RHODE ISLAND*</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>RI ST § 23-13-2-1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOUTH CAROLINA</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>TENNESSEE</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>VERMONT</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>21 V.S.A. § 305.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WASHINGTON DC.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>D.C. Code Ann. § 2-1402.82.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Connecticut, Indiana, and Rhode Island do not require both break time and space.
** Colorado requires employees to engage in private mediation prior to filing a lawsuit.

Last Updated August 2021
Enforcement Options:

**Government Agency Enforcement**

Enforcement by a government agency is one important way employers can be encouraged to follow the law. Agencies may be given the power to help resolve disputes between employers and employees, to assess financial harms and issue penalties for violations, and to file lawsuits in court to force employers to follow the law and/or pay monetary damages. Most states already have a government agency responsible for enforcing other non-discrimination or employment laws. Your break time and space statute should ideally direct that same agency to enforce lactation requirements too.

After the law is passed, agencies can provide helpful guidance to educate employers on their legal obligations and offer practical solutions for how to follow the law. They may also be able to prioritize investigating lactation complaints, to ensure workers get the break time and space they need quickly.

Agency enforcement, however, has some significant constraints. Often, agency action is limited due to chronic lack of funding and bureaucratic delays, which are particularly troublesome in the lactation context where quick action is needed to avoid harm. Agency involvement is important but is only one part of ensuring lactating workers’ rights are supported.

**Private Lawsuits**

It is critical that every break time and space law empowers people whose rights have been violated to enforce the law by filing a lawsuit in court. Workers should have a right to seek an immediate court order instructing an employer to comply with the law. Lactating employees should also be able to seek financial compensation for harms they’ve suffered, which can include painful infections, lost ability to breastfeed, emotional distress, lost wages from being forced to take leave, and job termination.

Empowering individuals to take their employers to court can not only ensure justice—it is also a preventive action. Robust enforcement has the power to deter unlawful behavior by strongly encouraging employers to follow the law in order to avoid facing a lawsuit. The federal Break Time for Nursing Mothers law’s weak enforcement mechanism - which does not allow lactating employees whose rights have been denied to sue their employers in most cases - illustrates the point. After the law’s passage, 60% of women reported that their employer still did not provide access to break time and space. This is why breastfeeding and lactation advocates around the country have prioritized amending the federal law to provide a right to private enforcement through the “PUMP for Nursing Mothers Act” that is pending in Congress as of September 2021.

WorkLife Law’s Model Policies Are Enforceable

• Both model policies (page 32) allow private individuals to sue their employers in court to seek:

• Payment from their employer for economic harms like job loss, unpaid leave, or health care costs;

• Payment from their employer to compensate them for non-economic harms like pain and suffering caused when an employee loses the ability to breastfeed or develops mastitis;

• Court orders requiring employers to immediately comply with the law (i.e., providing break time and space) or reinstating someone to their job;

• Reimbursement for attorney’s fees and costs of filing the lawsuit, in cases where an employer is found to have violated the law. This is critical to ensuring that lawyers are willing to represent harmed individuals and is typical with worker-protective laws to ensure litigation expenses do not prevent workers from seeking justice, particularly low-wage workers who cannot afford the cost of a lawyer.

WorkLife Law’s Gold Standard Model Policy also allows judges to award punitive damages against the employer in cases where the employer’s behavior was particularly egregious. Judges have discretion around what types of damages to award in any particular case.

Enforceable Laws Will Not Cause a Flood of Litigation

In advocating for strong enforcement mechanisms, advocates will likely run into opposition from business interests expressing concern about businesses being sued. Opponents may claim the bill will only enrich trial lawyers. However, a research report from the Center for WorkLife Law found that the annual likelihood that a private company will be sued under an enforceable lactation break time and space law is essentially zero (0.0002%). A business owner is over 25 times more likely to be struck by lightning in their lifetime. WorkLife Law’s data showed that allowing employees to enforce break time and space laws in court does not lead to a meaningful increase in litigation, likely because enforceable laws incentivize employers to comply, making lawsuits unnecessary.
2. Universal Employer Coverage
The strongest laws cover employers in all industries. Solutions that meet the health needs of lactating workers exist in all industries.\textsuperscript{50} Given the cost-effectiveness of accommodating lactating workers,\textsuperscript{51} break time and space laws should apply to employers of all sizes, both private and public, and should not exclude any occupations. The vast majority of states that have lactation break time and space laws cover employers of all sizes and do not exclude any industries.\textsuperscript{52}

3. Narrow Employer Exemptions
Almost all break time and space laws excuse employers from compliance when meeting the law’s requirements would impose an undue hardship (a significant difficulty or expense). There has been very little judicial interpretation of what this means in the lactation context, however there is judicial guidance on “undue hardship” in other contexts, e.g. under the Americans with Disabilities Act, and from enforcement agencies. These interpretations set a high bar for employers, which suggests that employers would only rarely be able to claim an undue hardship exemption for lactation laws, because lactation accommodations tend to be affordable and simple to provide. While the reality is that exemptions are uncommon, they are still harmful because many employers and employees mistakenly believe that exemptions mean small employers don’t need to follow the law.

In an ideal world, break time and space laws would not provide any exemption from employer compliance. However, nearly all state laws and the federal law do exempt some employers, typically those with a small number of employees. Given this reality, the model policies in this toolkit include language for undue hardship exemptions, but only for small employers. You may want to consider introducing a bill that provides no exemption, or a very low one, and then increase the employer size that is eligible for the exemption, if needed, as a bargaining chip.

Your legislation should make clear that undue hardship will be considered on a case-by-case basis, and that employers that have a valid exemption must still comply with any other requirements of the law that do not impose an undue hardship. WorkLife Law’s Gold Standard and Basic Model Policies do both of these things.

Finally, note that WorkLife Law’s “Gold Standard” model policy gives a right to break time and space for directly feeding or nursing a child. For this provision, employers of all sizes are not required to allow a child to be present at the worksite when it would present a health or safety risk or other undue hardship.
4. Recognition of Diverse Physical Needs and Life Circumstances

Most existing workplace lactation break time and space laws are focused on the needs of a worker pumping milk for an infant she gave birth to in the last year. But successful lactation support laws recognize that not all families are the same. In drafting a bill, you may want to:

**Protect All Parents Who Need to Pump**

Workers may need to express milk for their own health or to provide milk for children other than their own, for example following the loss of a child or in cases of surrogacy or adoption. Some lactating workers may not have given birth, but instead have induced milk production to provide for their baby.

Small changes are often all that is needed to provide protection to workers pumping following infant loss, adoption, induced lactation, or surrogacy. For example:

- Instead of the common phrasing, “reasonable break time for an employee to express breast milk for her nursing child,” simply say “to express breast milk each time they need to do so.”

- Avoid references to “the child’s birth,” as that may be interpreted as excluding parents who have experienced the loss of their child. Instead, consider including a reference to birth or postpartum.

The Gold Standard Model Policy in this toolkit provides an example of how to accomplish this goal.
Place No Limits on Child Age

One in three babies is still breastfeeding at one year, and the World Health Organization recommends breastfeeding for up to the first two years of a child’s life, or beyond. Legislation should not have a child age limit, if politically feasible.

Although WorkLife Law’s Gold Standard model policy does not have an age cap, it does suggest the possibility of including an age limit for paid lactation breaks, recognizing the political challenges inherent in requiring paid breaks. This may be offered as a bargaining chip in the political process.

Allow Direct Feeding

Some lactating employees may need to engage in direct feeding for medical reasons, while others may prefer to directly nurse their children. Ideally, employees should be allowed to use lactation spaces to directly feed their children when it is possible without safety risks to the employee, child, or others. WorkLife Law’s Gold Standard model policy provides an example of how to include direct feeding in a workplace lactation bill, which includes excusing employers from the requirement in certain cases when it would impose a health or safety risk or other undue hardship.

Include People of All Gender Identities

Not all lactating people identify as women or use she/her pronouns. While many existing workplace lactation laws that are not gender neutral should be legally interpreted to include all lactating people, laws that aren’t gender neutral pose an additional barrier to parents who aren’t women/mothers, few of whom have the resources to wage a complex legal fight. Legislation should give rights to all people who need to express milk or directly feed a child during the workday and should strive to use gender-neutral language that respects all people. Advocates should carefully consider how to incorporate inclusive language, while also taking into account the political realities of their state.

While individuals’ preferred terms vary, both of WorkLife Law’s model policies use “lactating employee” (instead of “nursing mother”); “they/their” (instead of “she/her”); and “lactation” and “nursing” (instead of “breastfeeding”). “Directly feeding a child” is another possible alternative, so long as the statement’s intention is clear in context.

Additional resources on how to honor the experience of all lactating workers and more suggestions for gender neutral language:

- Academy of Breastfeeding Medicine Position Statement and Guideline: Infant Feeding and Lactation-Related Language and Gender
- Great Lakes Breastfeeding Webinar – Bodyfeeding is a Political & Cultural Act
Require Adequate and Flexible Break Schedules

There is no universal or ideal frequency or duration of lactation breaks. How much time a worker needs to express milk and how often they will need to depends on a range of factors, including the employee’s own body, their child’s age and eating habits, workplace conditions, and the effectiveness of the breast pump. Breaks should be provided as regularly as needed and should last for as long as it takes the employee to express milk, as well as to complete all tasks incident to milk expression (e.g., walking to/from the space, retrieving and setting up the pump, cleaning up, and storing the milk).

Our Gold Standard model policy provides an example of how to ensure adequate break time. Be sure to indicate that breaks are available “as needed” or “each time the employee has need.”
5. Functional Space Requirements

Legislation should specify that lactation spaces be fully functional for expressing milk, and should specify that the space be:

- **Nearby:** If politically feasible, your legislation should state that the lactation space should be in close proximity to the employee’s work area so that it is practical to access it on a regular basis during the workday. This is particularly important for unpaid lactation breaks, so hourly employees do not lose additional pay traveling long distances to the lactation space, and so parents can get through their workload in normal time and return home to their babies.

- **Available:** Employers typically are not required to build a new lactation space or permanently dedicate a room or other area for lactation. However, employers must ensure that the lactation space is available at the times when it is needed by the employee. “The lactation space must be available each time the employee needs it to express milk or nurse.”

- **Private:** Pumping milk can be a sensitive process that often exposes an employee’s body. Employees who are pumping deserve to have their expectations for privacy respected. Embarrassment and fear from lack of privacy hinders milk release and can jeopardize milk supply. Your bill should give lactating employees a right to have access to space that is shielded from view and free from intrusion by coworkers and members of the public.

- **Not a bathroom:** Human milk is food for small tummies. It should be prepared in a clean space that is not a bathroom.

- **Functional:** The space should be practically functional as a lactation space. In particular, lactation spaces should be free from hazards (e.g. chemicals or extreme cold) and not present a risk to the employee’s physical safety when their body is exposed. You may also want to make clear that functional lactation spaces are clean/sanitary, as is appropriate for infant food preparation.

- **Equipped:** The space should include a place to sit, and a flat surface to place the pump, other than the floor. The best policies require employers to provide spaces that have access to electricity when it is available at the work site and a sink with running water whenever possible.
6. Prohibition on Discrimination and Retaliation
Employees should have protection from negative actions taken against them for exercising their rights under the law. They should not be punished or otherwise discriminated against because they are breastfeeding, chestfeeding, or lactating; have lactation-related needs; have requested or used break time and space; or have complained that their rights were denied. Both model policies within this toolkit include a section prohibiting discrimination and retaliation.

7. Promoting Racial and Class Equity by Making Breaks Affordable for All
Even where an employee is entitled to lactation breaks, taking these breaks is unaffordable for many low- and middle-income earners. When breaks are unpaid, lactating parents must choose whether to go without essential wages or without regular pumping breaks. Racial inequities in who can afford to take lactation breaks reinforce existing disparities in breastfeeding rates that break down along economic and racial lines and compound health disparities.

Public policy changes can help lactating parents to be able to afford the pumping breaks they need. There are several options available for closing the affordability gap:

Paid Lactation Breaks:

Requiring paid breaks is the most effective way to ensure the most vulnerable workers are able to express milk during the workday. Three states already require all employers to provide paid lactation breaks: Georgia, Illinois, and Minnesota. Some other states, like Indiana and Oklahoma, require public state employers to do so.

Georgia’s law, which was signed by a Republican governor in 2020, has strong language requiring that lactation break time “be paid at the employees’ regular rate of compensation.” It also requires that “If the employee is paid on a salary basis, the employer shall neither require the salaried employee to use paid leave during any break time nor reduce the employee’s salary as a result of the salaried employee taking a break to express breast milk.” This groundbreaking legislation can serve as a model for what is possible around the country.

Illinois and Minnesota also require paid lactation breaks, but use less clear language in their laws, stating that the employer “may not reduce an employee’s compensation” for pumping breaks. While the clearer language from Georgia provides the most readily understood legal right, the language from Illinois and Minnesota may be preferable from a political advocacy and messaging perspective, as it may be more palatable to require that employers “not reduce compensation” than that they “provide paid breaks.” WorkLife Law’s Gold Standard Model Policy includes sample paid break language.
Drafters of future paid-break policies should consider introducing legislation that:

1. Provides that employees, whether paid on an hourly, salary, or other basis, must be paid, or not docked pay, for the time spent on lactation breaks;

2. Makes clear that paid time off (like vacation, sick, or personal days) and other benefits of employment shall not be reduced for time spent on breaks;

3. Clarifies that the compensable lactation break time includes all time necessary to express milk (e.g., traveling to and from the lactation space, storing milk, etc.)

