Breastfeeding in the Workplace: Is Legislation Effective?

Kathleen A. Marinelli MD, IBCLC, FABM, FAAP
Neonatologist, Connecticut Children’s Medical Center
Medical Director, Lactation Services CCMC
Associate Prof., Div. of Neonatology, Dept. Pediatrics, University of Connecticut
School of Medicine
AAP Chapter Breastfeeding Coordinator, State of Connecticut
Leadership Team, AAP SOBr
In the past 12 months, I have not had a significant financial interest or other relationship with the manufacturer(s) of the product(s) or provider(s) of the service(s) that will be discussed in my presentation.

This presentation will not include discussion of pharmaceuticals or devices that have not been approved by the FDA and I will not be discussing unapproved or “off-label” uses of pharmaceuticals or devices.

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Objectives

- To define the problem
- To determine the magnitude of the problem
- To summarize the current state of breastfeeding legislation in the US (both Federal and State)
- To speculate on the efficacy of current legislation
- To suggest goals for on-going and future endeavors
Human Milk—
the “choir” takes this for granted:

- Uniquely superior for infant feeding
- Unique composition provides ideal nutrients for human brain growth in the first year of life
- Every baby has the right to be breastfed; every mother has the right to be protected and supported in breastfeeding
- “Babies were born to be breastfed!” (OWH, DHHS and the Ad Council)
A Paradox of Concern

“In some parts of the US, a woman waiting for a bus and breastfeeding her 6-week-old son could be arrested for violating “public indecency” laws; however if she unzipped her (“free” formula company) bag, pulled out a bottle and fed her son, she would be performing a perfectly decent act.”

Raju NTK, J Pediatr 2006;148:677
Recent and Current Cultural Reality in the US:

- OK at home
- Not OK in park
What About the Workplace?
Barriers to Breastfeeding in the Workplace

- Perception that infants at work impede mother’s job performance
- Not considered within the scope of business
- Lack of privacy for breastfeeding or expressing milk
- Inability to find a daycare facility at or near the workplace
- High cost of daycare and long waiting periods
Barriers to Breastfeeding in the Workplace

- Insurance regulations, building codes, and other rules that limit infants and children in workplaces
- Women in lower-wage jobs face substantially greater barriers than those in higher-wage jobs
- Reluctance to allow adequate time for feeding/expressing
- Lack of appreciation of societal benefits
- Local and state laws related to breastfeeding
Benefits for Employers

- Cost savings of $3 per $1 invested in breastfeeding support
- Less illness among the breastfed children of employees
- Reduced absenteeism to call for sick children
- Lower health care costs (an average of $400/baby over the first year)
- Improved employee productivity
- Higher morale and greater loyalty
- Improved ability to attract and retain valuable employees
- Family-friendly image in the community

USBC—Workplace Breastfeeding Support
How Big is the Problem?
Fig 1. Any and exclusive breastfeeding rate by age (2002 National Immunization Survey)


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Fig 2. Racial/ethnic disparities in breastfeeding rates (percent and 95% CI; 2002 NIS)

% of Married Women with Child <1 year in Labor Force

US Department of Labor, 1995
Approximately 70% of employed mothers with children <3 years old work full-time (Li 2005)
- one third of these mothers return to work within 3 months after birth
- two thirds return within 6 months

It has been estimated that just under 10% of American mothers may be back at work within 1 week of their infant’s birth (Klerman 1993)
Some Statistics

- July 2005—59.3% of women over age 16 are in the workforce (US Dept. Labor)

- Fastest growing part of the workforce in US is women with infants and toddlers (Bocar 1997)

- Estimate ~1,200,000 women/yr. forced to choose between breastfeeding children or keeping job (Christup 2000)
Part-time versus Full-time

- Expecting to work part-time did not effect probability of breastfeeding relative to expecting not to work

- Effects on duration:
  - Full-time at 3 months ↓ duration mean 8.6 weeks relative not working
  - No effect working ≤ 4 hours/d
  - >4 hours/d ↓ duration less than full-time

