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Safina Abdulloeva

*Washington University in St Louis*

Amy A. Eyler

*Washington University in St Louis*

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# Policies on Worksite Lactation Support Within States and Organizations

Safina Abdulloeva, MD, MSW/MPH,<sup>1</sup> and Amy A. Eyler, PhD<sup>2</sup>

## Abstract

**Background:** The issue of workplace lactation support has intensified due to the Affordable Care Act of 2010 (ACA) amendment of the Fair Labor Standards Act (FLSA) obliging employers to provide a reasonable break time for nursing mothers.

**Objectives:** This objective of this study is to examine organizational policies on worksite lactation support as they relate to the new federal standards in state employees and within large state public and private universities.

**Methods:** State laws were collected from National Conference of State Legislators. Policies for state employees and large public and private universities were collected via human resource or personnel administration websites. The policies were coded for content and compared to FLSA requirements. The presence of state law on lactation support and extent to which the organizational policies encompass FLSA were compared with state breastfeeding rates at 6 months.

**Results:** After the ACA became effective in 2010, 33 state organizations, 36 state public universities, and 13 private universities issued the administrative notice and aligned their organizational policies with the federal requirements. Twenty-four states enacted worksite breastfeeding law prior to the 2010 federal law. Nineteen states with enacted worksite breastfeeding state laws also have lactation policies for state employees.

**Conclusion:** States and universities vary in the presence of a formal, written lactation support policy for state employees. There was a significant correlation between State law and 6 months exclusive breastfeeding rates. Future research should investigate whether the federal law serves as stronger catalyst for organizational policies than does state law. Additionally, other policies such as paid maternity leave may also contribute to achieving the desired breastfeeding rates.

## Introduction

**B**REASTFEEDING IS ON THE AGENDA of the policymakers due to its recognized health benefits to infants and mothers, particularly in light of the childhood obesity epidemic.<sup>1</sup> Despite existing policies on breastfeeding support and promotion, breastfeeding rates remain low. The American Academy of Pediatrics (AAP) and the World Health Organization (WHO) recommend that infants should exclusively breastfeed for 6 months—that is, consume no other food, not even water, during this time. Only 15% of American women adhere to the recommendation, and 64% percent of lactating mothers introduce formula before their babies are 3 months old; 83.7% do so by 6 months.<sup>2</sup> However, duration of exclusive breastfeeding and continuation of breastfeeding are more significant predictors of health than the simple fact that a child was ever breastfed.<sup>3</sup> Low breastfeeding rates in the United States may be partially explained by the short duration of maternity

leave and lack of breastfeeding support at the workplace. More than 50% of women of childbearing age are employed, and most return to work at a time when exclusive breastfeeding is the ideal.<sup>4</sup> Statistically, the first dramatic decreases in breastfeeding rates happen when the baby reaches his third month.<sup>2</sup>

To be successful at integrating the roles of breastfeeding mother and employee, women need practical advice, the encouragement and support of health care providers, and societal and workplace support.<sup>5</sup> The Affordable Care Act of 2010 amended the Fair Labor Standards Act (FLSA), or federal wage and hour law, which require employers to provide reasonable break time and a private, non-bathroom place for nursing mothers to express breast milk during the workday, for one year after the child's birth.<sup>6</sup> Even though these provisions are required by the federal law, compliance monitoring and enforcement are responsibilities of state and local organizations. Prior to the 2010 federal law, only 24 states had

<sup>1</sup>Brown School of Social Work, and <sup>2</sup>Prevention Research Center, Washington University in St. Louis, St. Louis, Missouri.

already enacted worksite breastfeeding law supporting nursing mothers' right to continue breastfeeding when she returns to work, and the extent of these laws vary.<sup>7</sup>

According to ecological models, multiple levels of factors influence health behavior.<sup>8</sup> Therefore interventions at different levels (from policy to community to individual levels) are most likely to be effective and successful in behavior change. Policy interventions at national, state, and organizational designed to increase breastfeeding rates have the potential to complement individual behavior change efforts might work better when policies support the desired behavior levels. Although breastfeeding has been announced as a key public health issue and different projects were going on at the organizational level, (e.g., Baby Friendly Hospitals Initiative), the Healthy People 2010 goals on breastfeeding were not met.<sup>9</sup> The lack of top-down policy may have contributed to lack of success in achieving the national breastfeeding targets. Policy theory posits that a combination of top-down and bottom-up policies are considered to be the most effective in putting policy into a practice.<sup>10</sup> Thus the federal law requiring support for breastfeeding at the workplace could be seen as a missing element in the quest to increase US breastfeeding rates. Time and space are required components of worksite lactation support.