4. Prohibits employers from requiring employees to make up time used to express milk; and

5. Ensures that there is an effective enforcement mechanism in place to recover wages that are wrongfully withheld in violation of the law.

Fixed-Time Paid Lactation Breaks

An alternative to requiring compensation for all time spent during a lactation break is to require employers to provide a fixed amount of paid break time each workday for purposes of lactation (e.g., a 20-minute paid break for every three hours worked), in the same way that the laws of nine states currently require employers to provide paid rest breaks of fixed duration. Unlike typical paid rest breaks, however, lactation breaks must continue for as long as is necessary to complete the milk expression - even if only a fixed portion of the break must be paid.

No Deductions for Travel Time

Policies could allow unpaid breaks but require that the time spent traveling between the employee’s workstation and the pumping location and milk-storage location be compensable. Because the pumping location is within the employer’s control, this may be more politically feasible, and will incentivize employers to provide lactation spaces that are readily accessible.

For model language, consider the rules interpreting San Francisco’s Lactation in the Workplace Ordinance: “The time that it takes an Employee to get to and from the Employer’s designated Lactation Location and, if at a separate location, to and from a refrigerator and a sink with running water, shall not be included as part of the Employee’s break time.”
Clarification of Work Time

For break time and space laws that allow unpaid breaks, consider making clear that any lactation break during which the employee is not completely relieved of all work duties must be paid as normal work time. For example, if an employee is “on call” or required to answer phones when they are expressing milk, the time must be paid. That applies even if the employee is allowed to pump from a private space and is relieved of some duties.

The law should have an effective enforcement mechanism for collecting wages that are wrongfully withheld. Care must be taken in drafting statutory language to avoid sending the message that it is generally permissible to not relieve lactating workers of their duties during milk expression breaks. WorkLife Law’s Gold Standard Model Policy in this toolkit follows this approach.

Option to Continue Working While Expressing Milk

Some employees wish to continue working while expressing milk to avoid losing wages during an unpaid break or to avoid staying late at work to make up missed work. Whether this option is feasible depends on the unique physical needs of the breastfeeding parent, the type of pump they use, and the nature of their work, but it may be realistic and preferable for some employees.

Not all lactating parents can express milk while working, and therefore the key is that the law must require employers to give employees the nonmandatory option while making clear employees should not be required to continue working if they prefer to be relieved of their duties. See the Gold Standard Model Policy for sample language.

For more in-depth information about making lactation breaks accessible for the most vulnerable workers, see our full factsheet on lactation break affordability, or contact the Center for WorkLife Law at policy@worklifelaw.org.
MODEL STATUTE: GOLD STANDARD BREAK TIME AND SPACE LAW

This model statute gives broad rights to employees who wish to express milk or directly feed a child while at work. While it represents remarkably strong protections, this model also attempts to take into account valid employer needs and political realities.

If it is not feasible to include all of these provisions in your bill, consider including just some of them based on the political realities of your state or locality. Included within this model in red letters is suggested text that you may want to consider as compromise language. For example, you may initially omit the language when the bill is introduced, and then offer it later as a bargaining chip during the political process.

For assistance with this model statute, contact the Center for WorkLife Law at policy@worklifelaw.org.

Section 1: Definitions

(a) “Lactation break” means a break taken by a lactating employee for purposes of expressing milk or directly providing human milk to a child. This shall include time the employee needs to express milk or directly feed a child, and to travel in between the workstation, lactation space, sink, and the location where the employee stores the expressed milk.

(b) “Lactation space” means a room or other location provided for an employee’s use during a lactation break.

(c) “Undue hardship” means a significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.

Section 2: Lactation Break

(a) Employers shall provide a lactation break to a lactating employee each time the employee needs to take one. [If the breaks provided by your bill will be unpaid (see Section 1(d) below), you may want to consider including this language: “Upon employee request, the break time shall run concurrently with any break time already provided to the employee.”]

(b) Employees who request to continue performing their work duties while expressing milk should be allowed to do so if reasonable in light of the nature of their work duties. Employees who do not request to continue performing work while expressing milk shall be provided a lactation break under this section and must be completely relieved of all duties.

(c) Lactation breaks will be paid at the employee’s regular rate of compensation.
(i) If the employee is paid on a salary basis, the employer shall not reduce the employee's salary as a result of the employee taking a break to express milk.

(ii) The employer shall not require the employee to use paid or unpaid time off during a lactation break.

(iii) This subsection (c) shall apply only until the employee's child is 18 months old or the employee is 18 months postpartum. Depending on political realities, you may consider not including an age limit for paid breaks, changing the age by which breaks may be unpaid, or exempting small employers from the paid breaks provision. Requiring paid breaks is the best way to ensure low-wage workers and people of color have equal access to break time and space. See WorkLife Law's “Making Lactation Breaks Affordable for All Workers” for more information and additional legislative options.

Section 3: Lactation Space

(a) Employers shall provide lactating employees with a lactation space in close proximity to the employee’s work area for the employee’s use during a lactation break. The lactation space must be available each time the employee needs it for a lactation break.

(b) The lactation space shall not be a bathroom and shall be shielded from view and free from intrusion from co-workers or the public while the employee is using it for a lactation break. The lactation space shall be functional for expressing milk, including free from hazards and clean. The lactation space shall contain a place to sit and a flat surface on which to place a breast pump and must include access to an employer-provided electrical outlet or extension cord to operate an electric breast pump, if electricity is available at the worksite.

(c) The employer shall allow lactating employees to access a sink with running water, if available, and to access a refrigerator to store milk. If a refrigerator is not available, the employer shall provide a suitable place to store a cooler.

(d) Upon employee request, the employer shall allow the employee to express milk in the place where the employee normally works, if reasonable in light of the nature of the workspace. The preferences of others in the workplace do not determine reasonableness.

(e) The presence of a private location pursuant to this section shall not affect an individual’s right to nurse or express milk in public pursuant to other federal, state, or local law.
Section 4: Undue Hardship Exemption

(a) An employer that employs fewer than 15 employees may be exempt from any requirement of Section 1 or 2 if the employer can demonstrate that the requirement would impose an undue hardship in a particular case.

(b) Nothing in Section 1 or 2 shall require an employer of any size to allow a child to be present on the workplace premises when doing so would present a health or safety risk or otherwise impose an undue hardship on the business operations.

(c) Employers exempt under this section from a requirement must still comply with all other requirements of Sections 1 and 2 that do not cause an undue hardship.

(d) Employers exempt under this section must engage in an interactive process to determine if a reasonable accommodation is available as an alternative to address the employee’s lactation needs, including but not limited to telecommuting, schedule changes, relocation of workstation, or modification of job duties.

Section 5: Discrimination and Retaliation Prohibited

Employers shall not discharge, or in any other manner discriminate or retaliate against, an employee because of lactation or for exercising or attempting to exercise any right protected under this chapter.

Section 6: Remedies and Enforcement

[Ideally the protections of this model bill would be written into an existing anti-discrimination statute that has a robust enforcement mechanism. If that option isn’t available, the following language may be used.]

An employee claiming to be aggrieved by a violation of this chapter shall have a cause of action in any court of competent jurisdiction for compensatory and punitive damages and such other remedies the court may deem appropriate including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, and reasonable attorney’s fees and costs. A private cause of action pursuant to this section shall be filed within three years of the unlawful act, or the discovery thereof.

[Most states have a human rights commission, labor standards enforcement division, or other governmental agency that can be directed to enforce a lactation break law. Include here that complaints may be made to that agency. Give it the power to investigate, assess penalties, and order immediate compliance with the law. Ideally this can be done in part through reference to another code section providing the agency’s authority and process. The best practice is to ensure that employees will be allowed to file claims in court without being required to file a complaint with the state agency]
first, as there is often an urgent need for immediate relief in these cases. For more information, contact the Center for WorkLife Law.

Section 7: Requirement for Written Policy

Employers of 15 or more employees shall develop and implement a written policy alerting employees to their rights under this chapter, including that they have a right to lactation breaks and space under this chapter. The policy must describe the process by which an employee may make a request for break time and space. The policy must be included in any employee handbook or set of policies the employer makes available to employees and must be provided to any employee who requests leave for childbirth, adoption, or fostering a child within two weeks following the request.

[If a state agency is tasked with enforcing the law, consider directing the agency to provide a sample policy, workplace poster, and/or regulations.]
MODEL STATUTE: BASIC BREAK TIME AND SPACE LAW

This model statute provides the basic protections needed by all lactating workers who wish to express milk during the workday.

Section 1: Break Time and Private Space for Milk Expression

(a) Employers shall provide a reasonable amount of unpaid break time to a lactating employee each time the employee has need to express milk.

(b) Employers shall provide a lactating employee with the use of a room or other location, which is not a bathroom, in close proximity to the employee’s work area for the employee to express milk. The room or location must be available when the employee needs it to express milk and be functional for the purposes of expressing milk, including free from hazards. The room or location must be shielded from view, free from intrusion from co-workers and the public, and include a chair and flat surface to place the breast pump. The room or location may be the place where the employee normally works if it otherwise meets the requirements of this subsection (b), or if the employee requests it.

(c) Nothing in this section shall require an employer to construct a permanent dedicated space for milk expression.

(d) Employers shall not discharge, or in any other manner discriminate or retaliate against, an employee because of lactation or for exercising or attempting to exercise any right protected under this section.

(e) An employee claiming to be aggrieved by a violation of this section shall have a cause of action in any court of competent jurisdiction for compensatory damages and such other remedies the court may deem appropriate, including reasonable attorney’s fees and costs. A private cause of action pursuant to this section shall be filed within two years of the unlawful act. [Most states have a human rights commission, labor standards enforcement division, or other governmental agency that can be directed to enforce a lactation breaks laws. If appropriate in your state, indicate that a labor standards enforcement agency has jurisdiction over these claims. For more information, contact the Center for WorkLife Law.]

Section 2: Undue Hardship Exemption

An employer that employs fewer than 25 employees may be exempt from complying with any requirement of Section 1(a) or (b) if it can demonstrate that the requirement would impose an undue hardship in a particular case 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. An employer claiming an undue hardship must still comply with all other requirements of Section 1(a) and (b) that do not impose an undue hardship.
IV. ADVOCACY

LOBBYING 101

Few efforts can change the landscape of breastfeeding support as quickly as passing a law—but engaging in legislative advocacy comes with a new set of responsibilities for lactation-support organizations. A common belief is that non-profit 501(c)(3) organizations are not allowed to engage in any lobbying. Actually, most are legally permitted to do so. But there are limits to this permission under U.S. tax law, as well as some state and local laws. Likewise, many foundation grant awards prohibit the use of grant funds for lobbying activities. It is therefore critically important to understand what constitutes lobbying and what does not, as well as the rules to follow when you engage in lobbying. This section provides key considerations and links to reliable guides on this topic.

Please note that this section is included in the Toolkit for general information purposes only and may not reflect recent legal developments. It is not legal advice and is not intended to be a substitute for legal counsel. Please feel free to contact the Center for WorkLife Law for assistance identifying a relevant legal expert.

WHAT ARE THE RULES FOR NONPROFIT LOBBYING?

Often advocates struggle with the question of what does (and does not) constitute lobbying. This is an important question because lobbying activities are subject to IRS regulations and potential recordkeeping requirements. Straightforward resources from Bolder Advocacy can help.
IRS Lobbying Flowchart

This graphic can help you determine if your communication is considered lobbying under federal tax law rules for electing 501(c)(3) organizations. It does not cover situations or communications that take place in a candidate election context.

1. Does your communication refer to specific proposed or pending legislation or an appointment needing Senate confirmation?
   - YES
   - NO

2. Does it express a view on the proposed or pending legislation or the appointment?
   - YES
   - NO

3. Does it meet one of the lobbying exceptions?
   - YES
   - NO

4. Is it directed to a legislator (including staff), or the voting public for a ballot measure?
   - YES
   - NO

5. Are you meeting with others to plan or creating materials that will be used for direct communication?
   - YES
   - NO

6. Does it include a call to action?
   - YES
   - NO

7. Is it directed to the general public?
   - YES
   - NO

8. It’s probably grassroots lobbying. Keep track of expenditures, including staff time.
   - It’s probably not lobbying.

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice at 866-NPLOBBY.

www.bolderadvocacy.org | www.allianceforjustice.org
**Bolder Advocacy** is a nonprofit organization that offers workshops and other tools for advocates on nonprofit lobbying, including state level information regarding lobbying restrictions. They also provide a helpline for legal questions. Visit [bolderadvocacy.org](http://bolderadvocacy.org) to learn more about their offerings.

**Being a Player**, a comprehensive guide from Alliance for Justice, provides an excellent overview of the Internal Revenue Service regulations on lobbying by 501(c)(3) organizations. The guide defines lobbying, outlines the extent of permissible lobbying, offers guidance on recordkeeping, and more.