Fein 1998
Some More Statistics

- Among women who continue to breastfeed after return to work, ~10% continue recommended 6 months (Cohen 1995)
  - The sooner she returns to work, the earlier she stops breastfeeding
  - Working >20 hours/week increases the rate of early cessation
- In one study, 55% of women initiated breastfeeding, regardless of employment status
  - Of those who breastfed: (Ryan 1989)
    - 45% women not employed outside home still breastfeeding at 6 months;
    - 18% full-time working women still breastfeeding at 6 months
Effect of Employment on Breastfeeding Rates

**Early pp**
- Home: 68%
- Work FT: 67.7%
- Work PT: 35.4%

**6 months**
- Home: 35.4%
- Work FT: 22.8%
- Work PT: 25%

**1 year**
- Home: 22%
- Work FT: 10.6%
- Work PT: 19.2%

*Healthy People 2010 Goals*
Cycle IV of National Survey of Family Growth: (Lindberg 1996)

- Strong association between timing of breastfeeding termination and postpartum work:
  - Highest risk of weaning observed in the month women began employment outside the home
  - Women who worked part-time reported longer breastfeeding duration than women who worked full time or who were not employed outside the home(!)
To Summarize:

- Huge and growing part of the US labor force is women in childbearing years, with young children (breastfeeding age).
- Length of time at home (Maternity Leave) associated positively with duration of breastfeeding.
- Full-time employment has a significantly negative effect on duration of breastfeeding.
- Part-time status has smaller effect if <20 hrs/week; increasing hours of work associated with decreasing duration of breastfeeding.
The most vulnerable segment of our population in terms of risk factors for not breastfeeding or shorter duration, is the same high risk segment in the workforce:

- Young
- Lower educational levels
- Unmarried heads of households
- “Lower status” employment with highest barriers to successfully breastfeeding/expressing milk in the workplace
- Maternity leaves short due to economic necessity
- Welfare Reform Act—example of laws hurting breastfeeding
Returning to work is one barrier to breastfeeding!
Purpose of Breastfeeding
Legislation

- In our current culture breastfeeding seen as a “lifestyle choice”, not health concern/necessity
  - Employers do not see need for continued breastfeeding when mother returns to work
    - “Formula much more convenient”
    - Employers who did not breastfeed their own children may feel implied criticism of their parenting choices
- Legislation is a recognition by our government that breastfeeding is basic act of nurturing
- Helps change public perception that breastfeeding not important, necessary, or the norm
- Prevents harassment
What Has Been Done Legally? Breastfeeding in Public

- It is important to remember that women have a right to breastfeed *in public* whether there is a law or not.

- The purpose of legislation is NOT to legalize breastfeeding, but to clarify the fact that women have the right to breastfeed in public, or that it is not a criminal offense, such as indecent exposure.

http://www.lalecheleague.org/Law/Bills4.html
Food for Thought

- Do women have the innate right to breastfeed/express milk in the workplace?
  - Safety/productivity/privacy versus “mothers have the right to breastfeed and babies have the right to be breastfed”
  - “Mothers have the right to breastfeed any place a woman has a right to be”

- Is the purpose of workplace breastfeeding law to clarify that right or to give that right?
Family and Medical Leave Act of 1993 (FMLA)

- Provides up to 12 weeks unpaid vacation to covered employees within 1 year birth
  - After 12 weeks, no protection from having to choose breastfeeding vs. keeping job
  - What about those unable to be unpaid for 12 weeks?
- Narrow coverage
  - Applies to worksites with $\geq 50$ employees
  - Employee must have worked for at least 12 months and at least 1,250 hours that year
  - Inapplicable to $> \text{half women in paid labor force}$
- Once return to work, no provision for “breastfeeding breaks”
Americans with Disabilities Act of 1990 (ADA)

- Title I deals with employment discrimination
  - Requires employers make “reasonable accommodation to physical...disabilities...of employee”
  - “Breastfeeding woman is impaired in performing certain major life activities while she is breastfeeding”

