



# Breastfeeding and Lactation Advocacy

# 101

# TOOLKIT

## Contents

Introduction and Purpose . . . . .	2	Lactation Rights: Adoptive and Foster Parents . . . . .	36
Resource List . . . . .	3	Lactation Rights in Surrogacy . . . . .	37
Background and Overview of Laws . . . . .	7	Lactation Rights for LGBTQAI+ Families . . . . .	38
Federal vs. California Law Comparison Chart . . . . .	11	Breastfeeding and Traveling . . . . .	40
Six Key Laws for Working Parents in California . . . . .	12	Breastfeeding in Public . . . . .	42
Breastfeeding at Work . . . . .	17	Breastfeeding and Rights in Medical Care . . . . .	43
Breastfeeding in the Education System . . . . .	23	Advocating For Yourself . . . . .	47
Jury Duty: Breastfeeding and Lactation Accommodations . . . . .	30	Legislative Advocacy . . . . .	48
Breastfeeding and Divorce and Custody Cases . . . . .	31	Acknowledgments . . . . .	49
Lactation Rights during Incarceration or in Immigration Detention . . . . .	32	Endnotes . . . . .	50



## Introduction and Purpose

*BreastfeedLA could not be more thrilled to bring this to you!*

Since 1994, BreastfeedLA has served as a trusted resource for breastfeeding information and resources. As the local breastfeeding task force, BreastfeedLA is dedicated to improving the health and wellbeing of infants and families through education, outreach, and advocacy to promote and support breastfeeding.

We receive many calls from people and families whose breastfeeding or lactation rights were violated. Often our community partners call us with stories of clients whose rights were violated and they don't know how to help. This toolkit was designed with this in mind. We created this toolkit for anyone who wants to advocate for themselves or others.

This toolkit is the result of many conversations with a wide variety of breastfeeding advocates. We use gender inclusive language because breastfeeding and lactation rights apply to everyone.

This toolkit describes many laws, however these laws are the minimum standards to which organizations must adhere. Organizations can and should provide better accommodations than the laws require.

Please note, this toolkit is intended to be a source of general information only. This toolkit is not a substitute for legal advice. Please consult a lawyer for advice specific to your situation or if you have any questions that are not answered in this toolkit.

We hope that you find this a useful resource!

Sincerely,



**BreastfeedLA**



### **The toolkit has several goals:**

To be a resource for breastfeeding advocates so that they can better serve breastfeeding and lactating parents and families;

To educate parents and families about their rights and how to advocate for themselves;

To serve as a resource for employers and community organizations who employ lactating parents and individuals;

To serve as a resource for policy makers to enact policies that better serve breastfeeding and lactating individuals and families.

### ACLU Southern California

[www.aclusocal.org/en/issues/reproductive-rights-gender-equity](http://www.aclusocal.org/en/issues/reproductive-rights-gender-equity)

The ACLU of Southern California works to ensure equal access to comprehensive, quality, affordable and confidential reproductive health care and where personal decisions about sexual activity and childbearing are informed, respected, supported and attainable.

### The California Women's Law Center

[www.cwlc.org](http://www.cwlc.org)

CWLC works to break down barriers and advance the potential of women and girls in California through transformative litigation, policy advocacy and education. Since 1989, CWLC has advocated for and achieved policy change on a wide range of issues affecting gender discrimination and equality, Title IX enforcement, women's health and reproductive justice, economic security and violence against women.

### Center for Worklife Law

[www.worklifelaw.org](http://www.worklifelaw.org)

[www.pregnantatwork.org](http://www.pregnantatwork.org)

[www.thepregnantscholar.org](http://www.thepregnantscholar.org)

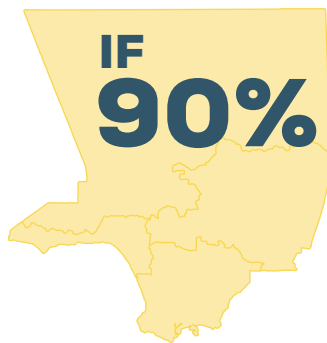
The Center for WorkLife Law has a free legal hotline at 415-703-8276. The Center for WorkLife Law is a research and advocacy organization at UC Hastings College of the Law that seeks to advance gender and racial equality in the workplace and in higher education. They provide an online resource center that provides tools and educational materials about accommodating pregnant workers and students.

### Legal Aid at Work

[www.legalaidatwork.org/our-programs/work-and-family-program](http://www.legalaidatwork.org/our-programs/work-and-family-program)

Toll Free in California: 415-593-0033

Legal Aid at Work protects the rights of pregnant people, new parents, and caregivers to time off work, paid leave, and workplace accommodations. They provide free confidential advice through their Work and Family Helpline, represent low-wage workers, engage in community education, and advocate for policy changes to expand work and family rights.



of LA County families were to comply with medical recommendations to

**breastfeed exclusively for 6 months**

the savings to the LA County economy would amount to

**\$1.1 BILLION** <sup>106,107</sup>  
per year.

### BreastfeedLA

[www.breastfeedla.org/advocacy](http://www.breastfeedla.org/advocacy)

BreastfeedLA is dedicated to improving the health and wellbeing of infants and families through education, outreach, and advocacy to promote and support breastfeeding. The Advocacy Committee focuses on addressing breastfeeding and healthcare disparities through grassroots organizing including legislative visits, creation of this advocacy toolkit and Advocacy Days. BreastfeedLA also helps employers with workplace lactation training and policy creation.

### California Breastfeeding Coalition

[www.californiabreastfeeding.org/advocate-voices/guidelines-and-instructions](http://www.californiabreastfeeding.org/advocate-voices/guidelines-and-instructions)

The purpose of the CBC Advocate Voices Blog is to provide breastfeeding advocates throughout California a platform to share expertise and opinions that will inspire others to join our collaborative efforts to improve the health and wellbeing of Californians by protecting, promoting, and supporting breastfeeding, thereby removing all barriers to breastfeeding in California. The blog features coalition activities, evidence-based practices, legislation, news, commentary and reflections related to breastfeeding.

### California Work & Family Coalition

[www.workfamilyca.org](http://www.workfamilyca.org)

The CWFC supports expanding job protected leave, making paid family leave affordable for low-income workers, expanding access to paid sick days, and other policies that help California workers preserve their jobs and fulfill their caregiving responsibilities. CWFC organizes local and statewide legislative advocacy efforts.

### MomsRising

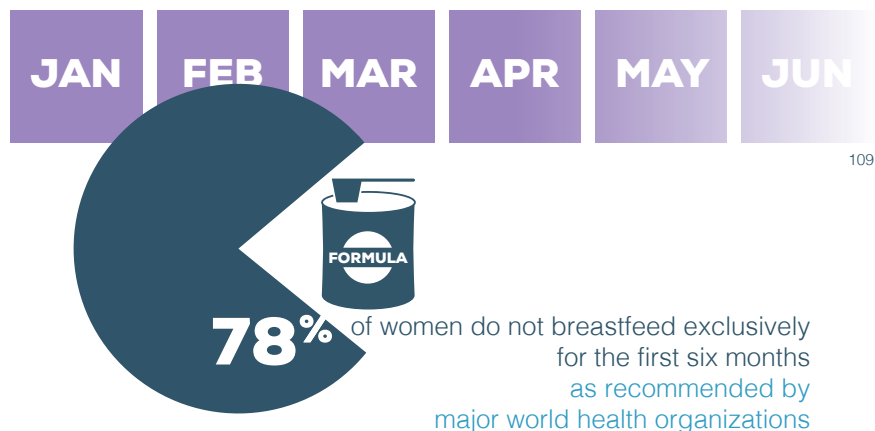
[www.momsrising.org](http://www.momsrising.org)

MomsRising combines the best of American innovation and ingenuity. They are a transformative on-the-ground and online multicultural organization of more than a million members and over a hundred aligned organizations working to increase family economic security, to end discrimination against women and mothers, and to build a nation where both businesses and families can thrive.

### The Restaurant Opportunities Center of Los Angeles

[www.rocunited.org/staff-and-locals/los-angeles](http://www.rocunited.org/staff-and-locals/los-angeles)  
213-380-1020

ROC-LA is a multi-racial, grassroots organization dedicated to winning improved working conditions and raising industry standards for all Los Angeles restaurant workers.



#### California Department of Fair Employment and Housing

Failure to provide lactation accommodations is also unlawful under the Fair Employment and Housing Act (FEHA). Under FEHA, California employees can make a complaint to the Department of Fair Employment and Housing (DFEH). Complaints must be made within one year. To learn more about the complaint process, see here: [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

#### California Department of Industrial Relations, Labor Commissioner's Bureau of Field Enforcement

If an employer is not following California Labor Code 1030-1033, the employee can make a complaint to the California Department of Industrial Relations, Labor Commissioner's Bureau of Field Enforcement (BOFE) office nearest to the place of employment. To make a complaint, see [www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm](http://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm)

The Labor Commissioner's website has a page dedicated to lactation accommodation frequently asked questions at: [www.dir.ca.gov/dlse/Lactation\\_Accommodation.htm](http://www.dir.ca.gov/dlse/Lactation_Accommodation.htm)

#### Employee Development Department

[www.edd.ca.gov/Disability/Paid\\_Family\\_Leave.htm](http://www.edd.ca.gov/Disability/Paid_Family_Leave.htm)

To find more information and file a claim for paid family leave benefits

#### Office on Women's Health, U.S. Department of Health and Human Services

[www.womenshealth.gov/breastfeeding/employer-solutions/nursing-moms.html](http://www.womenshealth.gov/breastfeeding/employer-solutions/nursing-moms.html)

A great resource for breastfeeding at work for both employers and employees.