For examples of lobbying and non-lobbying activities, as well as definitions of common legal terms around lobbying, check out Bolder Advocacy’s resource “[What is Lobbying Under the 501(h) election?”](http://bolderadvocacy.org)

**STATE AND LOCAL LOBBYING LAWS**

Nonprofits that lobby must comply with the federal IRS rules described in **Being a Player** and outlined in the flowchart above. They must also comply with the rules of their state and sometimes local jurisdiction, which may differ from the federal rules. Many states require certain advocates to register as a lobbyist and disclose lobbying activities to the state.

For an overview of considerations to comply with state and local lobbying laws, visit Bolder Advocacy’s [State Lobbying Registration Thresholds](http://bolderadvocacy.org).

National Conference of State Legislatures provides charts outlining the key rules in each state:

- [How States Define Lobbying and Lobbyist](http://www.ncsl.org)
- [50 State Chart: Lobbyist Activity Report Requirements](http://www.ncsl.org)
- [Lobbyist Registration Requirements](http://www.ncsl.org)

Consider google searching the name of your state and also the name of your city/county for “lobbying rules” to identify any rules that are not included in these guides.
Bolder Advocacy has created state-specific guides for many states:

<table>
<thead>
<tr>
<th>State</th>
<th>Links</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>· Arizona Lobbying Disclosure&lt;br&gt;· Arizona – Lobbying or Not?</td>
</tr>
<tr>
<td>California</td>
<td>· California Lobbying Disclosure&lt;br&gt;· California Lobbying Disclosure Thresholds: When an Organization Needs to File&lt;br&gt;· Shaping the Future: A Compliance Guide for Nonprofits Influencing Public Policy in California&lt;br&gt;· California City, County and Special District Local Lobbying Ordinances</td>
</tr>
<tr>
<td>Colorado</td>
<td>· Colorado Lobbying Disclosure</td>
</tr>
<tr>
<td>Delaware</td>
<td>· Delaware Lobbying Disclosure&lt;br&gt;· Delaware Lobbying FAQ</td>
</tr>
</tbody>
</table>
| District of Columbia | · District of Columbia Lobbying Disclosure |}
| Florida       | · Florida Lobbying Disclosure                                         |
| Georgia       | · Georgia Lobbying Disclosure<br>· Georgia – Lobbying or Not?         |
| Illinois      | · Illinois Lobbying Disclosure<br>· Illinois – Lobbying or Not?      |
| Iowa          | · Iowa Lobbying Disclosure                                            |
| Kansas        | · Kansas: Nonprofit Lobbying and Political Activity Guide            |
| Kentucky      | · Kentucky Lobbying Disclosure                                       |
| Louisiana     | · Advocacy for Louisiana Nonprofits                                  |
| Maine         | · Maine Lobbying Disclosure<br>· Maine – Lobbying or Not?             |
| Maryland      | · Maryland Lobbying Disclosure                                        |
| Massachusetts | · Massachusetts Lobbying Disclosure                                   |
| Michigan      | · Michigan Lobbying Disclosure                                        |
| Minnesota     | · Minnesota Lobbying Disclosure<br>· Minnesota – Lobbying or Not?     |
| Missouri      | · Missouri Lobbying Disclosure                                        |
| Montana       | · Montana Lobbying Disclosure                                         |
| Nevada        | · Nevada Lobbying Disclosure                                          |
| New Jersey    | · New Jersey Lobbying                                                |
| New Mexico    | · New Mexico Lobbying Disclosure                                      |
| North Carolina | · North Carolina Lobbying Disclosure                               |
| North Dakota  | · North Dakota Lobbying Disclosure                                    |
| Ohio          | · Ohio Lobbying Disclosure<br>· Ohio – Lobbying or Not?               |
| Oregon        | · Oregon Lobbying Disclosure                                          |
Pennsylvania
- Pennsylvania Lobbying Disclosure
- Pennsylvania – Lobbying or Not?
- Pennsylvania State Lobbying Flowchart

South Dakota
- South Dakota Lobbying Disclosure

Tennessee
- Tennessee Lobbying Disclosure

Texas
- Texas Lobbying Disclosure
- Texas Lobbying Registration Flowchart
- Texas: Lobbying Under the Insubstantial Part Test
- Texas: What is Lobbying Under the 501(h) Election?
- Public Charities Can Lobby in Texas: How to Measure Your Lobbying Limits
- Public Charities Can Lobby in Texas: How is Lobbying Defined?

Virginia
- Virginia Lobbying Disclosure
- Virginia – Lobbying or Not?

Washington
- Washington Lobbying Disclosure

Wisconsin
- Wisconsin Lobbying Disclosure
- Wisconsin – Lobbying or Not?
HOW DO I GET STARTED?

Lobbying is just one piece of the larger advocacy puzzle. Assessing your own capacity, analyzing the political landscape, building coalitions, raising public awareness, and strategic planning are all important to the overall success of your campaign. But once your organization is ready to engage in lobbying and has put in place a plan for tracking lobbying activities, it’s time to get started meeting with legislators and their staff! This can feel daunting the first time you do it, but remember, you’re the lactation expert. You have valuable insight into the struggles of lactating workers. You can prepare yourself to understand how those struggles relate to public policy solutions by reviewing this toolkit, as well as by reading the Center for WorkLife Law’s report Exposed: Discrimination Against Breastfeeding Workers. The Exposed report has been successfully used as a handout to share with lawmakers’ staff to open their eyes to these issues.

Remember, at the end of the day, you’re talking to another human being, trying to share information so they might see things the way you do. You never have to—nor should you—answer a question you don’t know the answer to. Try to be persuasive but honest, and work toward building a respectful relationship. Visit Bolder Advocacy’s Lobbying Do’s and Don’ts for a best practices guide to engaging lawmakers about your bill. For a basic guide to the legislative process for beginners, see the Center for WorkLife Law’s Legislative Process video.
FIVE NON-LOBBYING ACTIVITIES THAT CAN MAKE A DIFFERENCE

While talking directly to lawmakers or encouraging your membership to do so is a highly effective way to influence legislation, lobbying isn’t the only way to have an impact on public policy. Organizations or individuals who are not permitted to lobby due to funding or employment rules can shift the political landscape and change narratives, making others’ lobbying efforts more effective. And splitting up the work means that groups that can lobby will be able to put more of their focus there.

Here are some concrete actions you can take without lobbying. These ideas are based on the federal definition of lobbying, but the rules may be different in your state, so be sure to check your state's rules. See The Bolder Advocacy links to the state-specific guides above.

1. Collect stories

Compelling stories are often more persuasive than data or arguments. A collection of stories from directly impacted people or companies is one of the most powerful tools in your toolkit. Hearing from lactating parents and lactation-friendly employers brings the real-world impact of lactation accommodations to life for lawmakers and the public. Without lobbying, organizations and individuals can collect and share stories of people who would benefit from the legislation or businesses that have seen positive results by already providing what the law would require. These stories can be shared in letters to the editor, with journalists covering this issue, in written reports, or with advocates who are engaging in lobbying. For more on how to successfully collect stories, and a template form, visit the Collecting Stories section on page 45 in this toolkit.

2. Conduct or share research

Like stories, statistics about breastfeeding in your state can be useful to make clear that lactation accommodations are an urgent issue lawmakers need to address. Consider compiling information about human milk feeding rates in your state at birth and 6 months, the number of workers left out of existing law, or the financial or human costs of low breastfeeding rates in your state. (For existing key research on these topics, see the Resource and Research Directory on page 83.) You can provide this information to other advocates and even directly to lawmakers, so long as your communication doesn’t reference or express a view about proposed or pending legislation.

3. Inform decisionmakers

Your organization can build relationships with lawmakers and community leaders to educate them about why human milk feeding is so important. By raising awareness
around how breastfeeding benefits families, communities, and the state’s economy and public health before any bill is being discussed, you are laying the groundwork for future legislative advocacy. When legislation is later proposed, you may also be asked for technical information about breastfeeding and workplace dynamics that you can provide without lobbying, so long as you do not express a view about proposed or pending legislation.

4. Build membership capacity

Many organizations are surprised to learn that asking their membership to contact legislators about a bill is lobbying. But effective organizations can help their members engage in other ways. You can provide trainings to your membership on the legislative process, provide workshops on communicating effectively and even host events to help members get to know their elected officials without directing them to lobby for legislation. Organizations can also alert their membership of proposed legislation and inform them about the legislation, so long as they do not also encourage their members to take action.

5. Engage in administrative advocacy

Once a workplace lactation law passes, organizations that cannot lobby can take action to make sure the law goes into effect in a way that benefits the community. Under federal rules, it is not lobbying to seek to influence the implementation of a law, for example by submitting written comments or having a conversation with enforcement agency officials about how to interpret the law in a way that best benefits families. Other post-passage activities like drafting proposed guidance or encouraging a state agency to fast-track investigation into lactation complaints are not lobbying. For more information, see Bolder Advocacy’s guide to administrative advocacy.
COLLECTING STORIES

Your organization can shape the narrative around breast/chestfeeding legislation by telling stories of families in your community to make the case for why change is needed. You can use social media to collect them. Sharing stories from workers in the community is a very effective advocacy tool and is something an organization can do without lobbying (see the lobbying guide starting page 37 for more details).

**Step 1: Create a “story share” form** (see template, below). You can use Google Forms, SurveyMonkey, Jotform or any other tool to do this quickly.

**Step 2: Publicize your request for stories.** See suggested social media posts in this toolkit. See suggested social media posts in this toolkit. Encourage your members to pass on the request to their networks.

**Step 3: Carefully ensure you have obtained permission from folks that shared their stories to use them publicly.** Make sure you understand which details are shareable and which should be kept private (e.g., employer names or names of children).

**Step 4: Use the quotes and stories collected to add life to your campaign.** Add them to fact sheets and social media about the legislation or the topic generally. Compile the stories into a document or video to share with lawmakers or influential organizations. If there are particular lawmakers who you need to persuade, consider focusing on stories from their districts. Mention the stories in your meetings with lawmakers’ offices, or better yet, invite the impacted person to share their story directly with a lawmaker’s staff, in legislative testimony, at a public event, or in press release.

**Step 5: Keep the people who shared their stories informed of how they will be used, and how to stay involved in the fight for policies that support families.** This is a great way to build your advocacy community!

Below is a template that you can use to collect stories. Be sure to leave room for people to tell you what they experienced in their own words and let them know how the information will be used.

.Template available in Google Forms here. For access to your own editable copy of this form, email policy@worklifelaw.org.
Share Your Story

The [state] legislature is deciding whether to create a new law that will protect breastfeeding workers, and we need to let them know what pumping at work is like. Sharing YOUR STORY can help make sure that in the future, lactating workers in [state] are supported at work and aren’t discriminated against. Thank you for sharing.

Did you face discrimination at work in [state] because you were a breastfeeding parent? (check all that apply)

- Yes, I was fired
- Yes, I had to quit my job
- Yes, I wasn’t given the break time or space I needed
- Yes, I had to stop breastfeeding
- Yes, I was harassed
- Maybe
- No

Please tell us about what you experienced, and how it impacted your family.

Long answer text

How many employees did your employer have?

The proposed laws would grant new protections to workers at small businesses

- 0-5
- 5-10
- 10-15
- 15-100
- 100+
- Not sure
What type of business did you work for? (For example: store, restaurant, office, etc.)
Short answer text

What type of job did you do? (For example: waiter, nurse, cashier, teacher)
Short answer text

Do you want to share your story in meetings with lawmakers to help pass this law?
- Yes
- I'm not sure, tell me more!
- No

Can we share your story?
- Yes, use my first name
- Yes, but not with my name
- I'm not sure, tell me more!

Contact info
If you're interested in supporting legislation when the time comes or learning more, please enter your contact information and we will reach out to you.

Your contact information will not be shared publicly.
BUILDING AN INCLUSIVE AND EQUITABLE COALITION

As an advocate for change, you can increase your effectiveness by collaborating with others in pursuit of a shared policy goal. Partnership allows you to put forward a common—and therefore more credible—message; increase your access to resources and human networks; expand your knowledge; and tap into diverse areas of expertise and strengths. But partnerships aren’t just strategic tools, they are relationships, which require intention and give-and-take. When strong, coalitions can repair or strengthen bonds across racial, socio-economic, gender, and professional divides that require intent, effort, and action to overcome.

As diverse advocates from a white-led organization, we offer this discussion to share several core principles and useful resources that have stood out to us so far in our own journeys toward better fostering inclusivity in our partnerships.

Be aware that the first step in partnering with others may be taking stock of how your own organization, particularly if it is white-led, can better build principles of racial justice into its systems. Recognize this is a lifelong journey, and that the commitment to inclusivity and equity doesn’t expire, but also that it leads to more rewarding and fulfilling work experiences for all.

The process of building and managing coalitions is one place where you can use what privilege you might have to ensure that people of color and other systematically marginalized people can play leadership roles in lactation advocacy campaigns, which will increase their effectiveness. This commitment to inclusivity starts at time zero, which means inviting folks to co-create the campaign or coalition at the outset. It is never too soon to reach out with an invite, or to ask existing efforts if you can join forces.