The Affordable Care Act 2010 requires employers with more than 50 employees to provide "a 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." The federal law also requires that employer shall provide "a place, other than bathroom, shielded from view and free from intrusion from coworkers and the public" for nursing mothers to express the milk.<sup>6</sup> The purpose of this paper is to analyze the nature and extent of worksite breastfeeding support policies for state employees and large state universities across all 50 states. Policy components and correlation to state breastfeeding rates will also be considered.

## Methods

### *Policy collection*

Policies for state employees were collected using several methods. First, websites for state human resources or administration offices were searched for written policies or policy statements on breastfeeding or lactation support for employees. For states without this online information, an e-mail or phone inquiry was used to ascertain the presence or absence of such a policy. The same method was used to collect policies for the largest state university in each state. Data about the policy and the links were aggregated into a database spreadsheet.

### *State data*

State breastfeeding rates were collected from breastfeeding report card.<sup>2,7</sup> The rates for exclusive 3-month breastfeeding was used for comparison since this is the timeframe that corresponds with most 12-week maternity leaves. The presence of a state law on worksite breastfeeding support, as of December 2011 was collected from National Conference of State Legislators compilation of state breastfeeding laws (summary of state statutes).<sup>7</sup> It should be noted that the first

state to enact worksite breastfeeding law was Texas in 1995, and the most recent state to enact worksite breastfeeding law was Montana in 2011.

### *Policy analysis*

All policies were read for content and a checklist of items was developed to systematically assess whether or not the policies contained the minimum criteria as the federal law (space and time), and allowed for the assessment of other unique policy characteristics (e.g., if infant age was mentioned, detailed specific on space, expanded explanation of break time).

## Results

### *State laws supporting lactation*

Twenty-four states had a worksite breastfeeding law before the federal law was enacted in 2010 (see Table 1). The first state laws were enacted in 1995 in Texas and in 1999 in Georgia and Tennessee. Twenty-two were enacted between 2001 and 2011. All of the state worksite breastfeeding laws included accommodation for break time and adequate place for breastfeeding or expressing milk for nursing mothers. Although these components were present in all laws, states varied in number of employees within a company for exemption to the law. For example, the Indiana and Oregon laws require that employers with more than 25 employees must provide a private location, while the federal law exempts employers with less than 50 employees.

### *Worksite lactation support policies for state employees*

We identified the presence or absence of policies for state employees for 47 states (Table 1). Three states (Rhode Island, Hawaii, and Pennsylvania) could not be assessed even after repeated attempts to acquire policies via e-mail and phone. After reviewing the state employee policies on support for nursing mothers, three main categories emerged: (1) 11 states had lactation policies with a detailed description of the time and space used by nursing mothers employed by the state, while 10 states have focused more on either time or space nursing mothers could utilize; (2) 12 states have very brief and general policies; and (3) 14 had no policy at all.

Out of 50 states, 11 have very detailed lactation policies with well-articulated time and space requirements the nursing mother can use to express milk. In regard to the time, it is specified that any paid break (e.g., lunch and two 15-minute breaks) should be used by nursing mother; however, the policies include additional language to indicate that if nursing mothers need more time to express milk she can use her annual leave or make necessary agreement with supervisor whether to take unpaid leave or work overtime. These policies also indicate that flexible schedules in such cases are encouraged. Indiana lactation policy states that nursing mothers could use more than 15 minutes of break time if the location of the room is far from designated working area. In regard to the space, the same 12 states' lactation policies for state employees specify that a place to express milk must have an electric outlet, a door with lock, a comfortable chair, a small table, and access to running water. Indiana state policy requires the employer to provide a refrigerator to store breast milk.