- Current language of ADA does not reach pregnancy or breastfeeding
  - Courts have uniformly rejected breastfeeding as a “physical impairment”
  - Rely on Equal Opportunity Employment Commission (EEOC) which state that impairment must be “long term” to qualify
Breastfeeding as a Constitutional Privacy Right

- **Dike v. School Board (5th Circuit 1981)**
  - School teacher; breastfed during duty-free lunch breaks for 3 months; school cited “no children brought to school—potentially disruptive”
  - “breastfeeding is the most elemental form of parental care...like marriage, is ‘intimate to degree of being sacred’.
  - “…Constitution protects from excessive state interference a woman’s decision respecting breastfeeding her child.”

- Sounds good........but has not protected a single breastfeeding worker
  - On remand, sided with school board’s “interests in avoiding disruption...ensuring teachers perform duties without distraction...avoiding potential liability from accidents...”
The Pregnancy Discrimination Act of 1978 (PDA)

- “…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.”

- No cases won under PDA
  - “breastfeeding is not a medical condition related to pregnancy or childbirth”
  - “if woman wants to stay home to take care of the child, no benefit must be paid because this is not a medically determined condition related to pregnancy.”
Title VII of the Civil Rights Act of 1964

“...it shall be an unlawful employment practice for any employer...to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual’s...sex.”

No cases won

Because men do not breastfeed, discrimination against breastfeeding simply cannot be sex discrimination.
Current State of Breastfeeding
Legislation in United States
(Federal) As of May 2006

- National legislation enacted 1999, included in a postal appropriations bill, was language that a woman may breastfeed her child at any location in a federal building or on federal property, if the woman and her child are otherwise authorized to be present at the location. Pub. L. 106-058, sec. 647 (1999); Right to Breastfeed Act (HR 1848)

- Federal buildings and property may include museums, court houses, agencies, national parks throughout the country, if owned or maintained by the federal government.

http://www.lalecheleague.org/Law/Bills4.html
Pending Federal Law

“Breastfeeding Promotion Act” (HR 285)
- Enacts performance standards for breast pumps
- Provides tax incentives for businesses that establish private lactation areas
- Allows breastfeeding equipment to be tax deductible for families


Congresswoman Carolyn Maloney (D-NY)
“Although there is ...nothing...(we) can do to help the women who have already had their breastfeeding claims rejected by the courts, the hope...is...(to) be of assistance to some of the 1,000,000 breastfeeding women each year who are presently being forced to choose between breastfeeding and work, a choice that no man will ever be forced to make.”

Henry Wyatt Christup, JD; Yale Journal of Law and Feminism 2000; 12:263-286
Experience shows us that legislation is necessary to protect breastfeeding mothers from discrimination in the workplace.

- Working conditions discourage mothers from continuing once they return to work.
- Perceived choice: Wean baby vs. quit job.
  - Role of prenatal education.
- Difficulty obtaining relief from courts.
  - Several federal court opinions did not find discrimination against breastfeeding mothers actionable.
Current State of Breastfeeding Legislation in United States (States) As of May 2006

- **Any** breastfeeding legislation has been enacted in 45 states (90%)
- No breastfeeding laws of any kind in 5 states (10%) and the District of Columbia
  - Arkansas, Massachusetts, North Dakota, Pennsylvania*, West Virginia
  - *Although city of Philadelphia has ordinance supporting BF in public while PA has no law
- Specific laws applying to breastfeeding in the **workplace** have been enacted in 11 states (22%)

http://www.lalecheleague.org/Law/Bills4.html
Current State of Breastfeeding Legislation in United States
(As of Sept. 2006)

- Thirty seven states allow mothers to breastfeed in any public or private location (74%)
- Nineteen states exempt breastfeeding from public indecency laws (38%)
- Eleven states have laws related to breastfeeding in the workplace (22%)
- Eleven states exempt breastfeeding mothers from jury duty (22%)
- Four states have implemented or encouraged the development of a breastfeeding awareness education campaign (8%)

http://www.ncsl.org/programs/health/breast50.htm
Unique Laws Related to Breastfeeding
(As of Sept. 2006)