Those closest to the problems are often closest to the solutions. Empowering folks from disadvantaged communities to co-create policy is not only the right thing to do, but it also results in better policy and stronger, more equitable implementation once the policy becomes law. Diverse membership is the bare minimum to start centering the work in communities that will be impacted by the campaign. The model policies in this Toolkit are based on years of extensive discussion with impacted families, including through the Center for WorkLife Law’s free legal helpline, and community advocates, as well as other legal experts. In choosing from the various policy solutions offered, it is important to engage in an equitable process to identify your campaign’s policy priorities.

At the outset of your campaign, consider conducting a Racial Equity Impact Assessment to ensure you’ve meaningfully evaluated the racial impacts of your legislative policy options.
Another core principle is to avoid transactional interactions. To build authentic and respectful relationships, meet early and regularly with groups and leaders you wish to partner with, not only when you want something in return. Leaders who are from dominant groups should be keenly aware of the power dynamics at play and ways in which we all internalize oppressive cultural norms in work. Make sure all partners on the campaign don’t have just a seat at the table, but also a voice and a vote. Doing this requires setting clear understandings of the coalition, your goals, and decision-making processes. It also requires making sure spaces where policies are developed are accessible and respectful of the experience and expertise of everyone in the room. Exclusionary practices are not just a professional faux pas—they harm people and recreate oppressive systems.

Undertaking this work can feel daunting, but it will pay off in a more effective campaign and policy—and a stronger community. The following resources can help you, as they have us, navigate the process, whether for the first time or to refresh core principles as an experienced movement builder.

**Best Practices for White-Led Organizations to Promote Health Equity and Racial Justice in Health Advocacy from Community Catalyst** supports white-led organizations in ensuring their health advocacy agendas, coalition work, stakeholder engagement, communications, and campaign strategies include, reflect, and respond to the needs of people of color.

**Strength in Numbers: A Guide to Building Community Coalitions** from Community Catalyst provides a helpful framework for how to establish a strong coalition with broad and diverse membership.

**What Makes an Effective Coalition? Evidence-Based Indicators of Success from The California Endowment** explores what makes an effective coalition, with research-backed suggestions for how to improve coalitions, as well as how to reduce frustrations sometimes associated with operating them.

Racial Equity Tools’ webpage on **Networks, Alliances, and Coalitions** provides case studies and other tools on consensus decision making, diversifying membership, centering affected communities, and bridging differences and movements.

The **White Supremacy Culture** website discusses 15 interconnected characteristics of White Supremacy Culture that are omnipresent in our society and therefore show up in our work and organizations, along with antidotes to those behaviors.

**The Eight Steps to Effective Coalition Building** from Prevention Institute is a concrete guide for engaging individuals, organizations, and governmental partners in addressing community concerns. It provides practical tips for building effective partnerships and making them work.
Racial Equity Resource Guide from the W.K. Kellogg Foundation is an interactive racial equity resource guide that includes articles, organizations, research, books, media strategies, and training curricula aimed at helping organizations and individuals working to achieve racial healing and equity in their communities.

Racial Equity Tools, funded by the W.K. Kellogg Foundation amongst others, offers tools, research, tips, curricula, and ideas for people who want to increase their own understanding and to help those working toward justice at every level — in systems, organizations, communities, and the culture at large.
POTENTIAL ALLIES

Human milk feeding has the power to unite people with a broad array of interests and has received bipartisan support in many states. While breastfeeding advocates are powerful agents for change, their influence is heightened by working in partnership with advocates from other backgrounds. Be sure to consider which coalitions have been active on other recent legislation impacting maternal/infant health, fair workplaces, and women’s rights in your state (e.g. paid family leave, maternal health resolutions, paid sick days, etc.).

These ideas for potential campaign allies for breastfeeding advocacy groups are based on what has worked in past legislative efforts.

**Health Care and Public Health**
- American College of Obstetricians and Gynecologists (State Chapter)
- American Academy of Family Physicians (State Chapter)
- American Academy of Pediatrics (State Chapter)
- WIC (Local/State Offices)
- ZERO TO THREE
- Academy of Nutrition and Dietetics
- State health department breastfeeding staff
- Doula and birth worker organizations
- State maternal/infant care committee or coalition

**Business Interests**
- Chamber of Commerce (State/Local Chapter)
- Local breastfeeding friendly business award winners
- Local women-owned business groups

When approaching business groups, please keep in mind that the U.S. Chamber of Commerce has supported both the PUMP for Nursing Mothers Act and the Pregnant Workers Fairness Act at the federal level.

**Infant/Child Health**
- March of Dimes (State Chapter)
- 1,000 Days
- State organizations working to prevent child abuse
- Association of Maternal & Child Health Programs
- Association of State Public Health Nutritionists
Organizations Representing Workers, Including those Left Out of Federal Law (as of 2021)

- National Education Association (State/Local Chapter)
- American Federation of Teachers (State/Local Chapter)
- American Academy of Nursing
- National Nurses United/ National Nurses Organizing Committee (State Affiliates)
- American Association of University Women (State/Local Chapter)
- Association of Flight Attendants – CWA
- Other labor unions, especially those that represent a significant number of women members
- State/Local bar association’s women’s advancement committee
- State or local groups that advocate for workers’ rights, especially on work-family issues or gender equity

Women’s Rights Groups

- ACLU (State Affiliate)
- NARAL (State Chapter)
- Other reproductive justice organizations
- Planned Parenthood (State Chapter)
- MomsRising (State/Local Group)
- YWCA (State/Local Orgs or Board Members)
- State or local groups that advocate for women’s rights

National Organizations

- Center for WorkLife Law
- US Breastfeeding Committee
- A Better Balance
- ACLU Women’s Rights Project
- National Women’s Law Center

Other

- Interfaith coalitions
- Religious groups and leaders
- Online interest groups (e.g. Facebook groups for breastfeeding moms, new parent support groups, etc.)
V. MESSAGING

This section provides ideas for how to effectively craft messages around workplace lactation support. Workplace lactation laws touch on a broad scope of policy areas: employment, gender and racial equity, reproductive freedom, public health, and access to justice. At the same time, human milk feeding is at its core very personal, affecting the issues most dear to us—our families and our health. It is no wonder it can be challenging to distill such massive issues into neat talking points.

In this section, you will find tools to help you craft an effective strategy for lactation advocacy messaging:

   a. General Messaging Tips
   b. Talking Points in Support of Workplace Lactation Legislation
   c. Responding to Difficult Questions from Your Bill’s Opponents
   d. Sample Handout: FAQs On Needs of Lactating Workers
   e. Model Witness Testimony Samples
   f. Letters to the Editor
   g. Breastfeeding Policy Social Media Toolkit
   h. Language Suggestions

GENERAL MESSAGING TIPS

No two communities’ advocacy campaigns will look exactly alike. But while the picture may vary from place to place, there are some best practices for crafting an effective message. These tips can be used in your communications with lawmakers and the general public to ensure your message is both heard and well received.
1. Know yourself

Before beginning to take on legislative advocacy, first evaluate yourself as a messenger. What are your strengths and weaknesses? What issues are you expert on? Which lawmakers or constituencies will be most receptive to your advocacy? How will others perceive your interests and biases? Use your self-reflection to guide your role, and to help you identify when it would be more effective to ask others to step in.

2. Know your audience

When engaging in a legislative advocacy campaign, you will be in touch with a diverse group of people who may not all share your values and interests. Before communicating, be sure to know whom you’re talking to. What existing biases or ideas might they have about your issue? Are they familiar with lactation? Do they value racial and gender equity? Are they singularly focused on business interests? It is helpful to tailor the way you talk about your bill in light of your audience, so that you can draw their attention to your shared values, rather than your differences.

- Legislators may be more concerned with business interests than the health of families. If you need their votes, consider focusing on the business case for workplace lactation support\(^6^5\) and the benefits to the economy of supporting women to stay in the workforce. Take care not to demonize employers or lump all businesses into the category of bad actors, which can turn off many lawmakers and make lactation support seem more difficult than it is. There are businesses doing the right thing even without legal mandates; others require more education to adequately support lactating workers.

- Many legislators are strongly invested in supporting mothers and women, and some refuse to recognize lactating parents of other genders. While we know lactation support is needed by people of all genders, consider focusing on “moms” and “mothers” in your communications with these individuals, without compromising the bill’s inclusive language.

3. Tell a story

Advocacy campaigns are not won on facts and figures. Far more important are the stories we tell. Sharing stories can make even the most complicated of issues come to life for the public and lawmakers. Personalize your language and provide examples as often as possible; your messages will be more memorable.

- Instead of, “workers earning minimum wage experience significant income loss when they take unpaid lactation breaks,” try “Monica couldn’t afford to take the lactation breaks she needed, because she needed the money to pay for her son’s childcare.”
Instead of saying only that “existing law leaves out several classes of workers who are exempt” consider adding an example: “Stephanie, a registered nurse, has no right to pump at work, while all the staff members she supervises do.”

4. Blame broken systems, not people

Great stories often have heroes and villains—and the stories you tell about workplace lactation laws can as well. When messaging for legislative advocacy, be sure you’re leading your audience to the right villain. Keep the focus on the system that is not performing as it should, and not on individual people. Lawmakers or members of the public who did not breastfeed or provide human milk to their children can be valuable allies if you don’t inadvertently alienate them.

• Make sure your message doesn’t shame parents who do not breastfeed. The choice to breastfeed, and continue breastfeeding, is a personal one, and many parents do not have the support they need to make the choice to breastfeed. Focus on the support they need.

• Pay particular attention to the way you describe the benefits of breastfeeding. For example, instead of saying “failure to breastfeed causes illness in babies,” consider saying “breastfeeding reduces the risk of illness in children and nursing parents.”

• Advocates report success mentioning the recent developments in science. While older generations did not know the full benefits of breastfeeding for parents and children—or even have electric pumps—now we do. Breastfeeding has only recently returned to being the norm. This sort of framing can help relieve the tension with a person who may not have breastfed their own children.

5. Center impacted communities

The work you are doing to advance human milk feeding is for real families in your community, and your advocacy should reflect that. As you begin to build your campaign, make sure that your coalition includes those who will be directly impacted by the bill and your efforts. That likely includes lactating employees and their families, particularly people of color and lower income workers, who are less likely to have the workplace lactation protections they need. You may also want to invite lactation-friendly business owners and community groups to partner with you.

• Do not invite impacted community members to join you just for the photo opportunity. Truly centering their voices means offering a seat at the table in partnership for the long run.
• Support for lactating workers is a bipartisan issue. Legislators from a wide range of backgrounds and beliefs vote in support of workplace lactation laws. Some may be hostile to the deeply held values and personal identities that have led you and your coalition partners to support lactation rights. Become knowledgeable about the lawmakers you are lobbying to ensure you and your partners are comfortable engaging before participating in a meeting. Take care not to pressure a coalition member to engage in a situation that might cause them harm.

• If you are unable to find impacted community members who are eager to join your coalition, do not carry on. Press pause and take some time to reevaluate your strategy and network. Ask for help if you need it. For more information see Building an Inclusive and Equitable Coalition on page 48.

6. Use competitiveness to your advantage

Lawmakers look to other states for examples of legislative successes and horror stories. Play to lawmakers’ sense of competitiveness by encouraging them to not let your state fall behind its neighbors. Highlight what laws neighboring states have, and how the laws have impacted their workforce and breastfeeding rates. Try to make comparisons with states that are politically and geographically similar, yet have stronger legal protections. For a list of state workplace lactation laws see WorkLife Law’s U.S. Map of Workplace Lactation Laws.

7. Keep it simple and brief

Communicate in language that is approachable, easy to understand, and as succinct as possible. Often, lawmakers and members of the public are considering your message along with hundreds of other messages—attention spans are limited. While long, detailed reports might be useful to reference, be sure you have points that summarize their findings in a way that is easy for folks to quickly understand. Part of keeping things simple means translating the technical language of public health/medical practitioners and lawyers into language that everyone can understand.

• Instead of “breastfeeding is a primary public health prevention strategy that improves health outcomes for the maternal and infant dyad” try “breastfeeding is important for the health of parents and babies, because….”

• Instead of “this proposed legislation will facilitate compliance by replacing section (7)(r) with section 18(D)” consider “this bill will improve the law by making it easier to understand and follow.”

• If you expect someone with limited time to read it, keep fact sheets, handouts, and similar materials to 1 or 2 pages. Try to make important information stand out by identifying distinct sections and using bold or underlining, especially with longer documents. This helps readers get the information they need quickly, or at least skip to the section they are most interested in.
**LANGUAGE SUGGESTIONS**

There are no rigid rules when choosing words that will be most persuasive. Different audiences have different values and priorities, so different words resonate. But some words tend to trigger bias and negative reactions more than others. Consider the following suggested terms.

