



Protect, Promote, and Support Breastfeeding Through Legislation

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INTRODUCTION

Mothers who have been prohibited from breastfeeding their children in certain situations may argue that they have been treated unfairly and have suffered discrimination. There has been judicial disagreement, however, over how to balance competing rights and remedy any perceived discrimination. U.S. courts have ruled that the limitation of breastfeeding in certain cases does not constitute discrimination under state and federal civil rights law.^{1 2} In most cases there are competing interests at play. For example, a woman's right to breastfeed her child competes with the right of her employer to establish rules and boundaries in the workplace. No U.S. court or federal statute has determined that the right to breastfeed overrides all other rights. As a result, the greatest success in protecting, promoting, and supporting breastfeeding has been achieved through enacting state legislation.

The United States Breastfeeding Committee (USBC) exists "to ensure the rightful place of breastfeeding in society." In 2001, USBC published four goals for the Nation in *Breastfeeding in the United States: A National Agenda*. Two of the goals specifically pertain to enacting legislation. Goal III seeks to: "Ensure that all federal, state and local laws relating to child welfare and family law recognize and support the importance and practice of breastfeeding," and Goal IV proposes to: "Increase protection, promotion and support for breastfeeding mothers in the work force." Effective breastfeeding legislation serves to inform lawmakers, government officials, employers, and the public about the importance of considering breastfeeding in any policy or practice that impacts women or children.³

BENEFITS

Protection, promotion, and support of breastfeeding have been endorsed worldwide by health and scientific organizations concerned with the well-being of women and children. The benefits of breastfeeding and the risks of not breastfeeding are well documented in the scientific literature.⁴ Many of the health factors are dose-related, having increasingly beneficial effect with increased duration of breastfeeding.^{5 6 7} Human milk provides species-specific and age-specific nutrients that continue to change to meet the nutritional needs of the growing infant.^{8 9}

In addition to improved health for mothers and children, extended breastfeeding benefits communities and society.^{10 11 12} Breastfeeding provides economic benefits to families through elimination of the significant expense of purchasing infant formula. Through improved child health, breastfeeding reduces the cost of health services for families, insurers, and government agencies. Breastfeeding also decreases parental absences from work to care for sick children, increasing family income and employee productivity, while lowering employer costs. Environmental benefits are evident because breastfeeding requires no electricity or fuel for preparation, no packaging, and no disposal of waste.

BARRIERS

As the ideal source of nutrition for human infants, breastfeeding is a critical public health issue. Therefore, government at the federal, state, and local levels has a responsibility to protect, promote, and support a mother's fundamental right to breastfeed her child. Multiple barriers must be addressed and removed in order to attain the Healthy People 2010 breastfeeding goals established by the U.S. Department of Health and Human Services.¹³

Women encounter many restrictions on their right to breastfeed in certain places and situations. Significant obstacles to initiation and continuation of breastfeeding fall into four general categories: breastfeeding in public, workplace, family law, and health care industry. Many U.S. advocates agree that the best way to protect the breastfeeding relationship of a mother and child is through state legislation.²

LEGISLATION

In 1978, a Florida teacher appealed a court ruling stating that she had no right to breastfeed. In 1981, in the absence of federal legislation supporting breastfeeding, the Fifth Circuit Court of Appeals ruled, in *Dike v. School Board of Orange County*, that breastfeeding is a protected constitutional right. “In light of the spectrum of interests that the Supreme Court has held specially protected we conclude that the Constitution protects from excessive state interference a woman’s decision respecting breastfeeding her child.”¹ Although the appellate court ruled that mothers have a constitutional right to breastfeed, Ms. Dike was not allowed to bring her child onto school grounds or to leave the school to breastfeed during the school day, because the court ruled that these workplace restrictions were reasonable. This decision is a clear example of competing interests in the workplace, and may serve as a legal precedent supporting future legislation at the federal and state levels.