TABLE 1. DESCRIPTION OF BREASTFEEDING RATES AT 6 MONTHS AND BREASTFEEDING POLICIES AT STATE AND ORGANIZATIONAL LEVELS

State	Exclusive BF at 6 months (%)*	State worksite BF law <sup>a</sup>	State lactation policy <sup>b</sup>	Time ≥15 minutes <sup>c</sup>	Duration <sup>d</sup>	Public university lactation policy <sup>e</sup>	Private university lactation policy <sup>e</sup>
AL	9.1						
AK	21		✓	✓	✓		
AZ	19.6		✓	✓+	✓	✓	
AR	10.6	✓ (2009)					
CA	21.7	✓ (2001)	✓	✓	✓	✓	✓
CO	26.6	✓ (2008)	✓	✓	✓+	✓	✓
CT	12.6	✓ (2001)	✓	✓+	✓	✓	
DE	13.1						✓
FL	19.2		✓	✓	✓	✓	
GA	12.9	✓ (1999)	✓	✓	✓	✓	
HI	20.7	✓ (1999)	no info				
ID	23.2					✓	
IL	13.6	✓ (2001)	✓	✓	✓	✓	✓
IN	13.8	✓ (2008)	✓	✓	✓	✓	
IA	15.6		✓	✓	✓	✓	
KS	17.4					✓	
KY	9.6					✓	
LA	9.6		✓	✓+	✓		✓
ME	15.2	✓ (2009)	✓	✓+	✓	✓	
MD	15						✓
MA	16.5		✓	✓	✓	✓	✓
MI	17.9		✓	✓+	✓	✓	
MN	16.1	✓ (1998)	✓	✓+	✓		
MS	7.6	✓ (2006)	✓	✓+	✓	✓	
MO	16.2		✓	✓	✓	✓	
MT	12.5	✓ (2009)	✓	✓	✓	✓	
NE	20.2		✓	✓+	✓	✓	
NV	11.7		✓	✓	✓	✓	
NH	24.7		✓	✓+	✓	✓	
NJ	16.1						
NM	22.8	✓ (2007)	✓	✓+	✓		
NY	15.3	✓ (2007)	✓	✓+	✓+		✓
NC	15.3		✓	✓	✓	✓	✓
ND	15.4	✓ (2009)	✓	✓	✓	✓	
OH	11		✓	✓	✓	✓	
OK	10.4	✓ (2006)	✓	✓+	✓		
OR	26.3	✓ (2007)	✓	✓	✓+	✓	
PA	14.1		no info			✓	✓
RI	16.9	✓ (2003)	no info				
SC	13.3					✓	
SD	22.1		✓	✓	✓	✓	
TN	13.9	✓ (1999)	✓	✓+	✓	✓	✓
TX	13.7	✓ (1995)	✓	✓	✓	✓	
UT	24.8						✓
VT	23.3	✓ (2008)	✓	✓+	✓	✓	
VA	15.8	✓ (2002)	✓	✓+	✓		
WA	19.9	✓ (2001)				✓	
WV	9.1					✓	
WI	16.9					✓	
WY	20.5	✓ (2003)				✓	

\*Percentage from CDC Breastfeeding Report Card 2012.<sup>2</sup>

<sup>a</sup>✓=Presence of state worksite breastfeeding (BF) law (with year enacted).

<sup>b</sup>✓=Presence of a lactation policy for state employees.

<sup>c</sup>✓=Time described as a lunch, breaks if more time needed, usage of annual leave, or flex schedule in agreement with supervisor.

✓+=Time described as "reasonable time."

<sup>d</sup>✓=Policy describes duration until 1 year.

✓+=Policy describes duration more than 1 year.

<sup>e</sup>✓=Presence of lactation room at the largest public and private universities within states.

Of the 10 states that have more specific details, 7 states have lactation policies for the state employers focused only on the time a nursing mother can use to express milk, while the other 3 states specifically detail the space an employer must provide in their lactation policies. Twelve states have very brief lactation policies for their employees. Fourteen states do not have any break time policies for nursing mothers, but according to state human resource department officials, state employers must follow the federal policy.