<table>
<thead>
<tr>
<th>LESS EFFECTIVE</th>
<th>MORE EFFECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engorged, leaking breasts, clogged ducts</td>
<td>Pain, illness, and complications including inability to produce enough milk</td>
</tr>
<tr>
<td>Breastfeeding support</td>
<td>Lactation break time and space</td>
</tr>
<tr>
<td>Bonding and nurturing</td>
<td>Meeting health needs, lowering the risk for serious illness</td>
</tr>
<tr>
<td>Returning after maternity leave</td>
<td>Returning to work, returning to work after having a baby, or in the workplace</td>
</tr>
<tr>
<td>Comply, compliance, obey</td>
<td>Follow the law, meet obligations</td>
</tr>
<tr>
<td>Sue, lawsuit</td>
<td>Seek justice, face consequences</td>
</tr>
<tr>
<td>Universal, comprehensive</td>
<td>All children, every family</td>
</tr>
<tr>
<td></td>
<td>Opportunity, strong foundation, healthy children/families, strong children/families, future focused</td>
</tr>
</tbody>
</table>

While the terms on the left are accurate and may be useful for some audiences, pain and illness is more understandable by all. Terms on the left may also make some lawmakers uncomfortable, so consider whether it is worth that risk.

The word “support” may suggest something broader than what is required by a break time and space law, and it may trigger negative assumptions based on gender stereotypes. Instead, identify specifically what protection you’re talking about.

While the terms may be useful for some audiences, be aware that many people do not believe employers should face legal mandates so that parents can bond with their children. When breastfeeding is seen as simply a parenting choice, rather than a critical health issue, we lose support.

Many employees don’t have access to maternity leave and the time to establish breastfeeding that leave provides. We don’t want to support a narrative that leaves out the reality that many parents return to work within days of giving birth.
I. Why lactation rights matter

Importance of breast/chestfeeding; health and economic reasons for providing break time and space; impact of employment on lactation outcomes

A. Breastfeeding keeps babies and mothers healthy

- According to the U.S. Surgeon General, breastfeeding lowers babies’ risk of illnesses like ear, skin, and respiratory infections, diarrhea, and vomiting, as well as longer-term conditions such as obesity, type 1 and 2 diabetes, and asthma. Mothers who breastfeed for the recommended duration benefit, too, from lower risks of breast cancer, heart disease, and other ailments.

- In light of overwhelming evidence of health benefits for babies and mothers, human milk as a child’s first food is universally recommended by all relevant major American medical associations. Most mothers start out breastfeeding their newborns.

- Over 84% of newborns born in 2017 were breastfed. (Consider using your state’s numbers and comparing initiation with duration to make the point that return to work is preventing people who want to breastfeed from continuing to do so.)

B. The absence of workplace support is a major barrier to continued breastfeeding

- Despite medical advice, the health benefits, and a high national breastfeeding initiation rate, a large majority of American mothers do not meet the breastfeeding goals set by themselves or the medical community. Many mothers have to choose between nursing their babies and keeping their jobs when they are denied basic break time and space accommodations.

- Half of all women in one national survey reported that their employment impacted their breastfeeding-related decisions, and a third said that their employment posed a challenge to breastfeeding.
• Low-income women face the greatest workplace barriers to continued breastfeeding. They are only half as likely as middle-income women and one-third as likely as high-income women to be provided sufficient break time and private space.\(^71\)

• Most mothers are the primary, sole, or co-breadwinner for their families and rely on their income to get by.\(^72\) More than half of moms return to paid work before their infant is just three months old, and nearly 1 in 4 return within two weeks of giving birth.\(^73\)

• Because lactating parents are constantly producing milk, it has to be removed from the body regularly—typically by using a pump. Without adequate break time and space to pump during the workday, lactating employees can face serious health consequences, including the risk of painful illness and infection, diminished milk supply, or inability to continue breastfeeding.\(^74\)

• Many breastfeeding workers also suffer devastating economic consequences when they are not provided break time and space,\(^75\) such as when they are terminated or put on unpaid leave instead of being provided simple accommodations.

• Women who receive appropriate break time and private space for pumping breast milk are over twice as likely to be breastfeeding at six months, even after controlling for sociodemographic factors.\(^76\)

II. This bill is easy for employers to follow

For break time and space legislation

• The bill allows flexibility for employers to meet nursing parents’ needs in whatever way makes sense for their industry.

• Providing break time and space is typically low-cost or cost-free, and flexible solutions exist for every type of business.\(^77\)

• The bill does not require employers to construct a lactation space or even to provide a room with four walls. It only requires “a place, other than a bathroom, that is shielded from view and free from intrusion” (insert your own language)—a broad, flexible standard that can be tailored to the individual needs of each business.

• Most employers across our state have been providing accommodations to lactating workers as required by federal law since 2010. This bill merely closes the gaps (mention how your bill is an improvement, not something totally new.)

• When employers provide the lactation accommodations working parents need, it’s a win-win. Studies show that supporting nursing mothers leads to lower employer health care costs, absenteeism, and turnover, as well as improved morale, job satisfaction, and productivity.\(^78\)
• [If applicable] While most employers will be able to provide the break time and space their employees need, this bill protects small businesses by allowing businesses with fewer than [insert] employees to be exempt if following the law would cause an undue hardship.

III. This bill would close gaps left by federal law

*For break time and space laws that would cover all categories of workers, including teachers, registered nurses, and others who are left out of the national Break Time for Nursing Mothers law as of August 2021*

• This law would protect the [insert your state’s number from the appendix here] [state citizens, e.g. Floridian] women of childbearing age that are excluded under the national Break Time for Nursing Mothers law by extending break time and space rights to salaried employees and others who are excluded from the federal protections.

• The federal law, in effect since 2010, amended the Fair Labor Standards Act (FLSA) to require employers to provide “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.” Employers must also provide “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.”

• The federal law’s placement within the part of the FLSA that regulates overtime means that nearly [INSERT 1 in 5, etc.] women in [Insert state] are excluded from federal protections and have no clear right to break time and space to pump breast milk. Teachers, registered nurses, and many other [state name] workers are unprotected.

• While most employers are covered by the federal law, the law’s loopholes excluding certain categories of employees from workplace lactation protections make it challenging for employers to understand their legal obligations. [Insert bill name] will end the confusion and make clear that all lactating employees are entitled to basic protections under law.

• The majority of states have their own laws that give protections to lactating workers beyond federal law. We can’t wait for the U.S. Congress to act, [state] should join the majority of other states, including [insert neighbor states with laws, if any], and protect breastfeeding employees by passing [bill name].
IV. This bill would cover families currently left out of lactation protections
   Surrogacy, stillbirth, nursing older children

- Existing law protects only mothers pumping milk for their infant, leaving out those who need to express milk for other reasons.
- Under existing [state/federal] law, a mother who pumps milk after a stillbirth would have no rights. This bill would ensure that families who have faced unthinkable tragedy can get the lactation support they need through their recovery.
- Surrogate mothers providing milk to a baby in another parent’s care and adoptive mothers are also left out. This bill would make clear that these families matter, too.
- [Bill] would extend the length of time parents are entitled to lactation break time and space from [insert] to [insert]. While babies are typically ready to begin eating solid foods at around 6 months, the weaning process takes time. Every family is different, and some parents continue to need pumping breaks after their child’s first birthday. Most lactating employees need less time to pump as their child gets older, making it easier for employers to provide accommodations over time.

V. This bill would ensure that lactation breaks are accessible to low-income families and people of color

For paid lactation break laws, see Paid Lactation Breaks: on page 29.

- This bill would ensure all families can afford to breastfeed their infants by ensuring employers don’t dock worker pay for taking time to pump milk.
- Too often low-paid mothers are forced to choose between the wages they need to get by and providing milk for their child.
- Although highly-compensated employees usually take lactation breaks with no impact on their pay, employees paid by the hour can’t afford to take the breaks they need to protect their health and provide milk for their infant.
- When employees aren’t able to take the lactation breaks they need, they can suffer painful medical complications or even lose their ability to provide milk for their child, potentially setting off a chain of negative health consequences.
- Racial inequities in who can afford to take lactation breaks reinforce existing economic and racial disparities in breastfeeding rates, compounding health disparities in the long-term.
- Three states already require paid lactation breaks. See page 29.
VI. This bill would provide remedies for nursing mothers whose rights have been denied

For laws adding a right to sue

- This bill would ensure that nursing employees who face job loss or other harms are able to seek remedies in court, similar to the remedies available under other employment laws in [state].

- This bill would authorize [state agency name] to investigate complaints of non-compliance and give employers that are not following the law the information they need to come into compliance. Agency enforcement ensures all nursing mothers have the support they need to access their break time and space.

- Lactation break time and space laws without effective enforcement mechanisms are often ignored.\(^{79}\) Research has found that the single most impactful type of law that increases breastfeeding rates is a workplace pumping law with an enforcement mechanism.\(^{80}\)

- Privately enforceable laws incentivize employers to follow the law before problems arise, avoiding the need for litigation.\(^{81}\) Research has shown that allowing employees to enforce lactation break time and space laws in court does not lead to a meaningful increase in litigation.

- A study by the Center for WorkLife Law showed that there were only 6 lawsuits filed under privately enforceable lactation laws in other states over the combined 47 years those laws had been in effect. The likelihood a business owner will be sued under a break time and space law is essentially zero – they are over 25 times more likely to be struck by lightning in their lifetime.\(^{82}\)
RESPONDING TO DIFFICULT QUESTIONS FROM YOUR BILL’S OPPONENTS

As you meet with lawmakers and other interest groups, you should be prepared to respond to opposing arguments. The talking points below can help answer some of the most challenging questions. Make sure the points below are applicable to your specific legislation, and contact policy@worklifelaw.org for assistance.

Won’t employees take advantage of nursing breaks to get extra time off work?

- **The bill’s language protects against misuse of break time.** The bill specifically states that the amount of time spent on a pumping break must be “reasonable.” This standard has been in effect for years in other states and at the federal level. Considerable guidance is available regarding how long it typically takes to express milk. For example, the Department of Health and Human Services’ employer-focused guide, “The Business Case for Breastfeeding,” notes that “Each milk expression session takes around 15 minutes plus time to get to and from the lactation room.”
- **Misuse of breaks has not been a problem for employers in the past.** In practice, employers that provide break time and space have not found that employees take advantage of their lactation break time. It makes sense that they would not, as breaks provided by the [bill name] are unpaid [if true]. Hourly employees are incentivized to handle their health needs and return to their paying work. Likewise, salaried employees can be required to stay late to finish their assigned workload and are therefore similarly motivated to get back to their duties as soon as they are done pumping.
- **Lactation accommodations benefit employers too.** Research shows that employees that receive workplace support for lactation are more productive and loyal to their employers. We can trust them to meet their health needs without taking advantage.
- **If you are advocating for a paid break law, you can make all of the points above, except the one pertaining to hourly workers being taken off the clock. Instead, you can use the following: Employers are well equipped to handle any issues that arise. Employers routinely manage employees taking paid breaks for all sorts of reasons, from using the restroom to getting a cup of coffee, and have established ways of dealing with employee misuse of paid time. Employees must still abide by normal performance standards on the job; nothing in this law changes that.**

Should the law place time limits on milk expression breaks?

No. The amount of time needed to express milk varies from person to person. For example, a mother pumping milk for twins may take a little longer to express the additional milk. Someone who is first learning how to operate a breast pump will take longer to express milk than someone with more experience. If a nursing mother
repeatedly does not have enough time to express all of her milk, her supply will decrease, which may make her unable to produce enough milk to meet her infant’s needs.

Physiological needs change over time for each individual, and infants nurse less frequently as they grow and begin to eat solid foods. This bill provides a flexible approach that meets the needs of all nursing workers.

**Won’t giving employees a right to sue result in runaway litigation?**

No. The ability of employees who have suffered economic and other harms to seek appropriate remedies is key for employer compliance, but it doesn’t lead to significant litigation. Research published in 2021 showed that 4 states have break time and space laws—similar to this bill—that allow nursing employees to bring private lawsuits for violations. Over the course of the combined 47-year history that these four laws were on the books, nursing mothers brought a grand total of six (6) cases. The annual likelihood that a private employer will be sued under such a law is 0.0002%.

The ability to enforce legal rights encourages employers to follow the rules without imposing significant costs.

Similar laws, such as the federal Break Time for Nursing Mothers provision, have been in effect for over 10 years. Employers should be familiar with the needs of their lactating workers, and well prepared to provide break time and space.

**Won’t it be too burdensome and expensive for businesses to build new lactation spaces?**

- This bill does not require employers to build anything at all, or even to provide a room with four walls. It only requires “[state legal standard here]”—a broad, flexible standard that can be tailored to the individual needs and constraints of each business. For example, an employer can tape butcher paper over windows, provide a “pop up” tent, hang a curtain, or place visors in a vehicle. Spaces that are made temporarily available at the times when they are needed for lactation meet the requirement.

- Most employers already have been providing lactation spaces for over a decade. [State] employers have been successfully meeting the space needs of lactating workers as required by federal law since 2010. This bill merely closes the gaps/provides additional protections by [mention how your bill is an improvement, not something totally new.] Providing lactation space is low-cost or cost-free, yet employers that provide basic lactation accommodations have been shown to benefit from lower employer health care costs, absenteeism, and turnover, as well as improved morale, job satisfaction, and productivity.

- Keeping women in the workforce is critical to our economy (or, if appropriate, “critical to our economic recovery”). Businesses cannot afford
to lose more women from the workforce. When breastfeeding workers don’t get the lactation breaks they need, many are forced to leave their jobs. Employee turnover is always bad for businesses, but it is especially troubling when [state’s] economy is facing a severe labor shortage [if true]. We should be passing public policy that allows people to continue working, not the opposite.