#### U.S. Department of Labor, Wage and Hour Division

If the employer is covered by section 7 of the Fair Labor Standards Act and is not providing lactation accommodations, an employee can file a complaint with the U.S. Department of Labor, Wage and Hour Division (WHD). Visit the WHD website to learn about "How to File a Complaint."

[www.dol.gov/wecanhelp/howtofilecomplaint.htm](http://www.dol.gov/wecanhelp/howtofilecomplaint.htm)

The WHD has a toll-free information and helpline, available 8:00 a.m. to 5:00 p.m. at 1-866-4USWAGE (1-866-487-9243).



### BreastfeedLA Resource Directory

[www.breastfeedla.org/resource-directory](http://www.breastfeedla.org/resource-directory)

Lists breastfeeding resources and support in the Los Angeles area.

### Breastfeeding Without Birthing

[www.breastfeedingwithoutbirthing.com](http://www.breastfeedingwithoutbirthing.com)

Breastfeeding without Birthing is a great resource for breastfeeding and chestfeeding as well as for finding lactation consultants who are experienced in assisting parents who would like to induce lactation.

### Breastfeeding USA

[www.breastfeedingusa.org](http://www.breastfeedingusa.org)

Breastfeeding USA, Inc. provides evidence-based information and support, and promotes breastfeeding as the biological and cultural norm. We accomplish this through a network of accredited breastfeeding counselors and comprehensive resources for the benefit of mothers and babies, families, and communities.

### International Lactation Consultant Association

[www.ilca.org/why-ibclc/falc](http://www.ilca.org/why-ibclc/falc)

ILCA works to “advance the International Board Certified Lactation Consultant® (IBCLC®) profession worldwide through leadership, advocacy, professional development, and research”. Their website has a search feature to find local IBCLCs.

### La Leche League

[www.llli.org](http://www.llli.org)

La Leche League volunteers offer free breastfeeding support groups all over the world.

### Women, Infants and Children (WIC) Program

[m.wic.ca.gov](http://m.wic.ca.gov)

WIC helps families by providing nutrition education, breastfeeding support, vouchers for healthy foods, and referrals to healthcare and other community services. WIC serves babies and children up to age 5, pregnant people, and new parents. Grandparents, foster parents of young children, and working families are also welcome at WIC.

### Breastfeeding help lines in Los Angeles County

Antelope Valley 661-726-6393

City of Long Beach 562-570-4242

Northeast Valley Health Corp. 818-837-6349

Pasadena Public Health Department 626-744-6520

PHFE 888-278-6455

South LA Health Projects 323-905-1248

Watts Healthcare Corp. 323-568-3070

## Background and Overview of Laws<sup>1</sup>

In the United States, breastfeeding rights are typically either federal laws, meaning that they apply in every state, or state laws. Because BreastfeedLA is based in California, this toolkit will discuss California state laws. If you are not in California, our laws might give you some ideas about protections that you could win in your state!

### Federal Laws

Five federal laws provide protections for breastfeeding: Title VII, Title IX, the Family Medical Leave Act (FMLA), the Affordable Care Act (ACA)<sup>2</sup> and the Right to Breastfeed Act. These laws provide protections to breastfeeding people in all 50 states.

#### Title VII

Title VII is part of the Civil Rights Act of 1964. The Pregnancy Discrimination Act of 1978 amended Title VII to include pregnancy, childbirth and related conditions.<sup>4</sup> The law covers employers with 15 or more employees. It applies to private companies, employment agencies, labor organizations, and state, local and federal government employees, including educational institutions.

This law states that “women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment related purposes.”<sup>5</sup>

For example:

- An employer cannot use pregnancy, childbirth or a related condition as a reason not to hire an applicant
- If an employee cannot work or needs accommodations due to pregnancy, those needs should be accommodated in the same way that an employee with a temporary disability would be accommodated
- If an employee requires accommodations for lactation (such as schedule changes or sick leave), those needs should be accommodated in the same way that other employees are accommodated for doctors appointments or other non-life-threatening medical conditions.<sup>6</sup>

If a person believes that their employer is not following the Pregnancy Discrimination Act of 1978, they can contact the Equal Employment Opportunity Commission (EEOC). The EEOC is responsible for enforcing this law, and can help the person to file a complaint here: [www.eeoc.gov/employees/howtofile.cfm](http://www.eeoc.gov/employees/howtofile.cfm)

See *Breastfeeding at Work* on page 17 for more information.

#### Title IX

Title IX is part of the Education Amendments of 1972, which are amendments to the Civil Rights Act of 1964.<sup>3</sup> Title IX states that no federally funded education program or activity can discriminate against a person based on their sex. Title IX applies to colleges, universities, elementary and secondary schools as well as any other educational program that receives federal funding. This law has been interpreted as applying to pregnancy, childbirth and related conditions (such as breastfeeding and lactation) because they are related to a person’s sex.

If a person believes that their rights under Title IX are being violated, they can contact the Title IX Coordinator at their educational program. It is also possible to file a complaint with the Department of Education. Instructions on how to file a complaint can be found here: [www2.ed.gov/about/offices/list/ocr/docs/howto.html](http://www2.ed.gov/about/offices/list/ocr/docs/howto.html)

For more information about Title IX and breastfeeding and lactation rights, see *Breastfeeding in the Education System* page 23.

### The Family Medical Leave Act of 1993

The Family Medical Leave Act of 1993 provides job protection to an eligible employee and allows up to 12 weeks of unpaid leave for certain family or medical reasons every 12 months. This means that a company is required to hold the individual's job for them until they come back from leave. FMLA is unpaid. In California, there are other programs that may provide compensation for which an employee may qualify, which are discussed in the *Six Key Laws for Parents* part of the Toolkit (page 12).

Employees can take FMLA leave for their own serious health condition or for the serious health condition of a qualified family member all at once or intermittently. For instance, a new parent can take 12 weeks of leave all together to bond with the new infant or a person whose spouse needs regular doctor's appointments could take off one day a month to take their spouse to the doctor. Under FMLA, baby bonding leave has to be taken in one, continuous length of time unless the employee has permission from their employer to take baby bonding leave intermittently.

Employees who are eligible for FMLA must:

- Work for a private employer with 20+ employees within 75 miles of where the employee works OR work for a government agency with any number of employees
- Have worked for the same employer for at least 1 year
- Have worked at least 1250 hours in the past year
- Airline pilots and active duty military service members have special requirements under FMLA – see *The Employee's Guide to FMLA*<sup>6</sup> for more information about FMLA and special situations.





#### Patient Protection and Affordable Care Act (ACA)

The Patient Protection and Affordable Care Act (ACA) amended the Fair Labor and Standards Act to include the “Break Time for Nursing Mothers Act.” This law requires employers to provide employees with reasonable break time to express breast milk after the birth of a child. The amendment also requires that employers provide a place for the employee to express breast milk.

This law requires employers to provide:

- Reasonable break time for lactating employees to express breast milk for up to one year after the infant’s birth.<sup>8,9</sup> The burden of proof rests on the employer to show that the break time is unreasonable.
- The ability for the employee to use paid break time to express breast milk, and to allow for the use of additional unpaid break time as needed.
- A private space shielded from coworkers and the public – the space cannot be a bathroom.

There are some limitations to who is covered by the ACA, however in California there are stronger state laws that cover these employees, which are described in the *California Laws* (page 10) and in the *Breastfeeding in the Workplace* (page 17) sections of the Toolkit.

Limitations in the federal law include:

- If the employer has fewer than 50 employees and the employer can show that lactation accommodations are causing significant hardship, expense or difficulty.
- Federal law (unlike California law) does not require employers to provide lactation breaks to workers who are exempt employees. Exempt employees are salaried and are not eligible for minimum wage and overtime pay. This includes teachers and administrators. Non-exempt employees are paid hourly.

The law states that an employee cannot be discriminated against for filing a complaint against their employer for noncompliance with the ACA. If a breast-

feeding employee feels that they are being discriminated against or were terminated from their job because they took breaks to express breast milk, the breastfeeding employee can file an official complaint. The employee may be entitled to remedies such as “employment, reinstatement, lost wages, and an additional equal amount as liquidated damages.”<sup>9</sup> The US Department of Labor’s Wage and Hour Division Hotline at 1-866-4USWAGE (1-866-487-9243) provides both information and assistance with filing a complaint. See *Breastfeeding At Work* on page 17 for more information.

Another benefit of the Patient Protection and Affordable Care Act is it allows breast pumps and lactation supplies to be tax deductible and requires health insurance plans to cover breastfeeding support, supplies and counseling.

#### The Right to Breastfeed Act

The Right to Breastfeed Act protects the right to breastfeed on any federal property. The law defines federal property to include “any building, land, or other real property owned, leased or occupied by any department, agency or instrumentality of the United States (including the Department of Defense, the United States Postal Service, and any establishment in the legislative or judicial branches of the Government), or any other instrumentality wholly owned by the United States.”<sup>10</sup>

This includes National Parks, airports, bus and train stations.

See *Breastfeeding in Public* page 42 for more information about breastfeeding in public and how to respond if your rights have been violated.

California has the strongest protections for breastfeeding rights in the country. When state and federal law differ, the law with greater protection prevails over the law with weaker protections. In California, protections cover workplace accommodation, housing and employment discrimination, pregnancy discrimination, breastfeeding in public, and the Baby-Friendly Hospital Initiative. This section provides a general overview of some key California laws relating to breastfeeding. These laws are discussed in greater detail in later sections of this guide.

