



Public Health
Law Center

AT WILLIAM MITCHELL COLLEGE OF LAW



Legal Protections for Nursing Mothers in Minnesota

Breastfeeding mothers have legal protections in the workplace & in public

In Minnesota, 89.2% of women breastfed their newborn infants and 59.2% still breastfeed six months after birth. This is higher than the national average, where 79.2% of women have ever breastfed and 49.4% breastfeed at six months.¹ While many states have laws protecting nursing mothers in the workplace, Minnesota has some of the strongest laws in support of breastfeeding. In Minnesota, nursing mothers have legal protections in the workplace, as well as in public locations like parks, restaurants, or stores.² This fact sheet provides an overview of the Minnesota and federal laws that protect nursing mothers in the workplace and in public.

Q: What laws protect nursing mothers in the workplace?

A: Under both Minnesota law and the federal Patient Protection and Affordable Care Act,

Minnesota has some of the strongest laws in support of breastfeeding. Nursing mothers have legal protections in the workplace as well as in public locations like parks, restaurants, and stores.



employers are required to provide nursing mothers with reasonable time and appropriate space to express milk.³ The employer must follow whichever law offers nursing mothers the most protection.

Q: What sort of time and space must my employer provide me to express milk?

A: When read together, Minnesota law and federal law require employers to provide a space shielded from view, near your work area (if reasonable), free from intrusion, and that includes access to an electrical outlet. The space cannot be a bathroom and should be made available at the same time as other break times if possible.



Minnesota’s law protecting nursing mothers was recently changed to allow someone who is injured by a violation of the law to bring a civil action to recover any and all damages, costs and disbursements (including reasonable attorney’s fees), and to obtain injunctive and other equitable relief.

Q: Which employees are covered?

A: Under Minnesota law, employees who work for an employer with one or more employees are covered. Federal law applies only to employees who are covered by the overtime pay requirements of the Fair Labor Standards Act. The requirements under the federal law apply regardless of the mother’s citizenship status and whether she is legally permitted to work in the United States.⁴ Undocumented workers should consult an attorney for information on their specific situations.

Q: Am I required to inform my employer in advance that I will need to take breaks during work to express milk?

A: No. Even though you are not required to by law, however, it may be a good idea to give your employer advance notice of your intent to take breaks at work to express milk. This way, your employer can take the necessary steps to plan for your absence during your break times.⁵

Q: How many breaks will I be allowed to take, and will I get paid for break time taken to express milk?

A: Neither Minnesota law nor federal law specifies the number of breaks a nursing mother can take to express milk. Both laws only state that the employer must provide a “reasonable break time.” Under federal law, the break time must be provided “each time” the

employee has a need to express milk. The number of breaks will vary from woman to woman. Under both Minnesota and federal law, an employer is not required to compensate an employee who is receiving reasonable break time for the purposes of expressing milk, unless that break time occurs during a paid break.

Q: What if I encounter difficulties in obtaining break time or space to express milk in the workplace?

A: Understanding the law can be complicated for both you and your employer. Therefore, it may be helpful to contact someone for ideas on how to talk to your employer about arranging a time and space to express milk in the workplace. You can contact your local La Leche League group (<http://www.llli.org> or (612) 992-4996) with specific questions. For more information on breastfeeding in the workplace, visit the Minnesota Breastfeeding Coalition's website at <http://mnbreastfeedingcoalition.org>.

Q: What if I am unable to resolve the problem with my employer?

A: To file a complaint or report a violation under Minnesota law, you can contact the Minnesota Department of Labor and Industry at (651) 284-5005, or toll-free at 1-800-342-5354. The Division of Labor Standards and Apprenticeship will informally investigate and attempt to resolve the complaint. To file a complaint or report a violation under federal law, visit the U.S. Department of Labor's Wage and Hour Division website at <http://www.dol.gov/wecanhelp/howtofilecomplaint.htm> or contact the local District Office at (612) 370-3341. Depending on the situation, a legal remedy may also be available. Minnesota law was recently changed to allow someone who is injured by a violation of the law to bring a civil action to recover any and all damages, costs and disbursements (including reasonable

attorney's fees), and to obtain injunctive and other equitable relief.⁶ Contact an attorney if you wish to explore this option.

Q: What additional resources are available to help me understand the break time requirement for nursing mothers?