**Won’t it be too difficult to provide private space in some industries, like transportation and agriculture?**

This bill does not impose a “one size fits all” approach. The opposite is true. The bill provides flexibility for employers to meet the legal requirements in a manner appropriate for their industry. That is why [local business groups or Chamber of Commerce affiliate] support the bill.

For instance:

- Agricultural employers can provide inexpensive pop-up tents or allow pumping in company field vehicle with privacy visors.
- Transportation employers can provide windshield visors to cover company vehicle windows or establish spaces on routes.
- Employees in other industries can use existing spaces like storage closets or conference rooms that have doors or curtains; tape butcher paper over windows; or access public places like city halls and libraries that have lactation spaces.

Over a dozen states explicitly require employers to provide lactation break time and space to employees, without industry carve-outs. (Many more have reasonable accommodation laws with the same effect.) As a result, employers in all industries have already innovated solutions that respond to their business needs. Substantial federal and state guidance exists about how different industries can support nursing mothers, ensuring no business has to reinvent the wheel. Finally, should a situation arise where providing private space is genuinely not feasible, [small] employers can be excused from the requirement by claiming an undue hardship (if true).

**Isn’t it wrong to require employers to pay employees for time spent taking care of their own personal needs?**

- **Failing to support breastfeeding costs businesses and the state.** Employers and the state are already paying the cost of not supporting breastfeeding through increased health care and insurance costs, absenteeism, and loss of women from the labor force.
- **Other states already provide paid lactation breaks.** The legislatures of several states have found that providing nursing employees with short paid breaks is
well worth the cost. Georgia, Illinois, and Minnesota have for years required employers to provide paid lactation breaks. Other states, like Indiana and Oklahoma, require state employers to provide paid lactation breaks. Georgia and Illinois’ paid lactation break requirements were signed into law by Republican governors.

- Paid lactation breaks are critical for health equity. Paid lactation breaks make breastfeeding possible for low-wage workers, who are often unable to afford unpaid breaks. Black and Latinx families are disproportionately impacted, compounding disparities in breastfeeding rates and health outcomes. The reality is that there is currently a two-tiered system in who can continue breastfeeding their babies after returning to work. No mother should be forced to choose between the wages her family needs to survive and protecting her health and the health of her infant by breastfeeding.

- Employers have long been required to provide paid breaks to protect employee health and wellbeing. Under the federal Fair Labor Standards Act, breaks of 20 minutes or less must be paid. The laws of nine states require employers to provide paid breaks for employee rest. The typical lactating worker needs only 15 minutes per session for milk expression itself, plus any additional time it takes to walk to the lactation space. Employers can reduce the amount of time spent on lactation breaks by allowing employees to express milk near their workstations.

Why should breastfeeding employees get special treatment?

This bill treats breastfeeding employees the same as many other employees who need accommodations at work for health reasons. For example, under the American with Disabilities Act, an employee who needs additional breaks or private space for administering medication or resting because of a disability has a right to receive reasonable accommodation. This bill would put breastfeeding workers on equal footing with all other employees who are able to take care of their health needs without sacrificing their livelihoods.
SAMPLE HANDOUT: FAQS ON NEEDS OF LACTATING WORKERS

Many people, including lawmakers, are unfamiliar with the basic needs of lactating workers. They often do not understand what pumping is or why it is necessary. When meeting with lawmakers’ offices, it may be helpful to provide a simple FAQ breaking down the basics. You are welcome to adopt any of the text below in creating your own organization’s handout. For an unbranded version of this, see here.

FREQUENTLY ASKED QUESTIONS ABOUT WORKPLACE LACTATION BREAKS

WHY IS BREASTFEEDING IMPORTANT?
Breastfeeding is an important part of maternal and infant health. Breastfeeding parents experience faster recovery from pregnancy and improved long-term health. It is also the healthiest way to feed infants, as breast milk boosts children’s immune systems and reduces the risk of many illnesses and diseases—from ear infections to diabetes. All relevant major medical organizations recommend that babies eat nothing but breast milk for the first 6 months of their lives and continue consuming breast milk with other foods for at least a year.

WHY DO BREASTFEEDING EMPLOYEES NEED TO EXPRESS MILK DURING THE WORKDAY?
Nursing parents are constantly producing milk. Once milk fills the breast, it must be removed or “expressed” (usually through nursing or pumping). Milk must be expressed regularly, on roughly the same schedule as the child normally nurses. Inability to do so can lead to painful pressure and mastitis, an inflammation of the breast tissue that may involve an infection, abscess, pain, fever, and illness. It can also negatively impact future milk production; because the body produces milk on a demand and supply basis, removing milk less often signals the body to produce less. A nursing parent who isn’t able to express milk on schedule could suffer a drop in milk supply, leaving them unable to supply enough milk, and ultimately unable to breastfeed.

WHAT IS “PUMPING”?
This refers to using a device called a breast pump to remove milk. Breast pumps use suction to draw out milk and can be either electrical (requiring an outlet, battery, or charger) or manual. The milk that is removed is deposited into a bottle or other container so it can be stored and later fed to a child.
HOW MUCH TIME DO EMPLOYEES NEED TO PUMP? Each person is different, and how often they must pump will depend on their body and the age and needs of the child. Lactating employees typically need to pump every two to three hours when their baby is young, and less frequently as the child grows older. Pumping takes around 15 minutes per session, in addition to time spent walking between the workstation and the location where milk is expressed. The closer the lactation space is to the employee’s work area, the less time the break will take.

CAN LACTATING WORKERS WAIT UNTIL AFTER THE WORKDAY TO EXPRESS MILK? No. Inability to pump on roughly the same schedule as the child nurses can lead to pain, infection, illness, inability to produce enough milk to meet an infant’s needs, and total loss of the ability to breastfeed. These effects can occur with just one missed pumping break.

HOW DOES PROVIDING LACTATION BREAK TIME AND SPACE IMPACT EMPLOYERS? Simple cost-free or low-cost solutions exist in every industry. Supporting lactating employees lowers medical costs and health insurance claims, reduces turnover, lowers absenteeism, improves productivity, and raises employee morale and loyalty to the company. Studies show an almost 3:1 return on investment for employers that provide lactation support.

WHAT KIND OF SPACE DO EMPLOYEES NEED FOR PUMPING? Lactating employees do not need a permanent, dedicated space for pumping. A multi-use, temporary, or converted space with a chair and flat surface to place the pump is sufficient, so long as it is available when the employee needs it. The space should not be a bathroom, as human milk serves as food for babies. The space should be shielded from view and free from intrusion by coworkers and the public, as pumping employees may want privacy when removing clothing during the process.

Space options are available in all industries: empty conference rooms or offices, storage spaces or utility closets, portable structures (e.g., a pop-up tent or car with privacy visors), or a shared space with another employer or public facility (e.g., lactation spaces at the city hall or in shared office spaces at malls or transportation hubs).

If applicable to your law:

WHY DO LACTATING EMPLOYEES NEED TO ACCESS A REFRIGERATOR OR CARRY A COOLER? Breast milk is food that must be kept cold to avoid spoiling.

WHY IS ELECTRICITY HELPFUL? Many breast pumps must be plugged into an electrical outlet to function. Electric pumps are more efficient at removing milk quickly.

WHY IS THE ABILITY TO USE A SINK IMPORTANT? Lactating employees may need to clean their hands prior to handling their baby’s food. They may also need to clean milk off breast pump parts after pumping, as milk that remains on the pump can spoil.
MODEL WITNESS TESTIMONY: LACTATING PARENT IN SUPPORT OF WORKPLACE LACTATION LAW

This sample witness testimony provides an example of what is effective at a state-level legislative hearing in support of a workplace lactation bill. You are welcome to use any of the language you find in this sample document without WorkLife Law’s permission. This testimony is written from the perspective of a breastfeeding worker in support of a break time and space bill that would provide basic protections to all workers. WorkLife Law’s Lactation Policy Toolkit also includes sample testimony from breastfeeding advocates and healthcare providers.

Drafting Testimony

There are many different approaches to drafting testimony. One approach is for an advocate to work with the breastfeeding parent in an interview fashion to help them address key points, or to fill in the blanks in the testimony they’ve already written.

Here are some key questions to consider:

- Why was breast/chestfeeding important to you?
- What challenges did you face pumping at work?
- How did it make you feel when you were/weren’t supported in pumping at work?
- How did a lack of pumping break time or space impact your health?
- How did a lack of lactation accommodations impact your finances, if at all?
- Were you able to breast/chestfeed for as long as you wanted? If you had to stop early, how did it make you feel?
- Has this experience changed how you feel about working?
- What do you most want lawmakers to remember about your experiences?
- How could a law have changed what you experienced?
Key Tips for Drafting Effective Testimony from a Breastfeeding Parent

• Start strong. It is usually best to tell the story of what happened chronologically, but it may be helpful to share a one or two sentence summary in the beginning. For example, “I’m Shante and I support this bill because I know how devastating it is to lose your job over pumping accommodations. It all started when…”

• Encourage legislators to empathize with the witness by telling a story that pulls at the heart strings and is as personal as the witness is comfortable with. It is helpful to include emotion and heartbreaking details relevant to the legislation. Also keep things personal by including information like children’s first names and ages (if comfortable).

• A lactating parent should illustrate why the law is important by sharing their own experience, typically without citing much, if any, data or technical analysis of the proposed law. For example, instead of saying “all relevant medical authorities recommend breastfeeding for the first year,” say “our pediatrician and my own doctor recommended breastfeeding for the first year.”

• Make sure you center impact. People will be interested not only in what happened, but what it meant for the person’s life. Did they lose their job? How did they survive without the income? What did it feel like to have mastitis? To not be able to provide their infant with milk?

• While the testimony should be polite and thoughtful, it should use everyday language that the witness would normally use – no need to make it fancy. Authenticity is more impactful.

• Look closely to be sure nothing in the testimony undermines the overall messaging around the bill. For example, a witness wouldn’t want to say that it would have been impossible to accommodate her lactation needs in a particular job.

• Make clear how the proposed law would have helped the witness avoid the challenges she faced. It is okay to discuss the law simply and briefly to explain how expanded legal rights would have remedied the witness’s situation, especially if it is not obvious.

• Often witness testimony must be given in 2-5 minutes, sometimes less. Be sure to find out how long the witness has to speak and test how long it takes to read the statement. The statement should be punchy. If a particular detail doesn’t add to the desired impact, delete it.
Sample Testimony

This breastfeeding story is fictional, but is representative of the experiences of many lactating workers.

My name is Nikki Jackson and I am a mother of three children – James is my oldest, and then Ella, and Alicia. Because of my job, I was not able to breastfeed James for long, and I’m here today in hopes that no other mom would experience what I went through.

When James was born, I didn’t have any paid maternity leave, so I went back to my job as a teacher’s aide when he was 3 weeks old. Our pediatrician and my doctor recommended breastfeeding for the first year, and that was my goal, too, because I wanted to give my baby the best start in life.

When I got back to work, my head teacher refused to give me regular breaks to pump. At first, I pumped in the bathroom whenever she finally said I could take a break – sometimes as long as three hours after I’d asked for one. But in the end, I had to stop breastfeeding because I couldn’t get regular breaks. I was leaking milk and in pain for a lot of the day. The pain was interfering with my work with the students, and I even got a breast infection that made me exhausted and nauseated with a 101-degree fever. That was really scary because I was in the classroom and worried that it was getting worse, and I didn’t know how to take care of it. Another teacher helped me after work so I was able to go to urgent care, but after that, I just felt like I couldn’t take it anymore and stopped nursing my baby.

I’m very sad thinking about it now, that I wasn’t able do what I thought was best for my child because my boss didn’t understand, or really even seem to care much. At the time, I felt like a failure. I still wonder what would be different for me or my baby if I had been able to follow my doctor’s instructions. Now I don’t feel like a failure anymore. I know that work challenges are a major barrier to breastfeeding for many women, especially for people like me who can’t afford to take much leave from work and don’t have control over when we take breaks.

With my two younger children, I was working in a different school and my principal let me take pumping breaks in a private, clean space. They gave me breaks every three hours or so and I used an empty closet with a table and chair and lock on the door. It doesn’t sound like much, but it made all the difference to me, and my babies.

I was so happy to hear that this law was being proposed. Being able to breastfeed your babies shouldn’t depend on the kindness of your supervisor. We should all be protected by law. I can’t change what happened to me now, but especially after being able to breastfeed my two younger children, I hope that other working mothers will also be able to have the same positive experience with their little ones. I hope you’ll vote for this bill to make that possible. Thank you.
MODEL EXPERT WITNESS TESTIMONY IN SUPPORT OF WORKPLACE LACTATION LAW FOR PUBLIC HEALTH WORKERS, BREASTFEEDING ADVOCATES, AND HEALTHCARE PROVIDERS

These expert witness testimony models provide examples of what is effective at a state-level legislative hearing in support of a workplace lactation bill. **You are welcome to use any of the language you find in this document without WorkLife Law’s permission.** These samples are written from the perspective of experts - public health workers, breastfeeding advocates, and healthcare providers - in support of break time and space bills that would provide basic protections to all workers. WorkLife Law’s Lactation Policy Toolkit also includes sample testimony from breastfeeding parents.