**In California all employers are required to provide reasonable break time to employees who need to express breast milk.** The law states that break times should be as close to regularly scheduled breaks as possible, and any additional break time needed would be unpaid. The law requires the employer to make reasonable efforts to provide a space that is close to the employee's regular work space for the employee to express milk in private. The law applies to all employees regardless of the breastfeeding employee's immigration status and an employer who violates this law will face a civil fine of \$100. Employees who feel that their rights to express breast milk at work have been violated can contact the California Department of Labor and file a complaint here: [www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm](http://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm).

See *Breastfeeding at Work* page 17 for more information.

**California has additional protections against workplace discrimination based on pregnancy or breastfeeding.** The California Fair Employment and Housing Act explicitly defines sex discrimination to include breastfeeding and medical conditions associated with breastfeeding. Additionally, the Pregnancy Disability Regulations include lactation as a "related medical condition" and require employers to provide reasonable accommodations to lactating employees. The employee must request the accommodations and provide a note from their healthcare provider.

See *The State of Fair Employment and Housing Handout: Your Rights and Obligations as a Pregnant Employee* and *Breastfeeding at Work* page 17 for more information about protections under these laws.<sup>11</sup>

**California also has some of the most generous pregnancy and family leave laws in the country.** A pregnant employee in California who works for an employer with at least five employees is entitled to up to four months of leave for time during which the employee is disabled by pregnancy or childbirth. An employee who meets the eligibility requirements for CFRA leave can take up to 12 weeks of time to bond with a new baby *in addition to* any time classified as pregnancy disability leave.

See *Six Key Laws for Working Parents* on page 12 for more information.

**California law also explicitly protects a person's right to breastfeed in public.** The law states "A mother may breastfeed her child in any location, public or private, except the private home or residence of another, where the mother and child are authorized to be present".<sup>11</sup> The law does *not* require using a nursing cover.

See *Breastfeeding in Public* on page 42 for more information.

**California passed a law in 2014 that requires all airports with at least 1 million travelers per year to provide a room or space at each terminal to express breast milk.**<sup>12</sup> The space must be located after the security screening, must have at least an outlet and a chair and must not be a bathroom. The law also requires that all new airport terminals built in California include a space to express breast milk.

See *Breastfeeding and Traveling* on page 40 for more information.

**The State of California has made breastfeeding a priority because of its importance to public health.** The California Department of Public Health recognizes that workplace lactation accommodations are a key part of reducing breastfeeding disparities.<sup>13</sup> California also passed a state law that requires "all general acute care hospitals and special hospitals that have a perinatal unit to adopt the "Ten Steps to Successful Breastfeeding" per the Baby-Friendly Hospital Initiative, or an alternate process that includes evidenced-based policies and practices and targeted outcomes, by 2025".<sup>14</sup>

## Background and Overview of Laws<sup>1</sup>

### California Workplace Accommodation Laws vs. Federal Workplace Accommodation Laws

	California Law	Federal Law
<b>Preemption</b>	When state and federal law differ, the law with greater protection prevails.	
<b>Who</b>	Applies to ALL employers and employees. Employer of any size is exempted from providing break time under this section if doing so would seriously disrupt the employer's operations.	Applies to non-exempt employees. Employers with less than 50 employees may be exempt if compliance would create undue hardship 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.
<b>How long</b>	Reasonable amount of break time (no upper age limit).	Reasonable amount of break time up to 1 year after infant's birth.
<b>Breaks</b>	May use paid rest and/or meal break times. Additional unpaid breaks may be taken if not used concurrently with paid breaks.	
<b>Space</b>	An employer must make <u>reasonable</u> efforts to provide a room or other location in close proximity to the work area for the employee to express milk in private. Space cannot be a toilet stall.	Employer <u>shall</u> provide a place shielded from view and free from intrusion from co-workers and the public for the employee to express breastmilk. Space cannot be a bathroom.
<b>Penalty</b>	Civil penalty of \$100 per violation.	Civil sanction, \$1,100 per willful violation.

## Six Key Laws for Working Parents in California<sup>15</sup>

# 1

## Pregnancy Disability Leave Law (PDL): Job Protected Leave

In California, people who work for employers with 5 or more employees are entitled under California's Pregnancy Disability Leave (PDL) Law to take up to 4 months per pregnancy of **job protected leave** during the period that they are disabled by pregnancy, childbirth or a related condition, including but not limited to lactation.<sup>18</sup> This includes time off for routine prenatal care, time off for pregnancy complications when medically advisable, and time off to recover from childbirth and any associated complications. In California, the PDL has been amended to cover transgender individuals who are pregnant.<sup>16</sup>

Employees who want to take Pregnancy Disability Leave need to give their employers at least 30 days notice when the need for the leave is anticipated and as much notice as possible if the need for leave is unexpected.

An employee may also need to provide a doctor's note certifying the need for leave. A note does not need to identify the specific condition, but it should say:

1. anticipated start and end dates of the leave;
2. that the condition is related to pregnancy or childbirth; and
3. that the leave is medically advised due to the employee's inability to perform one or more essential job functions or is unable to do so without undue risk to self, others, or the completion of the pregnancy.<sup>17</sup>

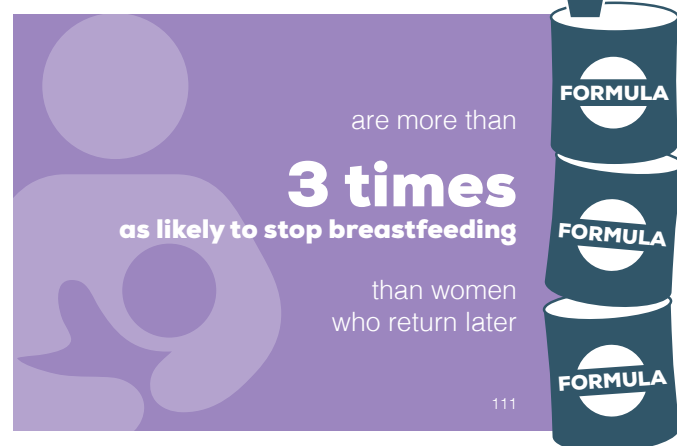
Some workers with pregnancy complications who are unable to work for an extended period of time may exhaust their available pregnancy disability leave before they give birth. To avoid exhausting available leave prior to childbirth, pregnant employees and their healthcare providers should always explore whether a reasonable accommodation would permit the employee to continue working. Detailed resources for employees and healthcare providers relating to pregnancy accommodations can be found at [www.pregnantatwork.org](http://www.pregnantatwork.org).

Most employees in California who have sufficient remaining leave will be able to take around 6-8 weeks of job protected leave to recover from an uncomplicated vaginal or cesarean section birth.

In California, Pregnancy Disability Leave (PDL) Law also guarantees employees the right to reasonable accommodations of any disability caused by pregnancy, childbirth or a related medical condition. Lactation is specifically defined in the PDL regulations as a "related medical condition" covered by the law. Lactation without complications is not generally considered a disability requiring PDL. An employee who is breastfeeding with or without complications is entitled to reasonable accommodations to enable the person to work safely and effectively while breastfeeding.<sup>16</sup> Employees who experience lactation complications on the other hand are eligible for PDL leave if they are unable to perform one or more essential functions of their jobs and leave is medically advisable.<sup>19</sup>

See *Breastfeeding at Work* section on the toolkit on page 17.

### Mothers who return to work before six weeks postpartum



## Six Key Laws for Working Parents in California<sup>15</sup>

### 2

#### FMLA/CFRA: Job Protected Leave

The Federal Family Medical Leave Act (FMLA) provides up to 12 weeks of **unpaid, job-protected leave**. There are requirements for both the employer and the employee to qualify for FMLA.

An employee can take FMLA for the following reasons:

- to bond after the birth or placement of a child,
- to care for a child, spouse, or parent with a serious health condition, or
- the employee's own serious health condition.

Baby bonding leave under FMLA must be taken within one year after the child's birth or placement. Leave to care for a child with a serious health condition does not need to be taken within the first year after birth or placement, but the child must be either a minor or be unable to care for themselves due to a disability.<sup>20,21</sup>

An employee must meet **all three** of the following qualifications to be eligible for FMLA leave:<sup>20</sup>

- Have worked for the employer for at least 12 months (not required to be consecutive).
- Have worked at least 1,250 hours for the employer during the 12 month period immediately preceding the leave.
- Must work at a location where the employer has 20 or more employees within 75 miles.

This means that even if an employee works for a company with 1000 employees but there are only 20 employees at the location where the employee works, that employee is not eligible for FMLA.

An employee who wishes to take FMLA leave to bond with a newborn baby (rather than for their own serious health condition) generally should not have to provide a doctor's note, but does need to provide advance notice to their employer. Notice should be given to the employer at least 30 days in advance when the need for leave is foreseeable and as soon as possible in all other cases.

The California Family Rights Act (CFRA) is the California version of FMLA and is identical in most respects, including leave length and eligibility requirements. There are however, some key ways in which CFRA provides more protection to California employees than FMLA. Under FMLA, baby bonding leave has to be taken in one, continuous length of time unless the employer agrees to allow the employee to take it intermittently. Under CFRA, unlike under FMLA, an employee can take baby bonding leave intermittently regardless of the employer's agreement. In general, CFRA leave for baby bonding must be taken in periods of at least two weeks, but an employer can approve requests for shorter increments of CFRA baby bonding leave on up to two occasions.<sup>23</sup> In addition, while FMLA leave runs at the same time as PDL leave, CFRA baby bonding leave is a separate and distinct right from PDL.

**This means that employees who are eligible for CFRA baby bonding leave can take both up to 12 weeks of baby bonding leave and up to 4 months of leave under PDL for any time that the employee is disabled by pregnancy, childbirth or a related condition.**<sup>22</sup>



### 3

## Paid Family Leave: Wage Replacement<sup>25</sup>

In California, Paid Family Leave (PFL) provides up to six weeks of partial pay to employees who take time off from work to bond with a new child entering the family.