In 1984, New York enacted the first example of state breastfeeding legislation, exempting breastfeeding from the state criminal statute regarding public indecency. By 1994, only five states had enacted any breastfeeding legislation, and New York again took the lead with the most progressive breastfeeding law in the United States. The Right to Breast Feed Law amended the New York state civil rights act, granting mothers the expressed right to breastfeed, “...in any location, public or private, where the mother is authorized to be...” As of July 2007, forty-seven states have passed some type of legislation in support of the right to breastfeed. Most of the laws address some aspect of breastfeeding in public, but they vary in their nature and scope. Other categories of state breastfeeding legislation include workplace issues, jury duty, family law, economic issues, and support services and education.^{14 15 16}

STATE MODELS

The purpose of this document is to provide information and resources for breastfeeding advocates seeking to initiate or support legislation, to assist mothers and legal professionals involved in litigation, and to aid lawmakers in researching or developing effective breastfeeding legislation. Samples of existing legislation are provided, with examples of effective laws and of language that can limit the effectiveness of legislation. The states listed in parentheses provide examples of enacted legislation, but do not represent all of the states with laws addressing the issue. The following information on specific legislation is taken from the La Leche League International Web site article, “A current summary of breastfeeding legislation in the U.S.” (updated November 26, 2007)¹⁶ and the National Conference of State Legislatures Web site article, “50 state summary of breastfeeding laws (updated October 2007).”¹⁷

Breastfeeding in Public

The strongest laws give a woman the right to breastfeed in any place, public or private, that she has a right to be, irrespective of whether her breast or nipple is uncovered during or incidental to breastfeeding (MN). Additional effective language prohibits interference with a breastfeeding mother in a public or private place (KY), and prohibits any person from restricting or limiting the right of a mother to breastfeed (CT). Some laws include a preamble outlining the benefits and medical recommendations regarding breastfeeding (CO, LA) and/or a supportive resolution to encourage removal of societal boundaries to breastfeeding in public (CO).

Workplace Issues

Effective, enforceable workplace legislation uses very specific language. The most effective laws require employers to provide paid or unpaid break time with space in close proximity to the work area, other than a toilet stall, where an employee can express milk in private (CA, MN, OR). Additional strength is added by defining “employer” as having one or more employees (RI) and imposing a fine or penalty for violation of the law (IL, NJ, OR). A state employment law (HI) may state specifically that it is

“discrimination” to treat a breastfeeding woman differently than any other employee in regard to hiring, firing, pay, advancement, demotion, or penalty.

Jury Duty

Jury duty requires a mother to be away from her child for unspecified periods of time, which can negatively impact infant attachment, breastfeeding, and milk production. The strongest legislation allows a mother to defer her jury duty for up to one year and renew the deferral as long as she is breastfeeding. The rules for breastfeeding mothers should be included in the standardized jury summons (CA) so that everyone is made aware of the deferral option.

Family Law

In laws regarding child custody and parent-child contact, ideally breastfeeding is one of the items that must be considered (UT) and included in the required parenting plan for minor children (HI). A woman who gives birth in prison, or is breastfeeding when sent to prison, may be allowed to have her child with her while the child is less than 12 months of age (NY).

Economic Issues

Several economic issues have been addressed in state breastfeeding legislation. Breastfeeding supplies and services may be exempted from state sales tax (MD) or paid for by the state WIC lactation support program (IL). A state may also require health insurers to cover post-discharge breastfeeding assistance if a maternity patient is discharged from hospital prior to a “statutory minimum stay” (TX).

Support Services and Education

When state public health departments are required to develop and distribute information, there is accountability regarding its accuracy and equitable dissemination. Strong laws require state agencies to provide information encouraging all program participants to breastfeed (TX), to establish public information programs with breastfeeding promotion campaigns (IL, MN), and to publish periodic reports on breastfeeding rates, complaints received, and benefits reported by employed breastfeeding mothers and their employers (RI). Although not written into law, the New York State Department of Health has developed *Breastfeeding: First Step to Good Health*.¹⁸ This learning activity package is designed for use in schools with children in grades K-12, with the goal of helping to form positive attitudes toward breastfeeding.

Miscellaneous/Unique Laws

While the majority of state breastfeeding legislation falls into one of the above categories, a few unique laws are included here, as other advocates may wish to address these issues. The state health department may be required to establish minimum guidelines for the procurement, distribution, or use of human milk by donor milk banks (TX). The state licensing agency may prohibit discrimination by child care facilities on the basis of race, color, creed, sex..., or whether the child is being breastfed (LA). State regulations also may require child care facilities to promote breastfeeding by mothers of children being cared for in the facility (MS).