**Key Tips for Drafting Effective Expert Testimony**

- Start strong by establishing your authority to weigh in on the issue. Why are you an expert? This can include professional associations, leadership positions, or formal credentials. And why are you passionate about breastfeeding?

- Feel free to share important data that are compelling to you. This will establish your credibility as an objective expert. But remember, people remember stories and personal impact more than data. If you’re able to summarize common experiences of the parents you work with, that is helpful to bring the data to life.

- While the testimony should be polite and thoughtful, it should use everyday language that the witness would normally use - no need to make it fancy. Authenticity is more impactful.

- Look closely to be sure nothing in the testimony undermines the overall messaging around the bill. For example, you wouldn't want to state that it is difficult to accommodate lactation in certain industries.

- Make clear how the proposed law would impact the communities you serve, including how it would have helped the individuals whose stories you share.

- Witness testimony must typically be given in 2-5 minutes, sometimes less. Be sure to ask how much time you have and test how long it takes to read the statement out loud. Whether oral or written, the statement should be punchy. If a particular detail doesn’t add to the desired impact, delete it.
Sample Expert Testimony I: Breastfeeding Advocate

I am Monica Hicks, a community health worker and member of the Wakanda Breastfeeding Coalition. I am a Certified Lactation Counselor. I’ve worked with hundreds of breastfeeding families in our community, and I’m here today in support of [bill name] because I want to be sure no more parents are forced to choose between breastfeeding and earning an income.

Breastfeeding is recommended by the U.S. Surgeon General and every relevant American health organization for at least the first year of life because of the health benefits human milk provides to children and their breastfeeding parents. According to the American Academy of Pediatrics, babies who are breastfed for the recommended term have lower rates of infection and disease, diabetes, obesity, and even childhood leukemia and lymphoma. And mothers who are able to breastfeed for the recommended term are found to experience lower risk for breast and ovarian cancers, heart disease, postpartum depression, diabetes, and rheumatoid arthritis.

Yet most mothers struggle to meet the medically recommended guidelines, in large part because their employers do not provide the break time and space they need to continue breastfeeding after they return to work. Most parents I work with return to their jobs in the weeks after their babies are born, when breastfeeding challenges are the most common.

While providing break time and space is simple and inexpensive, not enough employers currently do so, causing parents and their babies to suffer needlessly. All too often I work with mothers who have experienced painful complications from missed pumping breaks, like Taryn, who was recently hospitalized for mastitis after not getting pumping breaks at work, or Vanessa, who wasn’t able to pump enough milk to feed her baby and lost her job as a result.

A study from the Center for WorkLife Law showed that job loss is a common outcome of workplace breastfeeding challenges – our economy cannot afford to lose more women as we struggle to recover from pandemic losses. Businesses that provide break time and space benefit from increased employee retention, loyalty, and productivity according to the United States Department of Health and Human Services.

[Bill name] would ensure that all families in our state have access to reasonable break-time and a private space to express breastmilk—preventing moms from having to choose between breastfeeding and a paycheck. I hope you will support this bill, and the babies and parents whose health depends on it. Over half of all states already require employers to provide workplace breastfeeding accommodations, including [insert neighbor states with similar political makeup, if any]. [State] mothers and children have been left behind.

Please help protect [state’s] babies, while ensuring their moms can keep earning the income they need to provide for their families. I encourage you to support [bill number].
Sample Expert Testimony II: Public Health Advocate

I am Christina Velez, a health worker and member of the Wakanda Breastfeeding Coalition. I hold a master’s degree in public health from Wakanda College. I’ve worked with dozens of employers in our community on breastfeeding accommodation issues, and I’m here today in support of [bill name] because I think it is important to have fair rules in place that ensure lactating employees are not forced to choose between nursing their babies and earning an income. I know firsthand that [state] businesses can achieve this.

Breastfeeding is recommended by the U.S. Surgeon General and every relevant American health organization for at least the first year of life because of the health benefits human milk provides to children and their breastfeeding parents. According to the American Academy of Pediatrics, babies who are breastfed for the recommended term have lower rates of infection and disease, diabetes, obesity, and even childhood leukemia and lymphoma. And mothers who are able to breastfeed for the recommended term are found to experience lower risk for breast and ovarian cancers, heart disease, postpartum depression, diabetes, and rheumatoid arthritis.

The health risks and economic impact of not breastfeeding are considerable. In fact, research has shown that if 90% of mothers could meet the doctor recommended breastfeeding term, the U.S. could save $17 billion in health care and premature death costs each year. Families that are able to breastfeed for the recommended term miss fewer work and school days due to illness, leading healthier lives in the short and long terms.

Yet most lactating parents struggle to meet the medically recommended guidelines, in large part because their employers do not provide the break time and space they need to continue nursing. Our coalition has heard from too many parents in our community that have had no choice but to stop breast/chestfeeding because of work issues, missing out on the important health benefits. Others have been forced to leave their jobs just to follow their doctor’s lactation advice, which undermines efforts to retain them in the workforce. This is the last thing our community needs as we face a severe post-pandemic labor shortage.

The Wakanda Breastfeeding Coalition assists employers to implement employee breastfeeding supports. We’re able to offer ideas for lactation spaces, like a $20 pop-up tent you can order online, or taping paper over a storage room window. In my experience, there is no work environment where a solution is not possible—sometimes it takes a bit of problem solving or creativity—but inexpensive solutions always exist. Often employers just need a little encouragement to realize that break time and lactation space are readily available.
[Bill name] would ensure that all families in our state have the break time and space they need to be able to keep providing milk for their baby after they return to work—not just the ones who are lucky enough to get the help of our Coalition. Businesses that provide break time and space benefit from increased employee retention, loyalty, and productivity according to the United States Department of Health and Human Services. I hope you will support this bill, and the babies and parents whose health depends on it. Over half of all states already require employers to provide workplace breastfeeding accommodations, including [insert neighbor states with similar political makeup, if any]. I have no doubt the [state] business community can meet the same standards.

I encourage you to support [bill number].
Sample Expert Testimony III: Healthcare Provider

I am Stephanie Hanes, Registered Nurse and Internationally Board Certified Lactation Consultant. I’ve worked at Nearbyville Hospital for 10 years and helped hundreds of breastfeeding mothers. I’m here today in support of [bill name] because I want to be sure no more of my patients are forced to choose between breastfeeding and earning an income.

Breastfeeding is recommended by the U.S. Surgeon General and every relevant American health organization for at least the first year of life because of the health benefits human milk provides to children and their breastfeeding parents. According to the American Academy of Pediatrics, babies who are breastfed for the recommended term have lower rates of infection and disease, diabetes, obesity, and even childhood leukemia and lymphoma. And mothers who are able to breastfeed for the recommended term are found to experience lower risk for breast and ovarian cancers, cardiovascular disease, postpartum depression, diabetes, and rheumatoid arthritis.

Few things are as important as securing the health of our community’s children. Yet most mothers struggle to meet the medically recommended guidelines. Many mothers I serve struggle because they return to work just weeks after their baby is born. At that point, my patients are just establishing a milk supply and even small changes to their lactation schedule can have significant consequences.

While providing break time and space is simple and inexpensive, not enough employers currently do so. And without lactation break time and space, parents and their babies suffer. I regularly counsel mothers who are experiencing painful and preventable complications from missing pumping breaks at work, and some parents aren’t able to produce the milk their baby needs as a result of the missed breaks.

Some of my patients quit their jobs to be sure they can keep breastfeeding, even though they need the money. Others stop breastfeeding, even though they don’t want to. Both job loss and early weaning are common outcomes when breastfeeding employees don’t get the break time and space they need at work, according to a report from the University of California’s Center for WorkLife Law.

[Bill name] would ensure that parents have access to reasonable break-time and a private space to express breastmilk—preventing moms from having to choose between breastfeeding and a paycheck. I hope you will support this bill, and the babies and parents whose health depends on it. Over half of all states already require employers to provide workplace breastfeeding accommodations, including [insert neighbor states, if any]. It is time that our state catches up.

Please help protect [state’s] babies, while ensuring their moms earn an income. I encourage you to support [bill number].
LETTERS TO THE EDITOR

Letters to the editor can be effective tools to raise awareness about workplace lactation issues and pending legislation at the state or local level. Newspaper letters to the editor have long been used by lawmakers and their staff to gauge community interest in policy issues.

Letter writing can be a group effort, and organizations should consider encouraging their members to write letters as part of their advocacy campaign. Take 15 minutes at the end of a meeting to ask all members to write and submit a letter. Or a member of the group can draft letters and share with others for them to submit. Consider inviting your family and friends to join in—newspapers often like to hear from fresh authors.

Tips for getting published:

1. Shorter is better, so be concise. Most publications will share their length guidelines, typically under 200 words.

2. Get straight to the point—the first sentence of your letter is critical.

3. Connect your letter to a recently published article or current event (like an upcoming vote on your legislation), if possible.

4. Make sure the letter is clearly stated in language that people who know nothing about your topic will understand. Aim for an 8th grade reading level.

5. Focus on your geographic region. Keep points as local as possible.
   - “Iowan moms” is better than “American Moms”
   - “General Assembly Members” is better than “our leaders”
   - Ideally, you should be writing to a publication in your area. If not, ask a friend in the area to submit the letter instead.

6. Make sure the letter has an ask and a clear point of view. You should answer the question “what do you want?”

7. Make sure to include your title or affiliation, if any, as well as all contact information requested by the publication.
8. If possible, have someone else read the letter before you send it. Ideally this should be someone who is less familiar with your topic, so they can give you a fresh perspective and ensure it is clear and persuasive to someone without experience with this issue.

9. Even if your first letter is not accepted, don’t be deterred. You can try again later when you find a new hook, like a recent article or event. Also, know that, even if not published, a letter to the editor has the added bonus of informing the newspaper that people are interested in a topic.

10. Contact the Center for WorkLife Law for editorial assistance at policy@worklifelaw.org.

My letter was published, now what?

Having a letter to the editor published means that thousands of people, including lawmakers, will be exposed to your view. Congratulations! To maximize the impact of your letter, don’t let your work end there. Once a letter is published, it should be used to build more interest in the issue. You can cross post the letter to Facebook pages, organization websites, and social media. Encourage your friends and advocacy partners to comment on the letter (if possible) and to share it with their networks. Be sure your organization and advocacy partners also share the letter directly with the offices of relevant lawmakers through email, social media, and in meetings.

While letters to the editor can be submitted by anyone, longer opinion pieces (often called “Op-Eds”) are normally written by an expert, organizational leader, or person who is recognized in the community. Consider submitting one on behalf of your organization or ask community leaders to submit a letter that you write. These articles are much longer, often around 800 words, and provide more of an opportunity to share relevant stories and research.

For assistance with opinion pieces, contact policy@worklifelaw.org.
Example Letters

Feel free to adapt these sample letters to your needs and location:

To the Editor: The Paid Lactation Breaks Act recently introduced in the [State legislature] would help working class people like me take much-needed lactation breaks at work. Breastfeeding and chestfeeding parents who are unable to take lactation breaks to pump milk during the workday can suffer serious health consequences, and many are forced to stop nursing their babies earlier than their doctor recommends. Breastfeeding for the recommended term has been shown to save employers and the state money, because it keeps babies and their moms healthier. Even though current [State] law already requires employers to provide unpaid lactation breaks, the law doesn’t mean much when people can’t afford to take them. No parent should be forced to choose between the wages they need to survive and their child’s health. I urge [State] lawmakers to pass the legislation so that all parents can afford to feed their babies. Sincerely, [your name, title and affiliation (if relevant), and city, state]

Dear Editor: Your recent article [date, title] on the massive labor shortage facing [Town/City] businesses rightfully pointed out that women’s caregiving responsibilities during the pandemic have played a major role in many mothers’ decision to stay at home. But while lack of childcare is a crisis, it isn’t the only thing keeping women out of work. Moms are also being pushed out of their jobs because of [State’s] failure to provide basic legal protections for breastfeeding. New moms need to express milk while they are away from their babies, and without a private space and break time to do it, many are forced to quit. [X state employees—see Exposed Appendix A] are not covered by the federal breastfeeding laws, including registered nurses and teachers. [State] businesses can’t afford to lose any more workers, and it is ridiculous to lose moms over lactation break time and space, which are simple and inexpensive to offer. Our General Assembly should enact a law to protect breastfeeding moms at work, like all three of our neighboring states. Very truly yours, [your name, title and affiliation (if relevant), and city/county, state]

To the editor: Our Legislature passed a bill last week to allow breastfeeding employees to sue their employers in court when their rights are violated. This bill is personal to me and my family. When my baby was born, I swore I would breastfeed him for at least 6 months, because of the many health benefits. But when I returned to my nursing job, my supervisor told me we were too busy for me to take the breaks I needed to pump milk. Because I couldn’t pump regularly, my milk supply dropped and I couldn’t meet my commitment to my baby. I was surprised to learn that there is a Neverland law protecting my right to express milk, but no lawyer would help me because the law does not allow nursing mothers to seek justice for violations in court. I was also surprised to learn that litigation rates in states that do have enforceable laws are essentially zero, as employers are more likely to follow the law when they can be sued. Our Governor should encourage Neverland businesses to follow the law by signing the Remedies for Nursing Mothers Bill. Sincerely, Bethany Pumper, Gotham, NV
BREASTFEEDING POLICY SOCIAL MEDIA TOOLKIT

An effective social media campaign is one of the most powerful tools in your advocacy toolkit, providing a relatively inexpensive platform to raise awareness about the legislation, collect stories from impacted community members, and give your constituents a way to communicate their support directly to their elected officials. Social media sites have been used to create support networks and promote positive discussions about breastfeeding, but they are often underutilized as a platform for organizing and education.98 There is a ripe opportunity to utilize social media more effectively, both for general breastfeeding education, as well as lactation policy advocacy. This section offers ideas and templates to use in the social media component of your advocacy campaign.