To be eligible for California PFL benefits, the parent must have:

- welcomed a new child into the family in the past 12 months,
- paid into State Disability Insurance (noted as “SDI” on pay stubs) in the past 5 to 18 months, and
- not already taken the maximum six weeks of PFL in the past 12 months.

After filing a PFL claim online or by mail, there is a seven day waiting period. The employee must have at least \$300 in wages that are subject to SDI contributions during the 12-month base period of the claim.<sup>26</sup> The employee must provide proof of relationship for bonding claims (birth certificate or record, adoption paperwork, etc.). Eligible workers can receive up to 55% of their weekly earnings based on the applicable base period (maximum reimbursement amount is \$1,173 per week) for up to six weeks within any 12-month period. The six weeks of Paid Family Leave can be broken up throughout the 12 months and do not have to be taken all at once.

An employee can go to the EDD website for more information and to use a benefits calculator to estimate their weekly paid family leave benefits. The website also has resources for employers:

[www.edd.ca.gov/Disability/Paid\\_Family\\_Leave.htm](http://www.edd.ca.gov/Disability/Paid_Family_Leave.htm)

A new California law<sup>26</sup> was passed that will take effect in January 2018. This law provides greater economic security and equity in California’s Paid Family Leave (PFL) and State Disability Insurance (SDI) programs by raising the current wage replacement rates to 60-70% of the employee’s salary on a sliding scale for both programs, extending PFL from six to eight weeks, and eliminating the current waiting period when applying for PFL benefits.

### San Francisco Paid Parental Leave Ordinance<sup>27</sup>

People who are employed in the city of San Francisco are eligible to receive additional compensation through the San Francisco Paid Parental Leave Ordinance (SF PPLO). The SF PPLO requires the employer to provide supplemental compensation that is equal to the difference between the employee’s pay and what the employee receives through the California PFL program for six weeks. The law currently covers all employers in San Francisco who employ at least 35+ employees, and as of January 1, 2018, will cover all companies who have at least 20+ employees.

Employees must meet all of the following requirements to receive SF PPLO

- The employee has worked for a covered employer for at least 180 days before taking California PFL
- The employee works for the covered employer for at least 8 hours per week
- The employee works for the covered employer for at least 40% of their weekly hours
- The employee is currently receiving CA PFL benefits

For example, if the employee is receiving 55% of their salary through PFL, but works in the city of San Francisco, the employee will then receive an additional 45% of their income through the SF PPLO program. For more information about this law and how to apply for benefits visit:

[www.sfgov.org/olse/sites/default/files/FAQ%20August%202017.pdf](http://www.sfgov.org/olse/sites/default/files/FAQ%20August%202017.pdf)

**Note:** It is important to understand that Paid Family Leave is a wage replacement program and not a job protection program like FMLA, CFRA and PDL. Being approved for paid family leave does not automatically protect the employee’s job, so it is important for the employee to talk to their supervisor or human resources about whether they qualify for FMLA, CFRA and/or PDL even if the employee has received state approval for Paid Family Leave.

# 4

## Using Sick Leave for Family Care: Wage Replacement<sup>28</sup>

California law provides that employees who accrue sick leave are entitled to use up to half of the sick leave they accrue each year to take care of a sick family member or to attend a family member's preventative care appointment (for example, taking a child to a well baby visit).

"Family members" are broadly defined to include:

- Children (including foster children, legal wards, stepchildren, or children to whom the employee stands in loco parentis, meaning that they provide significant financial or caregiving support). Note: Unlike CFRA and FMLA, the child can be either a minor or an adult.
- Parents (including biological, adoptive, foster and stepparents, legal guardians, and individuals who stood in loco parentis when the employee was a minor child).
- Spouses and registered domestic partners.
- Grandparents.
- Grandchildren.
- Siblings.

Employers may not fire, demote, suspend, or otherwise discriminate against an employee for using or attempting to use up to half of the employee's annual accrued sick leave to care for a sick family member or to attend a family member's preventative care appointment.<sup>29</sup>

**Note:** The City of Los Angeles passed a sick days ordinance that allows all employees who work in the city of Los Angeles to take paid sick leave. Employers must provide sick leave either by:

1. providing the entire 48 hours to an employee at the beginning of each year of employment, calendar year, or 12-month period (lump-sum/front-loading); or
2. providing the employee one hour of sick leave per every 30 hours worked (accrual method).<sup>30</sup>

The employee can begin using the sick leave after 90 days of employment. The employee is eligible to take a maximum of 48 accrued hours of paid sick leave in each calendar year, and any unused sick leave rolls over to the following year.<sup>30</sup> The employer can choose to cap the total number of sick hours at 72 or set a higher cap, or set no cap at all.



## Six Key Laws for Working Parents in California<sup>15</sup>

### 5

#### Family-School Partnership Act: Job Protected Leave<sup>31</sup>

Employees who work for employers with more than 25 employees working *at the same location* are entitled to take up to 40 hours of **job-protected leave** per year for certain school-related activities. Employees can take a maximum of 8 hours of leave in a single month.

Employees who are eligible for the Family-School Partnership can take job-protected leave for the following reasons:

- finding a school or licensed child care for the employee's child;
- enrolling a child in a school or licensed child care;
- participating in the activity of a school or licensed childcare; or
- attending to a school or child care related emergency.

“Emergencies” include unexpected closure of a school or child care facility, natural disasters, behavioral and disciplinary problems, or a request by the child care provider that the child be picked up early (e.g. due to illness). According to this law, planned school and child care holidays are not considered emergencies.

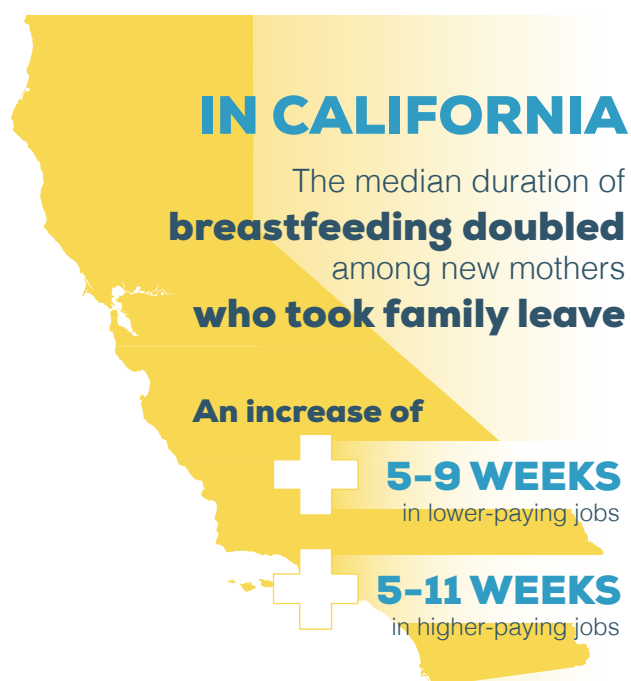
An employee must give the employer reasonable notice in order to take time off for school or child care related activities or emergencies.<sup>31</sup>

### 6

#### Lactation Accommodation Provisions of the California Labor Code

In California all employers are required to provide reasonable break time to employees who need to express breast milk. The law states that break times should be as close to regularly scheduled paid breaks as possible. If the employee needs more time to express milk, that time would be given unpaid, unless the employer allows the employee to use paid time to express breast milk. The law requires the employer to make reasonable efforts to provide a space that is close to the employee's regular work space for the employee to express milk in private. The law applies to all employees regardless of the breastfeeding employee's immigration status and an employer who violates this law will face a civil fine of \$100.

For a more detailed discussion of these laws and the ways that they interact with similar Federal laws, see the *Breastfeeding at Work* section of this Toolkit (page 17).



113



In California, all employers are required to provide reasonable break time to employees who need to express breast milk. Unlike Federal law, which has restrictions on the age of the child and which employees are covered, California's laws regarding lactation breaks cover all employers and all employees in the state with no upper age limit of the child. The California Labor Code provides that break time for expressing milk should be concurrent with existing paid breaks when possible. Break time that exceeds the length of the employee's existing paid breaks must be offered, but the break time does not have to be paid. California law requires the employer to make reasonable efforts to provide a space that is close to the employee's regular work space for the employee to express milk in private.<sup>32</sup>

California employees who are non-exempt workers are also protected by the Break Time for Nursing Mothers provisions of the Federal Labor Standards Act (FLSA) in addition to the provisions of the California Labor Code. In general, employees who are eligible for overtime pay are non-exempt and eligible for the protections of the FLSA. In cases where an employee is protected under both the federal and state law, the stronger of the two shall prevail. In some cases, that may be state law and in some, federal.

Below is a chart comparing federal and state laws with a summary of legal protections for workers who are eligible for the protections of both the California Labor Code and the FLSA with respect to expressing breast milk. Federal law only applies to non-exempt employees. State law applies to both exempt and non-exempt employees.

If an employee feels that their employer is not providing adequate break time and/or a place to express milk, the employee may file a report/claim with the Department of Labor Standards Enforcement (DLSE) Bureau of Field Enforcement (BOFE) either at the BOFE office that is located nearest to the place of employment. More information about how to file a claim is here:  
[www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm](http://www.dir.ca.gov/dlse/HowToReportViolationtoBOFE.htm).

Any employee who experiences retaliation for asserting their rights to lactation accommodations or for reporting a violation to the DLSE about their employer's failure to provide lactation accommodations can file a claim with the DLSE<sup>33</sup> and also seek legal advice.