Some policies for state employees go beyond recommended federal law as well as state law. In South Dakota, qualified health plan participants can choose from a \$100 savings bond, a car seat, or a breast pump. The lactation policies in both Minnesota and Montana recommend that all employees, whether nonexempt or exempt, should be provided suitable location to express milk. Moreover, Montana's lactation policy for state employees gives permission to use state vehicle for nursing children.

Three states have policies that go beyond the duration recommended by federal law, which requires accommodation for 1 year of break time for nursing mothers. Oregon lactation policy for state employees indicates that nursing mothers can use break time up to 18 months after birth, and Colorado's policy provides provisions for up to two years. New York state employees have the longest time allowed; employees can continue breastfeeding support at work for up to 3 years.

While many of the breastfeeding policies for state employees provide encouragement for this behavior, Mississippi and California's policies for the state employees states that an employer is not required to provide break time if it will seriously disrupt the operations of the employer.

#### *State law and state employee policy*

Three out of twenty-four states with worksite breastfeeding state law enacted prior to 2010 do not have lactation policy for the state employees. Fourteen states without state law, however, have a breastfeeding policy for state employees. There are eleven states that have neither a state law nor a lactation policy for state employees. However, the majority of states ( $n=19/24$ ) have both enacted worksite breastfeeding support state law and lactation policy for state employees (Table 1).

#### *Lactation policies at universities*

In order to get a broad perspective of lactation policies within states, we also collected information on at the availability of lactation rooms (lactation policies) at the largest public and private universities within states. Within the 50 states, 35 of the largest public and 12 of the largest private universities provided lactation rooms (Table 1). When the presence of a policy at the university level was compared with state law, the results showed that the presence of a state worksite breastfeeding support law does not correlate with the presence of lactation policies at the organizational (university) level within that state. Moreover, the results suggest that a higher number of universities with designated lactation rooms are located in the states without state worksite breastfeeding law.

### **Discussion**

Our findings yielded varied state and organizational worksite breastfeeding policies. Based on the top-down policy

theory, high-level policies can influence implementation and can speed up the process of putting policy into practice through communication and monitoring of subordinate levels.<sup>11</sup> Since the federal law was enacted in 2010, a significant number of state employee and large university worksite policies to support breastfeeding have been also enacted.

The top-down impact of federal law has many implementation implications. Most of the policies indicate that the "reasonable time" should be given for nursing mothers to express breast milk. But at the same time, the policies advise that nursing mothers should use already established breaks such as lunchtime and 15-minute breaks. Time to express breast milk varies among women; however, according to American Association of Pediatricians (AAP) the average time needed for breastfeeding is 30 minutes.<sup>12</sup> Thus, the designated 15 minutes stated in most policies may not be sufficient. Taking this into consideration, some policies highlight if designated break time is not enough to express milk, flexible schedules should apply. Some policies also state that women can use annual leave or work overtime as options or take unpaid break time. The option of using unpaid break time may put women, especially from the lower socioeconomic strata, at a disadvantage. When nursing time is reflected in (deducted from) their paychecks, it can be a barrier for women already at disparate rates for breastfeeding to continue breastfeeding.<sup>13</sup>

The exemption to the federal and state laws also warrants discussion. Federal law exempts small companies (<50 people) from the required worksite breastfeeding provisions. Small companies (less than 50) make up 37.5% (4,852,032 firms) of the employers in the US.<sup>14</sup> This exemption has the potential to affect millions of employed women. Many state laws also provide an exemption for organizations if the breastfeeding provisions "will seriously disrupt the operations of the employer."<sup>15</sup> This protects the employer from potentially negative consequences of implementing the law. Those employees who are not paid hourly (referred to as exempt employees) are not included in the federal law. Salaried employees may not have defined breaks as hourly employees do, and this exemption may be a deterrent for women to make time in their workday to express breast milk. Recent research shows that many workers do not even take a dedicated lunch break away from their desks. According to American Diet Association (or Home Food Safety) 83% of Americans workers eat lunch and snacks at their desk. Women tend to eat at their desks more often than men.<sup>15</sup> In a contemporary and highly competitive work environment and with the current sluggish economy, many employees do not prioritize breaks for eating and may not be likely to prioritize breaks to express milk when breastfeeding.