Images and graphics

Images can double or triple engagement with your posts. Here are image resources to help make it easier to incorporate images into your posts.

Sample breastfeeding infographics, Center for WorkLife Law

These infographics can be used as a part of your campaign, but for best results, consider making your own with a hashtag or bill title specific to your legislation.

- US Breastfeeding Committee Free image bank
- National Perinatal Association, Open-sourced Inclusive Breastfeeding Graphics
- 1,000 Days, National Breastfeeding Month Inspiration Guide 2019, Library of open-source graphics, statistics, etc.

Need a hand?

For more information on effectively using social media, see:

- W.K. Kellogg Foundation Social Media Guide
- The University of Kansas Guide for Using Social Media for Digital Advocacy
- American Association for Cancer Research Guide on How to Use Social Media as a Powerful Tool

Useful tools:

- URL shortener websites with free services such as Bitly and TinyURL allow you to shorten long website URLs into links that fit better into social media posts and are easier to remember.
- QR Codes can be extremely useful at events or on the run, as people can easily scan a code with their phones to access your website, resources, and other online content. QR codes are easy and free to make with websites like BeaconStac or the QR Tiger.
- Graphic tools help simplify the process of creating professional looking images and infographics sized for social media platforms. Commonly used free tools include Canva, Pablo, Pixlr, and Piktochart.
SAMPLE TWEETS

The [State] Senate will vote on the Paid Lactation Breaks Act (SB 1234) this Wednesday! Email your representative to vote YES on #LactationBreaksForAll. (hyperlink to a webpage providing instructions on how to identify the relevant legislator and providing a sample email messages)

The [State] Assembly has the opportunity to take concrete action to support nursing mothers by passing the #LactationBreaksForAll Act, so low-paid workers can afford breaks they need to provide breast milk to their babies.

Please pick up the phone and CALL your elected representative to vote YES on the #LactationBreaksForAll Act. It will take just 2 minutes and can make a world of difference. Your voice matters! (hyperlink to instructions and sample messages)

An inability to pump on the job disproportionately affects women of color in low-wage jobs. The #LactationBreaksForAll Act is a key step forward in making workplaces more equitable for all nursing parents.

Nearly #### [State] women of childbearing age are left out of the federal Break Time for Nursing Mothers law. [See Appendix A of Exposed for number] Tell your representative to close that gap by voting YES for the #LactationBreaks Act this week. [hyperlink instructions and sample messages]

Parents shouldn’t have to choose between breastfeeding and their job. The #LactationBreaks Act (SB 1234) makes sure all nursing parents are protected at work.

Lactation support provides an impressive return on investment for businesses and there are low cost or cost-free solutions to support nursing mothers in every industry. #LactationBreaks Act works for moms and businesses alike!

Help Members of the [State] Senate understand why voting YES on the Lactation Breaks Act (SB 1234) is so important. Shoutout your pumping at work story at hashtag #LactationBreaks
VI. RESOURCE AND RESEARCH DIRECTORY

The Center for WorkLife Law, with the help of our partners, has compiled resources and research that we refer to frequently in our policy work. Many of these materials are referenced in the toolkit. We hope this makes it easier for you to make your case for policy changes that support lactating workers!

The full directory is available here. Please share any important additions by emailing them to policy@worklifelaw.org.

Content areas:

1. Background on Breastfeeding Discrimination and Policy Solutions
2. Get Help Now for Lactating Workers
3. Building Inclusive and Equitable Coalitions
4. Media Toolkits & Messaging Resources
5. Lobbying Compliance
6. Legislative Process
7. Research: Racial Disparities in Breastfeeding (and Breastfeeding Support)
8. Research: Impacts of State Laws
9. Research: Workplace Studies
10. Research: Breast/chestfeeding as a public health imperative
11. Other
GET HELP NOW FOR LACTATING WORKERS

CONTACT THE CENTER FOR WORKLIFE LAW:

Advocates for expanding lactation rights call 415-565-4640 or email policy@worklifelaw.org.

Free legal helpline for lactating workers and students call 415-703-8276 or email hotline@worklifelaw.org.

Legal resources and practical tips for employees and their care providers visit www.PregnantAtWork.org.
ACKNOWLEDGMENTS

This toolkit was written by WorkLife Law Deputy Director Liz Morris, Senior Staff Attorney Jessica Lee, and Program Associate Isha Patel. However the concepts and strategies presented are informed by a large coalition of advocates and experts, to whom we are deeply grateful for their wisdom and insights. We are especially thankful to the attendees of the Center for WorkLife Law’s 2019 Breastfeeding Policy Summit whose ideas have informed every page of this document. They are listed below, with their professional affiliation at the time of the Summit. An asterisk indicates a significant debt of gratitude to the participants who taught the rest of us by making special presentations at the event. While we are proud to be associated with these individuals and organizations, this Toolkit was not endorsed by them. Any miscalculations belong to the authors alone.

Mellissa Alvarado
Texas Breastfeeding Coalition

Ifeyinwa Asiodu
California Breastfeeding Coalition

Jameshyia Ballard
Mississippi Breastfeeding Coalition

Brenda Bandy
Kansas Breastfeeding Coalition

Kinkini Banerjee
U.S. Breastfeeding Committee

Sarah Brafman*
A Better Balance

Caroline Brunton
W.K. Kellogg Foundation

Kimarie Bugg*
Reaching Our Sisters Everywhere

G. Wesley Bugg
Reaching Our Brothers Everywhere

Jessica Coloma
W.K. Kellogg Foundation

Nancy Faul
Florida Business Case for Breastfeeding
Florida Breastfeeding Coalition

Elizabeth Gedmark*
A Better Balance

Jenna Gerry
Legal Aid at Work

Robbie Gonzalez-Dow*
California Breastfeeding Coalition

Eric Gorovitz*
Adler & Colvin

Jaribu Hill
Mississippi Workers’ Center for Human Rights

Lissa Knudsen
New Mexico Breastfeeding Task Force

Linda Kopecky
Colorado Breastfeeding Coalition

Jackie Lambert
Delta Baby Cafe – Let’s Talk

Cheryl Lebedevitch
U.S. Breastfeeding Committee

Ashley C. Lidow*
Women’s Rights and Empowerment Network

Malia Luarkie
Indigenous Women Rising

Stephanie Pitcher
Utah Women’s Coalition

Alexia Poe*
The Ingram Group
We are especially grateful to Galen Sherwin from the ACLU Women’s Rights Project, as well as Dina Bakst, Elizabeth Gedmark, and Sarah Brafman from A Better Balance for providing invaluable feedback on our model legislation and sharing their insights into legislative strategy over the years. Additionally, we have learned countless lessons about lactation advocacy and messaging from brilliant colleagues like Vania Leveille of the ACLU; Nikia Sankofa, Amelia Psmythe, and Cheryl Lebedevitch of the US Breastfeeding Committee; Andrea Johnson and Kelli Garcia (formerly) of the National Women’s Law Center; and Tina Sherman of MomsRising. Thanks also to the US Breastfeeding Committee for providing photos that appear throughout the toolkit and Bolder Advocacy for its incredible resources that support nonprofits engaged in lobbying.

WorkLife Law’s skilled research assistants who contributed to this Toolkit include Kim Ira, Heather Lanyi, Joe St. James, Alaina Harwood, and Olivia Andrews.

As always, we thank our incredible WorkLife Law colleagues, past and present, especially Sky Mihaylo, Mikayla Boginsky, Joahna Cervantes, Lisa McCorkell, Anna Garfink, Chelsey Crowley, Rachel Korn, Jamie Dolkas, Juliana Franco, and Cynthia Calvert. We are grateful to work closely with you all. Many thanks to WorkLife Law Founding Director Joan Williams, without whose leadership and vision this project would not be possible.

WorkLife Law sincerely thanks the Bigglesworth Family Foundation, the van Löben Sels/RembeRock Foundation, and the NoVo Foundation for providing generous operating support to our Center.

We are grateful to the W.K. Kellogg Foundation for its generous support of this Toolkit and the Breastfeeding Policy Summit, as well as its unparalleled leadership in the First Food Field to eliminate racial disparities in breastfeeding.
ENDNOTES


2 Id. at 4.

3 Id. at 4.

4 Id. at 7, 13-14.

5 Id. at 26.

6 See pages pages 22-23 of this report.

7 Liz Morris et al., supra note 1.

8 See pages 31-33 of this report.


12 The law excludes registered nurses, nurse practitioners, medical technologists, and physician assistants who are paid on a salary basis of at least $684 per week. On the other hand, healthcare employees working in positions that do not require a specialized advanced academic degree are covered by the law, typically including licensed vocational nurses, licensed practical nurses, medical assistants, certified nursing assistants, and similar healthcare employees.


14 See 29 U.S.C. § 207(r), supra note 11.


16 See id.

17 See id.

18 See id.

19 Liz Morris et al., supra note 1, at 9, 31

20 U.S. Dep’t of Labor, supra note 15.

21 See id.

22 See id.

23 See id.

24 Liz Morris et al., supra note 1, at 32.

25 Employees who have been retaliated against for making a complaint about a violation of their legal rights can seek broad monetary damages in court. See Liz Morris et al., supra note 1, at 23.

26 See id. at 32.

27 Liz Morris et al., supra note 1.

28 U.S. Dep’t of Labor, supra note 15.

In 2013, the Fifth Circuit Court of Appeals, in *EEOC v. Houston Funding*, was the first federal appellate court to rule that breastfeeding discrimination is sex discrimination. Citing the *dictionary*, the court wrote the obvious: “Lactation is the physiological process of secreting milk from mammary glands and is directly caused by hormonal changes associated with pregnancy and childbirth.” (*Houston Funding EEOC*, 717 F.3d at 428) Since then, as a lower court in Rhode Island noted in 2016, “the trend post-*Houston Funding* ... has been to follow the Fifth Circuit’s reasoning and hold that lactation is a ‘condition related to pregnancy’ under the PDA.” *Mayer v. Prof'l Ambulance, LLC*, 211 F. Supp. 3d 408, 417 (D.R.I. 2016). See also *Hicks v. City of Tuscaloosa*, 870 F.3d 1253, 1259-60 (11th Cir. 2017).

*Note 31* Liz Morris et al., supra note 1, at 35.

*Note 32* 42 U.S.C. § 2000(e) (k).

*Note 33* Young v. UPS, 135 S. Ct. 1338, 1355 (2015).


*Note 35* Id.

*Note 36* Even where a worker lacks evidence that other similar employees have been accommodated, *Young v. UPS* contemplates that the existence of a discriminatory policy alone may be sufficient to raise an inference of discrimination. See *Young*, 135 S. Ct. at 1344 (stating that courts should “consider the extent to which an employer’s policy treats pregnant workers less favorably than it treats non-pregnant workers similar in their ability or inability to work,” emphasis added.); See also *Legg v. Ulster Cnty.*, 820 F.3d 67, 74 (2d Cir. 2016) (stating that an employer’s policy of accommodating employees injured on the job was enough, if not adequately justified, for a reasonable jury to find discriminatory intent behind the employer’s failure to accommodate pregnant employees).

*Note 37* Non-comparative legal rights may be available, such as for example in situations where an employer’s failure to accommodate breastfeeding workers has a disparate impact on them, in violation of Title VII, even when the employer does not accommodate others. For more information on non-comparative legal rights under the Pregnancy Discrimination Act, contact the Center for WorkLife Law.


*Note 39* Liz Morris et al., supra note 1.


*Note 43* Smith-Gagen et al., supra note 9.

*Note 44* U.S. Breastfeeding Committee, supra note 10.


Id.


Id.

Contact the Center for WorkLife Law for assistance incorporating model language from Georgia into the existing laws of other states. WorkLife Law suggests making clear that employers cannot require any employee, including those paid by the hour, to use PTO for lactation breaks (not just salaried employees).

Id.


U.S. Dep’t of Health and Human Serv., supra note 51.

Six in ten mothers stop breastfeeding earlier than the intended. Odom EC et al., Reasons for Earlier Than Desired Cessation of Breastfeeding, PEDIATRICS, 131(3), e726-32 (Mar. 2013).

Liz Morris et al., supra note 1; Liz Morris & Jessica Lee, supra note 47.

Smith-Gagen et al., supra note 9.

Liz Morris & Jessica Lee, supra note 47.