### Reasonable Accommodations

Lactation is considered a condition related to pregnancy and childbirth under the California Pregnancy Disability Leave Law and is, therefore, a basis for reasonable accommodations when accommodations are deemed medically advisable by a person's healthcare provider.<sup>34,36</sup> Employees who experience substantial impairment in a major life activity because of a breastfeeding complication may also have protections under the federal Americans with Disabilities Act. Employees in California are already entitled to break time to express milk under the California Labor Code, as explained above.

In most circumstances, advocates in California should not need to rely on the reasonable accommodations of PDL to obtain basic breaks or space for a breastfeeding employee to express breast milk. If, however, an employer offers an employee a space to pump that complies with the bare minimum requirements of the Labor Code, but does not meet the worker's basic pumping needs, the employee can, with the advice of their healthcare provider, request a different space or changes to the offered space as a reasonable accommodation. Examples might include:

- Access to nearby clean running water for washing hands and pump parts.
- Access to a clean refrigerator or space to store a personal cooler for storage of breastmilk.
- Access to an electrical outlet to plug in an electric breast pump.
- A comfortable chair to sit in while expressing milk.
- A table for the lactation space.

Some workers will need accommodations beyond basic break time and space in order to continue to work and breastfeed due to breastfeeding complications or challenges presented by their particular jobs. Which accommodations will be reasonable for a particular worker is very situation specific and depends on the employee's medical need, the specifics of the employee's job, and the needs of the employer.

## Breastfeeding at Work

### Break Time and Private Space for Lactating Employees

Subject	Laws on Subject	Citation
Breaks To Express Milk	<p><b>California and Federal.</b> Both state and federal law require employers to provide reasonable break time for nursing employees who need to express milk.</p>	Cal. Labor Code § 1030; 29 U.S.C. 207(r)(1)(A)
Period During Which Employee Is Entitled To Breaks To Express Milk	<p><b>California.</b> California has no time limit on how long an employee may take breaks to express milk for an infant child.</p> <p><b>Federal.</b> Federal law states that a non-exempt employee is entitled to breaks only until the child is one year old.</p>	Cal. Labor Code § 1030
Provision of Space For Expression of Breastmilk	<p><b>Federal.</b> Federal law provides that employers <u>shall</u> provide space for non-exempt breastfeeding employees to express milk that is shielded from view and free from intrusion by co-workers and the public.</p> <p><b>California.</b> California provides that employers need to make “reasonable efforts” to provide private space to express milk.</p>	29 U.S.C. 207(r)(1)(A)
Location of Milk Expression in Relation to Restrooms	<p><b>Federal.</b> Federal law states that employers <u>shall</u> provide space for non-exempt breastfeeding employees to express milk that <u>cannot</u> be a bathroom.</p> <p><b>California.</b> California law states that employers must make reasonable efforts to find a space that is not a <u>toilet stall</u>.</p>	29 U.S.C. 207(r)(1)(B)
Location of Pumping Space in Relation To Work	<p><b>California.</b> California law provides that an employer must make reasonable efforts to find a space for any employee to express milk that is <u>close to the employee’s workspace</u>.</p>	Cal. Labor Code § 1031
Exemptions Based On Hardship/Disruption	<p><b>Federal.</b> Federal law provides that only employers with fewer than 50 employees may claim exemption from compliance based on undue hardship.</p> <p><b>California.</b> Under California law, any employer can obtain exemption based on serious disruption to their operations regardless of size.</p>	29 U.S.C. 207(r)(3)

## Breastfeeding at Work

### Break Time and Private Space for Lactating Employees

#### Some examples of possible reasonable accommodations include:

A breastfeeding employee who develops a complication like mastitis may need an accommodation such as time off from work to seek medical treatment and recover.<sup>35</sup>

Rarely, breastfeeding may be incompatible with an employee's basic job duties. For example, a breastfeeding police officer might be temporarily unable to wear a tight bulletproof vest required to safely perform patrol duties. In this example, the officer might need a reasonable accommodation in the form of a temporary transfer to a light or desk duty position, if the employer offers light duty to other non-breastfeeding workers.

An employee whose work involves exposure to smoke, heavy metals, radiation or other toxins that could affect breast milk may need reasonable accommodations to reduce exposure. Reasonable accommodations might include use of protective gear (such as gloves, protective clothing or respirators) or, if available, temporary reassignment to a different position. More information about accommodations for breastfeeding workers exposed to potentially hazardous materials is available at:

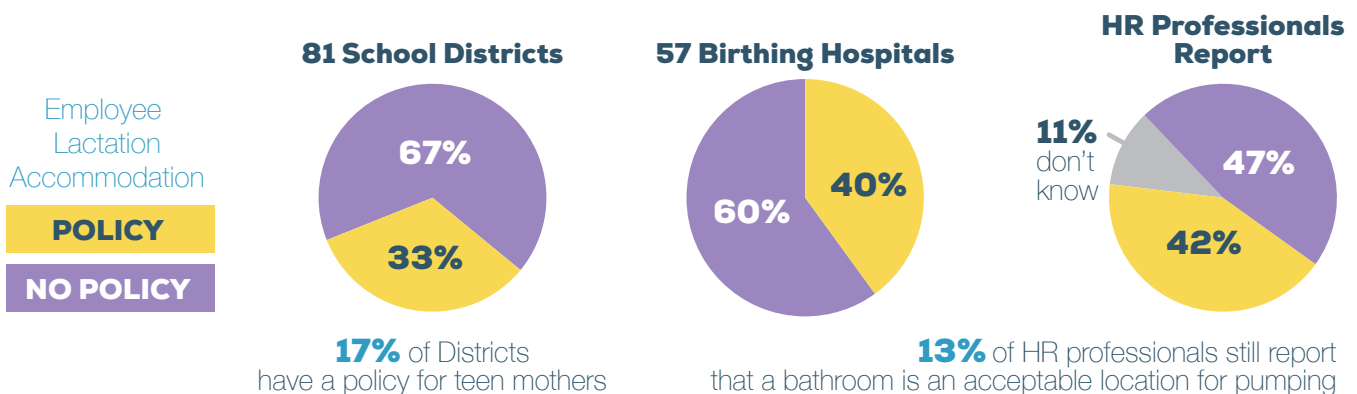
[www.cdc.gov/niosh/topics/repro/breastfeeding.html](http://www.cdc.gov/niosh/topics/repro/breastfeeding.html)

An employee who is having difficulty expressing milk using a pump is entitled under the Labor Code to express milk each time there is a need to do so, even if they need to pump more frequently than the average breastfeeding worker. Depending on the nature of the employee's workplace, they may also be able to discuss accommodations that would allow the employee access to their infant so that they can breastfeed rather than pump during some or all of their lactation breaks. (Note: Employers may be particularly willing to consider access-to-infant accommodations if granting them will result in shorter or fewer lactation breaks due to the fact that infants are much more efficient than pumps at removing breast milk.)

Examples of this type of accommodation might include:

- Having a caregiver bring the baby to the parent to breastfeed on breaks (rather than pumping).
- Permission to leave work to breastfeed at home or the baby's day care (if nearby).
- Permission to bring baby to work pursuant to a babies-at-work policy.
- Permission to telework (with another caregiver present to watch the baby when the employee is not breastfeeding).

### Women work at the highest numbers in health care and education



## Breastfeeding at Work

### Break Time and Private Space for Lactating Employees



It is important to remember that workers are not entitled to receive their first choice accommodations, and employers generally do not have to change the employee's job duties, hours, or productivity requirements unless they would do so for a non-breastfeeding worker.

Employers also do not have to offer accommodations that would create undue hardship for their businesses. Reasonable accommodations may need to be negotiated.

**An employee cannot, however, be punished, fired, or penalized in any way for asking for a lactation accommodation, even if the accommodation is ultimately denied.**

### Discrimination and Retaliation

Under both Federal and California law, discrimination against employees on the basis of pregnancy, childbirth and related medical conditions is considered a form of sex discrimination and is illegal. The California Fair Employment and Housing Act expressly recognizes discrimination based on lactation as a form of illegal sex discrimination.<sup>18,37</sup>

State and Federal law also forbid employers from retaliating against employees who oppose sex discrimination, seek reasonable accommodations, or exercise their rights to take job-protected leave.<sup>38,39</sup>

Employees who believe that they have been demoted or fired because they breastfed or expressed milk at work should seek legal counsel and should contact one of the legal resources listed on the front of this toolkit.

Women with adequate break time are

**2.6  
TIMES**

more likely to breastfeed exclusively and

**3  
TIMES**

more likely to breastfeed at all

**at 6 months postpartum.**

Women with private space at work breastfeed for 1.4 months longer than women with no break time or private space.<sup>114</sup>

## Breastfeeding at Work

### Contract Workers

Some contract workers are assigned to work with a company for a particular project or time frame but are still legally considered employees. This includes most “temp” workers. Temporary workers are entitled to the same legal protections as full-time, permanent workers, even if their work is limited in time or scope.

True independent contractors, on the other hand, are not protected by most of the provisions of the ADA, FEHA, FMLA, CFRA, PDL and Labor Code that are discussed in this guide. True independent contractors are self-employed and should have a high degree of control over the time and manner in which they perform their work. Therefore, a lactating worker who is truly an independent contractor should be able to take breaks to nurse or express milk as needed.

If an employer is exerting control over a worker’s working conditions, that worker may be legally an employee and entitled to the protection of state and federal employment law even if the employer refers to the worker as an “independent contractor.”

If a worker has questions about their status as an employee versus an independent contractor and needs help understanding which legal protections for lactation accommodation apply, the lactating person should seek advice from an attorney or from the Center for WorkLife Law free legal hotline at 415-703-8276.