A: The federal government has a fact sheet⁷ and a list of frequently asked questions⁸ to assist nursing mothers in understanding the federal law, found at <http://www.dol.gov/whd/nursingmothers>. The Public Health Law Center and the Network for Public Health Law also have useful resources.⁹

Q: In addition to workplace protections, does Minnesota law allow breastfeeding in public?

A: Yes. Minnesota law allows a mother to breastfeed in *any* location, public or private, where the mother and child are allowed to be.¹⁰ A mother may breastfeed her child anywhere even if the nipple or breast is uncovered while breastfeeding. This means you are allowed to breastfeed in restaurants, stores, parks, malls, and other locations. Breastfeeding in public is not a violation of Minnesota's indecent exposure laws.¹¹

Q: Are there any public benefits programs that assist nursing mothers?

A: Yes. The Woman, Infants, and Children (WIC) program provides foods, health care referrals, and nutrition (including breastfeeding) education to eligible pregnant women, new mothers, babies, and young children.¹²

Q: Are there any tax benefits relating to breastfeeding?

A: Yes. The cost of breast pumps and supplies that assist lactation are medical expenses that may be eligible for tax deduction in certain circumstances,

or may be reimbursable under flexible spending accounts and other health savings accounts.¹³

For more resources to support breastfeeding, please see <http://bit.ly/1xmTR43>.

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The Public Health Law Center provides information and technical assistance on issues related to public health. The Public Health Law Center does not provide legal representation or advice. This document should not be considered legal advice. For specific legal questions, please consult with an attorney.

Endnotes

- ¹ CTRS FOR DISEASE CONTROL & PREVENTION, BREASTFEEDING REPORT CARD — UNITED STATES 2014 at 4, *available at* <http://www.cdc.gov/breastfeeding/pdf/2014breastfeedingreportcard.pdf>.
- ² MINN. STAT. § 145.905 (2014); MINN. STAT. § 181.939 (2014).
- ³ *See* Patient Protection and Affordable Care Act, H.R. 3590, 111th Cong. § 4207 (2010); MINN. STAT. § 181.939 (2014).
- ⁴ The Federal Department of Labor enforces the FLSA “without regard to whether an employee is documented or undocumented.” U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #48: APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION (2008), <http://www.dol.gov/whd/regs/compliance/whdfs48.pdf>; U.S. Dep’t of Labor Josendis Amicus Letter to U.S. Court of Appeals for the Eleventh Circuit (Aug. 26, 2010), *available at* [http://www.dol.gov/sol/media/briefs/josendis\(A\)-8-26-2010.htm](http://www.dol.gov/sol/media/briefs/josendis(A)-8-26-2010.htm) (reiterating the DOL’s position and citing cases in support).
- ⁵ Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073 (Dec. 21, 2010), *available at* <http://webapps.dol.gov/federalregister/PdfDisplay.aspx?DocId=24540> (Notice).
- ⁶ MINN. STAT. § 181.944 (2014).
- ⁷ U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #73: BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA, *available at* <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.
- ⁸ U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FREQUENTLY ASKED QUESTIONS — BREAK TIME FOR NURSING MOTHERS, <http://www.dol.gov/whd/nursingmothers/faqBTNM.htm> (last visited Sept. 4, 2014).
- ⁹ *See* <http://www.publichealthlawcenter.org/topics/healthy-eating/breastfeeding>; PUB. HEALTH LAW NETWORK, HEALTH CARE REFORM AND NURSING MOTHERS, *available at* <http://bit.ly/1IXb13d>.
- ¹⁰ MINN. STAT. § 145.905 (2014).
- ¹¹ MINN. STAT. § 617.23, subd. 4 (2014).
- ¹² To determine if you are eligible for WIC, visit <http://www.health.state.mn.us/divs/fh/wic/eligibility/step1.html> or contact 1-800-942-4030.
- ¹³ *See* IRS, PUBLICATION 502, Medical and Dental Expenses (Including the Health Coverage Tax Credit), *available at* <http://www.irs.gov/pub/irs-pdf/p502.pdf> (for 2013 tax year) and IRS, PUB. 969 HEALTH SAVINGS ACCOUNTS AND OTHER TAX-FAVORED HEALTH PLANS, *available at* <http://www.irs.gov/pub/irs-pdf/p969.pdf> (for 2013 tax year).