- CA and TX: laws related to the procurement, processing, distribution or use of human milk.
- LA: prohibits child care facility from discriminating against breastfed babies.
- ME: requires courts, when awarding parental rights and responsibilities in divorce, to consider whether the child is under age one, and being breastfed.
- MD: exempts from the sales and use tax, sale of tangible personal property that is manufactured for purpose of initiating, supporting or sustaining breastfeeding.

http://www.ncsl.org/programs/health/breast50.htm
Unique Laws Related to Breastfeeding
(As of Sept. 2006)

- MS: requires child care facilities to promote breastfeeding by mothers of children being cared for in the facility.
- NY: nursing babies up to 1 year of age can remain with incarcerated mothers.
- RI: requires DPH to prepare consumer mercury alert notice, explaining danger of eating mercury-contaminated fish to pregnant or breastfeeding women.

http://www.ncsl.org/programs/health/breast50.htm
Early Breastfeeding in Workplace
State Legislation

- “Encouraged” support
  - Allow advertising as mother- or infant-friendly if lactation support conforms to state guidelines
More Recent Legislation

- Newer legislation deals with discrimination
  - Require employers to accommodate mothers on return to work—6 states (CA, CT, HI, IL, MN, TN)
    - Make clear treating differently is discrimination (CT, HI)
      - Over-rides federal court decisions that found discrimination against breastfeeding mothers not to be actionable
  - Requires specific actions be taken to provide the support—5 states (CA, CT, IL, MN, TN)
    - Require private place specifically not a bathroom stall—all 5 states
    - Provide sufficient break time to express milk—4 states (CA, IL, MN, TN)
    - Civil penalty for violation (CA)
Breastfeeding and breastmilk feeding are very different entities.

Must be careful not to fall into trap of talking/writing/legislating “pumping” (expressing) breastmilk in the workplace as the standard.

Easily occurs: breastfeeding while in the workplace requires discussion/implementation of on-site day care; flex time opportunities; baby/child being brought directly into the workplace.

CT Law “An Act Concerning Breastfeeding in the Workplace”: Any employee may, at her discretion, express breast milk or breastfeed on site at her workplace...
Central Question Today

- Is breastfeeding legislation effective?
1 study found in search:

- Puerto Rico, Public Law 427 (12/00)
  - Grants 30 minutes during regular work day to FT mothers from day return to work, for 12 months.
- Public Law 155 (2002) ordered government agencies to designate private spaces for breastfeeding
- Surveyed 25% of government agencies (n=28)
  - 100% knew of law
  - 50% set up and equipped spaces
  - 61% had written breastfeeding policy
  - 54% offered orientation to women employees regarding their breastfeeding rights
- Conclusion: necessary for responsible entities to watch for compliance

Benitez YL, PRHSJ 2005;24:297-301
Subjective Data

- Shown politicians that this gets them votes from thinking people and gives them an aura of humanity which they sorely need;
- Shown employers that women are no longer obedient servants but are beginning to demand their rights;
- Shown women that they do make a difference;
- Shown us that the passage of a law is a necessary first step, but it is not enough;
- Shown fathers that they are important elements of child upbringing, even if we cannot breastfeed;
- Shown Health Department officials that they cannot ignore the issue.
- A great Latin American once said: Let's be realistic, let's do the impossible!

Jose Gorrin, personal communication 2006. With permission.
To the contrary, I have heard that many women are intimidated to the point that they are not even mentioning to their employers that they are pumping for fear of losing their job... I brought it up at a WIC Breastfeeding Committee meeting about a week later and many of the Coordinators indicated that they had heard such stories from participants. They are assisting women who request their help, of course, but some women are dealing with it the best they can or are discontinuing breastfeeding rather than confronting their employer and potentially jeopardizing their job.