### Workers Who Perform Duties Off-Site

If an employee works at one location and is also sent off-site to perform work, both the primary employer and the off-site employer are responsible for providing lactation accommodations.<sup>40</sup> Additionally, if an employee is sent off-site to perform work for a client, it is the responsibility of both the employer and the client to provide lactation accommodations. For example: if a bookkeeper leaves their primary worksite to go to a client’s office to perform bookkeeping work, both the primary employer and the client are responsible for providing lactation accommodations to the bookkeeper.



## Breastfeeding at Work

### Union Members

Employees who are members of a union may have additional protections beyond what federal and state laws require. Union contracts could include additional benefits such as paid family leave for non full-time employees, extended leave beyond 12 weeks, elimination of the employer's right to automatically apply vacation or sick days to leave, payment of the employee's insurance contributions by the employer during leave, and stronger lactation accommodations. Union members should contact their union and ask for a copy of their contract to find out what protections are included. Union members can also participate in contract negotiations to advocate for additional paid family leave and lactation protections.

Union members have a legal right to have a union representative at any interview or meeting that could result in disciplinary action.<sup>41</sup> If a union member feels that they were retaliated against for taking breaks to express breast milk, the union member should contact a union steward or representative. The union may provide guidance about how to file a grievance, may be able to connect the union member to a lawyer, and/or support the union member in taking collective action to resolve the issue.

### Low-Wage Workers

Advocates should bear in mind that low-wage workers experience barriers to breastfeeding that higher wage workers may not, including low job security, lack of health benefits and sick leave, and inflexible work schedules.<sup>42</sup> Low-wage workers may not be able to afford to take the full amount of unpaid leave to which they are entitled under PDL and CFRA and may feel forced by financial constraints to return to work before they have physically recovered from childbirth or established breastfeeding. California's Paid Family Leave program is a step in the right direction toward protecting these workers, but six weeks of partial pay may not be enough for some workers to take the leave they need to establish a milk supply and bond with a newborn.

Upon returning to work, low-wage workers are less likely to have access to a dedicated lactation room or to their own private locked office in which to express milk. For a construction worker, waitress, factory employee, or farmworker, private space to express milk may be more difficult to locate than for, say, a corporate attorney. Fortunately, the Department of Health and Human Resources, Office of Women's Health has fantastic resources for identifying appropriate pumping spaces for nursing employees in a wide variety of occupations and work environments. The Employer Solutions webpage is available online at: [www.womenshealth.gov/breastfeeding/employer-solutions](http://www.womenshealth.gov/breastfeeding/employer-solutions)

CalWORKs is a public assistance program in California that serves all counties in the state. People who participate in the CalWORKs program are required to complete welfare to work activities. California state law provides that CalWORKs participants are entitled to the same protections as other workers in the state of California such as rest and meal breaks, pregnancy disability and lactation accommodations.<sup>43</sup> Additionally, California law protects CalWORKs participants' right to breastfeed in any public space including county offices.<sup>43</sup>

Some low-wage workers may also be reluctant to advocate for themselves in fear of negative repercussion and loss of employment. Workers should be reassured that retaliation for breastfeeding or expressing milk is illegal. A worker who experiences retaliation or who is terminated for expressing milk or asserting their legal rights should seek legal advice right away and should consider contacting a worker's rights advocacy organization as well. See the resources list in the front of the toolkit for more information.

Pregnancy Disability Leave is important to allow students to recover from childbirth, establish their milk supply, and bond with their baby. Many students would be surprised to learn that they are legally entitled to leave for medical reasons related to pregnancy and childbirth.

The California Education Code<sup>44</sup> provides some of the most comprehensive and clear student breastfeeding protections in the nation. California students must be provided with a suitable space for expressing milk, storage for their breast pump or milk storage, and break time for expressing milk.

The California Education Code asserts that all pupils have the right to participate fully in the education process, free from discrimination and harassment. It further demands school districts to provide reasonable accommodations for lactating students on a school campus to express breast milk, breastfeed, or address other needs that are related to breastfeeding.<sup>45</sup>

**Title IX** is part of the Education Amendments of 1972,<sup>46</sup> which are amendments to the Civil Rights Act of 1964.<sup>3</sup> Title IX states that any education program or activity that accepts federal funding cannot discriminate against a person based on their sex.<sup>47</sup> Title IX applies to colleges, universities, elementary and secondary schools as well as any other educational program that receives federal funding. Federal Regulations on Title IX<sup>48</sup> make clear that sex discrimination includes discrimination based on parental status, pregnancy, false pregnancy, abortion, miscarriage, childbirth, recovery and related conditions, such as lactation<sup>49</sup> and breastfeeding. This includes ensuring pregnant and breastfeeding students have equal educational opportunities.

Under the federal regulations on Title IX<sup>48</sup> schools must:

- Allow a student to take leave for as long as medically necessary (medical necessity is determined by the student's physician). The student may be asked to bring in a doctor's note.
- Ensure that a student's educational opportunities aren't diminished due to breastfeeding. To do so would be sex discrimination.

Under this law, **K-12** schools must specifically:

- Provide access to a private, secure room with a power source for breastfeeding or to express milk; and a place for storage (refrigerator or cooler bags)
- Allow lactating students to bring a breast pump to school and store expressed milk;
- Provide reasonable break time or time away from the classroom for lactation without incurring academic penalty and allowing the student to make up work; and,
- Process student complaints about lactation accommodations through the Uniform Complaint Process (UCP).

In addition, California law protects the right for a person to breastfeed their child in any place where they are authorized to be present.

If a lactating student believes that their rights under Title IX are being violated, the student can contact the Title IX Coordinator at their educational program. By law, the Title IX Coordinator's contact information is required to easily accessible on the school's website. If the student is unable to find the Title IX Coordinator at their school, they can contact the Human Resources Department or the Center for WorkLife Law at [www.thepregnantscholar.org](http://www.thepregnantscholar.org). The student can also file a complaint with the Department of Education. Instructions can be found here: [www2.ed.gov/about/offices/list/ocr/docs/howto.html](http://www2.ed.gov/about/offices/list/ocr/docs/howto.html)

### Students with children

are especially unlikely to complete a certificate or degree within six years of enrollment, with only

**33%**

attaining a degree or certificate in that time.<sup>115</sup>

# Breastfeeding in the Education System

## Federal laws

requiring school districts to accommodate and not discriminate against lactating employees and students.

### Federal Statutes

### Code of Federal Regulations

#### Title IX

##### 20 U.S.C. § 1681

Prohibits sex discrimination in educational institutions that receive federal funds.

Requires that pregnant students and those recovering from child-birth-related conditions be provided with the same accommodations and support services available to other students with similar temporary medical needs.

##### 34 C.F.R. § 106.40(b)(1)

Prohibits discrimination against students based on parental status, pregnancy, childbirth, recovery from childbirth and related conditions.

##### Guidance Document

Department of Education Office for Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students under Title IX of the Education Amendments of 1972* (2013)

Explains students' legal right to lactation accommodations under Title IX. Encourages schools to designate a private room for young mothers to breastfeed, express breast milk, or address other needs related to breastfeeding during the school day.

#### Fair Labor Standards Act/Affordable Care Act

##### 29 U.S.C. § 207(r)

Requires employers to provide lactating mothers with breaks and a private location (other than a restroom) to express breast milk.

#### Title VII/Pregnancy Discrimination Act

##### 42 U.S.C. § 2000e-2, 42 U.S.C. § 2000e(k)

Prohibits sex discrimination in employment. Sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. Requires women affected by pregnancy, childbirth, or related medical conditions be treated the same for all employment-related purposes, as other persons with temporary medical conditions.

##### 29 C.F.R. § 1604.10

Requires women affected by pregnancy, childbirth, or related medical conditions be treated the same for all employment-related purposes, as other persons with temporary medical conditions.

##### Guidance Document

Equal Employment Opportunity Commission, *Enforcement Guidance: Pregnancy Discrimination and Related Issues* (2015)

Explains that Title VII prohibits discrimination based on lactation and breastfeeding. Lactating mothers must get the same type of accommodations given to employees with other similar temporary medical needs.



# Breastfeeding in the Education System

## California laws

requiring school districts to accommodate and not discriminate against lactating employees and students.

### California Statutes

### California Code of Regulations

#### California Education Code/California Sex Equity in Education Act

##### Cal. Ed. Code § 201

Schools have an affirmative obligation to combat sexism, other forms of bias, and to provide equal educational opportunity to all students.

##### Cal. Ed. Code § 220

Prohibits schools that receive support from the state from discriminating based on sex, and provides that all persons in public schools, regardless of their gender, gender identity, or gender expression have equal rights and opportunities in their educational institution.

##### Cal. Ed. Code § 222 (new, added by AB 302)

Schools shall provide reasonable accommodations to a lactating pupil on a school campus to express breast milk, breast-feed an infant child, or address other needs related to breastfeeding. Reasonable accommodations include, but are not limited to, (1) giving lactating students access to a private, secure room with a power source to deal with any needs associated with breastfeeding or expressing milk, (2) allowing lactating students to bring a breast pump to school and store expressed milk, (3) giving lactating students reasonable break time or time away from the classroom to accommodate their lactation schedule without incurring an academic penalty and with the ability to make up any work missed, and (4) processing student complaints about lactation accommodations through the Uniform Complaint Process (UCP).

##### 5 Cal. Code Regs. § 4950

Prohibits schools from discriminating based on a student's pregnancy, childbirth, or recovery therefrom. Prohibits schools from applying any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

#### Unruh Civil Rights Act

##### Cal. Civil Code § § 51(b), (e)(5)

Prohibits sex discrimination in public accommodations, which includes schools. Defines sex to include pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

#### California Labor Code

##### Cal. Labor Code § 1030

Requires every employer to provide lactating mothers with reasonable break time to express breast milk.