Restrictive or Limiting Language

Language in any legislation should be clear and specific, presenting a strong statement for or against the issue. Legislation that supports breastfeeding in public, “with as much discretion as possible” (MO) or “in a modest manner” (GA – language stricken from law in 2002), allows subjective interpretation of the law

in a complaint. A law that “allows”, but does not “require” employers to provide workplace accommodations for breastfeeding women (GA) is voluntary and unenforceable.

Imposing any limitations on the age of the breastfeeding child restricts the application of the law, leaving the mother of a toddler or older child vulnerable to a criminal charge (TN – “less than 12 months of age”). Similarly, laws addressing the needs of a breastfeeding child in custody and visitation are less effective when consideration is limited to children less than one year of age (ME) or when full weekend visitation and one week summer visits are required to begin at 18 months of age (UT). The restrictive or limiting language in these examples should not be copied by other states.¹⁶

USE OF DATA

Breastfeeding activists can use the information contained in this report to develop legislation tailored to the needs of their state, and to inform and educate others about the importance of legislation in protection, promotion, and support of breastfeeding. Legislators and policymakers must be informed so that they recognize breastfeeding as vital to the health and social and economic well-being of women, children, families, and society.

Advocacy

Individuals and groups working to overcome institutional barriers and enact effective breastfeeding legislation will need to organize and develop a political strategy aimed at informing, persuading, and motivating their legislators. Litigation to overturn restrictive policies or expand breastfeeding rights is but one of many alternatives. Activists will need to lobby their representatives directly or through implementation of a broad-based grassroots campaign. The sponsors of breastfeeding legislation will require a community of committed and dedicated supporters to help them enact effective laws.

Bartick recommends the use of calm, professional language to establish credibility and help policymakers recognize breastfeeding as, “a mainstream health and family issue.”¹⁹ Advocates may illustrate public support and apply political pressure through personal phone calls, e-mail messages, and letters. Groups can raise awareness and channel public support for legislative action by coordinating letters to the editor in local newspapers or purchasing television and radio time to air positive, informative messages. According to Wilson & DiIulio, the single most effective factor in influencing policymakers is supplying current, credible, and unbiased information.²⁰

There are a number of additional “how-to” resources for breastfeeding activists working on legislative issues. Wilson-Clay, et al offer a user-friendly guide in the article, “Learning to lobby for probreastfeeding legislation: the story of a Texas bill to create a breastfeeding-friendly physician designation.”²¹ And Baldwin includes a section on helpful pointers in the Web article, “A look at enacting breastfeeding legislation.”¹

Education

Any breastfeeding legislation is a positive step, creating a statement that recognizes the importance of breastfeeding. Public knowledge of breastfeeding laws can create a more supportive breastfeeding environment, alleviating mothers’ fears about breastfeeding in public or at work. Knowledge of breastfeeding laws in their states can empower families if discriminatory situations arise.¹ Health care professionals and breastfeeding peer counselors should be aware of the current protections provided by breastfeeding legislation in their states. These specialists can be instrumental in educating families, other health care workers, and the public about existing breastfeeding laws, advocacy groups, and available resources.²²

CONCLUSION

In the *HHS Blueprint for Action on Breastfeeding* Surgeon General David Satcher MD, Ph.D., states, “Together we can shape a future in which mothers can feel comfortable and free to breastfeed their children without societal hindrances.”²³ Enacting strong state legislation that protects, promotes, and supports breastfeeding is the most effective means to remove the barriers and uphold this most basic, fundamental right for all mothers and children in the United States.

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INTERNET RESOURCES

Centers for Disease Control and Prevention	www.cdc.gov
Why do we need Family Friendly Jury Duty Legislation?	www.familyfriendlyjuryduty.org
International Lactation Consultant Association	www.ilca.org
La Leche League International	www.llli.org
National Conference of State Legislatures	www.ncsl.org
Representative Carolyn B. Maloney	http://maloney.house.gov
Senator Tom Harkin	http://harkin.senate.gov
World Alliance for Breastfeeding Action	www.waba.org.my