S. Jackman, WIC Breastfeeding Coordinator, CT, 2006. Personal communication
Women across the nation are attempting to heed public health’s call to breastfeed, but are finding that inconsistent workplace policies can complicate matters. Nearly half of all new mothers return to work in the first year after giving birth, but no federal law protects their right to pump breast milk at work. Twelve states have passed laws, but most are virtually toothless, giving discretion to employers to decide on providing reasonable break times and privacy. The U.S. Department of Health and Human Services is beginning a campaign entitled, “The Business Case for Breastfeeding,” that will emphasize that breast-feeding reduces absenteeism and pediatrician bills. But working mothers are finding that disparities between well-paid professional women and mothers with lower-income jobs (such as jobs in restaurants, factories, call centers, and the military) are acute.
Corporate jobs often provide lactation support as a benefit to working mothers, including free or subsidized breast pumps, access to lactation consultants, and special rooms for pumping milk. Women in lower-paying jobs often find themselves unable to find time to pump milk, and according to Barbara L. Philipp, associate professor of pediatrics at Boston University School of Medicine, many are “scared to death to even talk to their employers.” Jennifer Munoz, a former cashier at Resorts Atlantic City Casino said she faced many obstacles to pumping breast milk on the job. “I feel like I had to choose between feeding my baby the best food and earning a living,” she said.

The New York Times (09/01/06) Jodi Kantor
Healthy People 2010: Where Are We With Breastfeeding?

- 75% initiation—21 states achieved
- 50% at 6 months—5 states
- 25% at 12 months—11 states
- Achieved all 3 goals—5 states
  - California*, Hawaii*, Oregon, Vermont, Washington*
- Exclusivity for 6 months—1 state at ≥25%
  - Oregon

* Have workplace legislation  
 CDC: 2005 National Immunization Survey
I cannot definitively prove, with current evidence, that legislation is effective.

However, it would appear that it is not a negative influence, and more than that, that it likely is effective for at least some sub-segments of the population.

The secondary effects of lifestyle choice vs. health concern/necessity; influencing public opinion and preventing harassment are as important as desired primary effects.
How A Bill Becomes A Law In Connecticut

Proposed bill

Bill is sent to the clerk of the House of the sponsoring legislator for numbering.

Bill title, number and sponsors are printed in the House and Senate Journals.

A bill is sent to the appropriate committee of the House or Senate Assembly, depending on the bill's subject matter.

Committee may:
1. have the bill discussed in open session; 2. consider it in executive session; 3. have it discharged as a committee bill; or 4. refer the bill to another committee for action.

Committee holds public hearings for the bill. If no report is filed by the committee, the bill is ready to be heard in another committee of the Appropriations Committee.

Committee may report the bill favorably, disfavor the bill or take no action on the bill.

Bill may be referred to another committee or chamber (e.g., a bill involving education might be referred to the Appropriations Committee).

Bill is then referred to the second house for consideration. If a conference is reached, the bill is sent to the governor.

If the bill is passed, the governor signs it. If the governor vetoes the bill, it is returned to the house in which it originated.

The bill becomes law if the governor signs it. If the governor vetoes the bill, it is returned to the house in which it originated. The bill may be reconsidered by both houses.

The bill becomes law if either house passes the bill on reconsideration. If both houses pass the bill, it is sent to the governor. If the governor signs the bill, the bill becomes law. If the governor vetoes the bill, it is returned to the house in which it originated.

The bill becomes law if the governor signs it. If the governor vetoes the bill, it is returned to the house in which it originated. The bill may be reconsidered by both houses.
The Future

- The given “right to breastfeed” is of little value if we do not protect and support it in the workplace.
- Future legislation should require:
  - Reasonable accommodation
  - Break time
  - Civil penalties for non-compliance
- We must also address issue of Maternity leave policy (paid; length)
The Future

- We must look at effects of implementing public policy/law
  - Evaluate pre and post law passage for breastfeeding outcomes in the working mother population
“Until the legislatures and the courts send clear messages about the right to breastfeed and what that entails, women will be discouraged from breastfeeding (both) in public and at work. As a result, both women and their children will suffer.”

Thank you!

Handout of references, web links and “How a Bill Becomes a Law in CT”

For PDF of slides, email Kathleen.marinelli@cox.net