##### Cal. Labor Code § 1031

Requires every employer to provide lactating mothers with a private location (other than a toilet stall), near the employee's work area, in order to express breast milk.

# Breastfeeding in the Education System

## California laws

requiring school districts to accommodate and not discriminate against lactating employees and students.

### California Statutes

### California Code of Regulations

#### California Government Code

##### Cal. Gov. Code § 12940, Cal. Gov. Code § 12926(r)

Prohibits employers from engaging in sex discrimination. Sex is defined to include breastfeeding or medical conditions related to breastfeeding.

##### Cal. Gov. Code § 12945

Requires employers to provide reasonable accommodations for an employee who has a condition related to pregnancy, childbirth, or a related medical condition.

##### Cal. Gov. Code § 11135

Prohibits discrimination on the basis of sex in any program or activity conducted, operated, administered or funded by the state.

##### 2 Cal. Code Regs. §§ 7291.2(d), (u)

Makes clear that the pregnancy-related accommodations that employers must provide include lactation accommodations.

#### Breastfeeding Rights

##### Cal. Civil Code § 43.3

Provides that women have the right to breastfeed in any public or private location where they are otherwise allowed to be present.

**4.8 million college students are raising children.**

**Women make up 71% of all student parents.**



**Women of color are the most likely students to be raising children while pursuing a postsecondary degree.**

Nearly half of all black women in college have dependent children (47%).

115

The California Equity in Education Act<sup>51</sup> specifically guarantees leave for graduate student parents. This law allows for graduate students to take leave for longer than what is medically necessary, and return without penalty.

Under this law institutions must provide their graduate students with:

- One academic year of leave for childbirth (one month for parents who haven't given birth);
- At least 12 additional months to prepare for and take preliminary and qualifying exams (one month for parents who haven't given birth);
- At least 12 months towards normative time to degree\* (one month for parents who haven't given birth); and,
- If a longer term is medically necessary, extensions will be granted (per Title IX, which protects medically necessary leave).

For more information, visit [www.thepregnantscholar.org/leave-and-absences](http://www.thepregnantscholar.org/leave-and-absences)

**Note:** While the law does not state any specifications for lactation space, the Department of Education Office of Civil Rights suggests administrators “designate a private room for young mothers to breastfeed, pump milk, or address other needs related to breastfeeding during the school day.”<sup>52</sup>

For more information, see: [www.thepregnantscholar.org/know-your-rights-breastfeeding](http://www.thepregnantscholar.org/know-your-rights-breastfeeding)

\*Normative time to degree is the number of quarters established for students to complete requirements of their program. Each program may have a different normative time to completion. What these accommodations mean is that a student who is a parent has extra time to complete their degree without penalty.



### Extracurricular Activities and Athletics

Title IX protects students from discrimination on the basis of pregnancy and related conditions (like lactation/breastfeeding) both outside and inside the classroom. Under this law:

- A student's participation in a university/college sanctioned club, student group, academic society, etc. cannot be limited because of breastfeeding.
- Pregnant and breastfeeding athletes must be treated as well as any other athlete with a temporary disability.
- The student and their doctor have the final say as to whether the student can compete while pregnant/breastfeeding, not the coach, athletic director, or anyone else.
- The student may only be asked to provide a medical clearance to play if players with other medical conditions are asked to do so as well.
- Scholarships cannot be terminated or altered during the award term based on pregnancy.
- If the school renews athletic awards to injured players who are actively rehabilitating or athletes who stay involved with the team after a career-ending injury, the same must be done in the case of pregnancy. A decision not to renew must be provided in writing by July 1, including the reason for not renewing and the process to appeal.
- If other students who take time off due to an injury/medical condition can apply for a waiver to extend their overall athletic eligibility, athletes who miss time due to pregnancy and related conditions must also be allowed to apply for an extension. The NCAA has allowed these extensions.

### Internships

Colleges and universities cannot exclude pregnant or lactating students from participating in university-affiliated internships, externships, or other off-site programming. If a student is completing an internship under the guidance of their university, the school and the internship site have responsibility for providing appropriate accommodations. Interns who work for university credit should seek assistance of Title IX if problems arise. Interns who are considered employees of their internship site are entitled to all the same protections as any worker. See *Breastfeeding at Work* on page 17 for more information.

### Financial Aid

Merit and need-based scholarships cannot be terminated or altered based on pregnancy or related conditions. Taking off more time than medically necessary may cause a change in student status, scholarships, loans or other financial aid. Students should consult their school's non-medical leave policy for more information.

A student may register as an "independent student" if the child's due date is in the award year (July 1 to June 30) and the student will be providing at least half of the support to the child. When filling out the Free Application for Federal Student Aid (FAFSA) form, the student should count the child toward the household size if the due date is within that award year—even if the child has not been born when the student files. Keep a copy of an ultrasound and other medical records in case FAFSA audits the application.

While they are on the clock, students who are employees of their college/university have the same rights as other workers at the institution. See the section *Breastfeeding and Work* for more information.

For more information:

NCAA Pregnancy Toolkit  
[www.ncaa.org/sites/default/files/PregnancyToolkit.pdf](http://www.ncaa.org/sites/default/files/PregnancyToolkit.pdf)

Pregnant Scholar  
[www.thepregnantscholar.org/for-students/extracurriculars-and-athletics/7](http://www.thepregnantscholar.org/for-students/extracurriculars-and-athletics/7)

NWLC FAQs  
[www.nwlc.org/resources/faq-pregnant-and-parenting-college-graduate-students-rights](http://www.nwlc.org/resources/faq-pregnant-and-parenting-college-graduate-students-rights)

Pregnant Scholar  
[www.thepregnantscholar.org/financial-aid](http://www.thepregnantscholar.org/financial-aid)

### Employees/Teachers/Professors of K-12 Schools and Colleges/Universities

There are specific provisions relating to breastfeeding workers at educational institutions, therefore, employees of educational institutions should review this section in addition to the workplace section, which provides information on laws applicable to all workers. This section includes information specific to those employees, including teachers, administrative staff, student workers, graduate student employees, postdoc employees and others.

See section *Breastfeeding at Work* at page 17.

Teachers, professors, and other educators should look to California state lactation accommodation law in the California Labor Code. The Federal Break Time for Nursing Mothers provisions do not apply to those workers that have teaching as a primary job duty. This is because the law only protects those workers who are eligible for federal overtime protections. See *Breastfeeding at Work* page 17 for more details.

**Title IX:** In addition to the resources that other workers have to assist with problems in the workplace, employees at educational institutions are also protected by Title IX. This law prohibits sex discrimination (including discrimination related to pregnancy and childbirth) in educational settings.

Breastfeeding employees that have difficulty arranging the lactation accommodations they need can contact their institution's Title IX Coordinator in addition to Human Resources, Union representatives, or any of the resources listed at the front of this toolkit.

### Campus Specific Policies

In addition to the above laws, the two major university systems within California also have internal policies relating to breastfeeding workers. Additionally, some of these workers may also have protections for lactation accommodations in their union contracts. Workers should assess both policies to make sure that they are receiving all of the accommodations that they are entitled to.

### California State University System<sup>52</sup>

This policy largely mirrors the Federal Break Time for Nursing Mothers Act. The CSU policy encourages supervisors to accommodate those employees who are not covered by that law, but does not require it. However, the policy is limiting in that it does not support California legislation which is stronger in some aspects such as no upper age limit of the child and covering exempt employees in addition to non-exempt employees.

### University of California System<sup>53</sup>

The University of California Policy on Lactation Accommodation states that "the university will provide a private, locked place for nursing mothers to express milk, including appropriate temperature and ventilation, table, comfortable chair, and electrical outlet. Employees will be given a reasonable amount of break time; the pay and accounting for the time varies based on employment classification."<sup>53</sup>

See the full policy:  
[www.policy.ucop.edu/doc/4000609/PPSM-84](http://www.policy.ucop.edu/doc/4000609/PPSM-84)

For more information about colleges and universities, please see BreastfeedLA's *Breastfeeding 101: Los Angeles County Colleges and Universities* report.<sup>54</sup>

For more information about K-12 schools, please see BreastfeedLA's *ABC's of Breastfeeding Report Card*.<sup>54</sup>

## Jury Duty: Breastfeeding and Lactation Accommodations

California law<sup>55</sup> states that “the mother of a breastfed child” can delay jury duty for up to one year, and can ask for an extension after her infant is one year old. The law also requires that the exemption for breastfeeding be part of the standard jury duty summons so that all lactating persons are aware of this protection.<sup>55</sup>

If a breastfeeding or lactating parent needs lactation accommodations while serving for jury duty, it is important they advocate for themselves. Parents should immediately notify the court clerk and request accommodations for pumping when they arrive to serve jury duty. Lactating parents can ask the court clerk where lactating employees go to express breast milk and can ask to use the same place. Lactating parents can remind the court clerk that California law requires them to provide a place for court employees to express breast milk that is not a bathroom.

There is not a specific law that governs lactation accommodations such as pumping breaks during jury duty. If the parent runs into resistance from the court when requesting lactation accommodations, the parent could cite the Unruh Civil Rights Act<sup>58</sup> and the government’s anti-discrimination provision,<sup>56</sup> which require public accommodations and government actors, respectively, to accommodate lactating people.

While serving jury duty, the parent can also request that someone bring their child to the courthouse, because California Civil Code 43.3 protects the right to breastfeed in public. For more information about breastfeeding in public see the section *Breastfeeding in Public* on page 42.