Even though the federal law has the potential to reduce some structural barriers to breastfeeding in employed women, it may not be effective in reducing the current disparity in breastfeeding rates. Among African Americans, the rates of breastfeeding are significantly lower than among white women: 58% start out breastfeeding (76% in white) and 28% breastfeed at six months (45% in white), while only 12% breastfed at twelve months (23% in white).<sup>16</sup> The low and declining rates over infant age may also be influenced by employment. Research shows that women in lower income categories and racial/ethnic minorities have a greater likelihood to return to work sooner



after delivery<sup>4</sup> and tend to work at places where support for breastfeeding is insufficient.<sup>17</sup>

Assessing the impact of these policies at the federal, state, and organizational level and across populations is critical for progress in increasing breastfeeding rates among working mothers. Even though governmental agencies such as the Centers for Disease Control and Prevention produce an annual report of state breastfeeding rates, there is a lack of surveillance that impedes monitoring and evaluating the impact of worksite lactation policies. A better system for collecting policy adoption, implementation, and evaluation at all levels needs to be considered in order to build the evidence on the policy effect on breastfeeding rates.

federal, state, and organizational laws requiring break time for nursing mothers is crucial for maintaining breastfeeding among employed mothers; however, international research indicates that paid maternity leave is proven to be the most effective intervention.<sup>18</sup> The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, which has been accepted by 185 countries since it entered into force as an international treaty in 1981, highlights the importance of paid maternity leave.<sup>19</sup> Article 10 of the International Covenant on Economic, Social, and Cultural Rights also protects paid leave for mothers: "Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period, working mothers should be accorded paid leave, or leave with adequate social security benefits."<sup>20</sup> Paid maternity leave is guaranteed in the national legislations of 177 nations all over the world.<sup>21</sup> No other policy has achieved greater global consensus; however, the US is the only country among affluent nations and one of the three countries across the world that does not have a federal policy on paid maternity leave.

The benefits of paid maternity leave are numerous.<sup>21</sup> For example, in Canada, the extension of paid maternity leave from 6 months to 1 year increased breastfeeding rates at 6 months by 40%.<sup>22</sup> In Norway, after duration of paid maternity leave increased from 10 to 40 weeks, the breastfeeding rates at 6 months is also increased from 10% to 80%.<sup>18</sup>

### Limitations

This study is unique in that we explore worksite breastfeeding support at three policy levels: federal, state, and organizational. In spite of this, several limitations warrant mention. First, collection of policies for state employees was challenging. States vary greatly in state personnel administration and availability of policies. When policies could not be located online, e-mails and phone calls were made to state departments. After many attempts, policies could not be located or an absence of policy confirmed in three states. Further exploration is needed. Also, it should be noted that lack of a policy does not confirm that policies do not exist. For example, South Carolina does not have a state-level policy for state employees, but the decision to have policies is left up to the state department or division level. Third, we used public and private universities as organizational examples because they are large employers and would likely encompass a range of employee levels. Future research is needed to identify if our results could be generalized other types of organizations.

### Conclusion

The federal law requiring lactation support at worksites is an important step in influencing behavior. Our results show an increase in subsequent policies at the state and organizational level. While the federal law may have contributed to the widespread understanding of the breastfeeding benefits and necessary components for lactation support at the worksite, impact (increased breastfeeding rates for employed women) from the implementation of federal worksite policy may take several years. Exemption to the federal law may also dilute future impact. Internationally, there is evidence that a mandated paid maternity leave is a worksite policy that is effective in increasing breastfeeding rates. As political support in the US for breastfeeding increases, this policy should be considered.

### Disclosure Statement

No competing financial interests exist.

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Address correspondence to:  
*Safina Abdulloeva, MD*  
*Washington University in St. Louis*  
*Prevention Research Center*  
*621 Skinker Boulevard*  
*St. Louis, MO 63130*

*E-mail: sabdulloeva@gmail.com*