**While not yet passed**, the Fairness for Breastfeeding Mothers Act H.R. 1174,<sup>57</sup> introduced to the House of Representatives in 2017, would require all buildings that are federally owned or leased to provide a designated, private, clean place for lactating parents to express breast milk. **This law has not passed yet**, but would provide additional protections to breastfeeding and lactating parents who need to express breast milk during jury duty.



## Breastfeeding and Divorce and Custody Cases

If a breastfeeding parent is negotiating custody with the other parent, it is important to create a custody plan that acknowledges the importance of breastfeeding as well as shared parenting. A custody plan that moves from frequent shorter visits to longer visits as the child gets older can balance the needs of breastfeeding and secure attachment to both parents.

The following resources may be helpful in establishing a fair custody plan. It is important to balance both shared parenting, the benefits to human milk, and the physiology of maintaining milk supply when creating a shared parenting plan.

Los Angeles County Family Court Services has issued guidelines for creating a parenting plan for children under 3. See “Creating a Fair Parenting Plan”.

[www.lacourt.org/selfhelp/familiesandchildren/pdf/parentingunder3.pdf](http://www.lacourt.org/selfhelp/familiesandchildren/pdf/parentingunder3.pdf)

The “American Academy of Pediatrics Statement on the Use of Human Milk” provides recommendations for breastfeeding that may be helpful.

[www.pediatrics.aappublications.org/content/129/3/e827.full#content-block](http://www.pediatrics.aappublications.org/content/129/3/e827.full#content-block)

“Attachment 101 for Attorneys” provides evidence-based information about infant attachment and how it relates to child development.

<http://www.psychology.sunysb.edu/attachment/online/attachment101.pdf>

“Parenting Plans and the Breastfed Child: A Look at How Breastfeeding is Used as a Factor in Parenting Time Allocations for Divorcing Parents in the U.S.” provides guidance for how to balance breastfeeding and custody issues with the other parent.

[www.ingentaconnect.com/content/springer/clac/2011/00000002/00000003/art00005?crawler=true](http://www.ingentaconnect.com/content/springer/clac/2011/00000002/00000003/art00005?crawler=true)

For children who are older than one year and breastfeeding, citing the World Health Organization’s recommendation to breastfeed for a minimum of two years may be helpful.

[www.who.int/mediacentre/news/statements/2011/breastfeeding\\_20110115/en](http://www.who.int/mediacentre/news/statements/2011/breastfeeding_20110115/en)

Katherine A Dettwyler, Ph.D has also written a letter in support of extended breastfeeding for use in court cases, which can be found here:

[www.bhaktibirth.wordpress.com/2010/07/09/breastfeeding-court-letter-by-katherine-a-dettwyler-ph-d-anthropology](http://www.bhaktibirth.wordpress.com/2010/07/09/breastfeeding-court-letter-by-katherine-a-dettwyler-ph-d-anthropology)

La Leche League International also has information for family law cases here:

[www.lalecheleague.org/law/familylaw.html](http://www.lalecheleague.org/law/familylaw.html)

### Recommendations

- If at all possible, come to a shared custody agreement parent to parent without involving the courts. Parents can use attorneys and mediation to come to a shared custody agreement.
- Consult with an attorney who is experienced in creating shared custody agreements or if the attorney is not aware of the importance of breastfeeding educate the attorney about the importance of breastfeeding.
- Talk to other parents who have faced similar kinds of issues.
- Consult with a lactation professional who can help support continued breastfeeding and help to maintain milk supply during any separations.



# Lactation Rights While Incarcerated or in Immigration Detention

People who are incarcerated or detained by immigration while they are breastfeeding or lactating have the right to lactation accommodations during their incarceration or detention. These rights can be difficult to enforce, but there have been a number of cases in which a breastfeeding or lactating individual who was denied lactation accommodations was able to win accommodations through a combination of legal action and community support.

If an individual is incarcerated or in immigration detention and needs lactation accommodations, contact ACLU SoCal right away.

## Incarceration

### Community Based Alternatives to Incarceration

One option to explore in California is whether there is a community-based alternative to incarceration for those individuals who are pregnant, postpartum, lactating or parenting. The ACLU Report *Reproductive Health Behind Bars in California*<sup>59</sup> describes numerous health benefits to community-based alternatives to incarceration for both the incarcerated person and their child.

Contact ACLU SoCal for more information about community-based alternatives to incarceration.

### Pregnancy While Incarcerated

California law provides protections for lactating individuals who are incarcerated as well as for pregnant people who are incarcerated.<sup>56</sup> The California legislature consider breastfeeding and medical conditions related to breastfeeding as part of the legal definition of the term “sex” under California law, which means discrimination on the basis of breastfeeding or related conditions is sex discrimination and is thus not permissible.<sup>60</sup>

### Reproduction Health Services During Incarceration

Incarcerated people have a constitutional right to appropriate medical care. In 2003 the American Public Health Association (APHA) released a list of Standards for Health Services in Correctional Institutions which includes best practices for reproductive health:<sup>61</sup>

1. A “sensitive and dignified” reproductive system examination as part of initial health screening
2. Prenatal screening tests
3. Prenatal health education
4. Special housing and diet when necessary
5. Identification and proper referral of high-risk pregnancies
6. Treatment to prevent perinatal transmission of HIV for HIV-positive women
7. Prohibition of shackling during labor and delivery
8. Training of healthcare staff in jails and prisons for labor and delivery in case of emergency
9. Standing arrangement for deliveries that allow a parent and infant to spend time together after birth
10. Ongoing access to newborns after delivery
11. Access to family planning services, including abortion counseling and services



Shackling of pregnant people poses a serious health risk to both the pregnant person and their pregnancy and is a violation of their human dignity and human rights. This practice is opposed by both the American Medical Association (AMA) and the American College of Obstetrics and Gynecology (ACOG). It is also illegal in the state of California.<sup>62</sup>

California Law prohibits the use of shackles in both pregnant and laboring people.<sup>62</sup> Pregnant people can never be shackled or restrained with leg irons, waist chains, or handcuffs behind the body. Laboring people cannot be shackled during transport to the hospital, during labor, birth, or recovery postpartum. Any restraints used on a pregnant person must be removed during a medical emergency when a medical professional in charge of the person's care determines that such removal is necessary. In other words, the doctor has the final say, not the deputy.<sup>63</sup>

### Lactation

Jails and prisons in California must provide lactation accommodations to incarcerated people who need them. Most often, this means giving the incarcerated person access to an electric breast pump. It is also best practice for facilities to allow for the expressed breast milk to be picked up by a designated family member from the facility for delivery to the child. For examples of model lactation policies, see attached lactation policies.<sup>64</sup>

If an incarcerated person is not being accommodated or allowed to express breast milk, this could pose a serious medical risk to both the incarcerated person and to the infant. Mastitis, a breast infection, can occur in lactating people who are not able to frequently express breast milk. If the incarcerated person is forced to wean earlier than intended, artificial feeding also poses health risks to the infant. If a facility does not afford necessary lactation accommodations, the facility may be in violation of that person's constitutional rights by showing "deliberate indifference to [their] serious medical needs"<sup>65</sup> as well as California law, which prohibits "any lack of care whatever which would injure or impair the health of the prisoner, inmate, or person confined."

There are facilities in San Diego, Santa Fe Springs, Fresno, Bakersfield, and Pomona that allow children

younger than 6 to live with their incarcerated parents while they serve out their sentences. There are 16 beds at each facility and an application process. See citation for additional details about this program.<sup>66</sup>

### Recommendations if the facility does not provide appropriate lactation accommodations:<sup>63</sup>

- Contact the ACLU and BreastfeedLA if the facility continues to refuse lactation accommodation.
- Request an electric breast pump, see model policies for how best to accommodate the lactating person.
- If an electric breast pump is unavailable request a manual hand pump.
- If the facility refuses to provide an electric or manual pump, the lactating person should be taught hand expression for immediate relief and to help prevent infections, while advocating for more appropriate accommodations.
- The lactating individual should be given a private place to express breast milk.
- Contact the sheriff's department or facility directly if the individual is not being accommodated.

### Policy Recommendations for Jails and Prisons

We recommend that counties adopt the following policy, which includes lactation accommodation, for postpartum individuals. Citations to relevant law and recommendations of leading health organizations are below.

Incarcerated people recovering from labor and childbirth will receive appropriate medical care and accommodations. This care shall include:

- Assessing inmates who delivers a child vaginally to determine appropriate housing, and to begin their postpartum care, and admitting an individual who delivers via C-section to further in-patient care.<sup>67</sup>
- Supervising obstetricians or RN/NPs should have discretion to determine when, postpartum, an inmate is cleared for housing in the general population.<sup>67</sup>
- A postpartum examination six weeks after birth, wherein the supervising obstetrician or RN/NP will determine whether the inmate will be cleared, or if further medical restrictions are warranted.<sup>67</sup>
- A screening for depression or mental stress during pregnancy and for postpartum depression after delivery, and treatment as needed.<sup>69</sup>
- A bottom bunk during the postpartum period.<sup>69</sup>
- A recovery period of at least 4-6 weeks after delivery before the inmate is required to resume normal activity.<sup>69</sup>
- Access to a breast pump to express milk to relieve pain or maintain milk supply.<sup>69</sup>
- Parents will be allowed time to connect with their infants after delivery, both in the hospital and later visitation.<sup>69,70</sup>
- Inmates will be educated about the benefits of breastfeeding and the facility's policy is to encourage and support breastfeeding.<sup>69</sup>
- Lactating inmates will be allowed to express milk to maintain milk supply and also for delivery to the infant.<sup>69</sup>
- The facility will make accommodations for storing and transporting breast milk.<sup>69</sup>



For more information please see the ACLU's recommendations in the report *Reproductive Health Care in California Jails - A Tool to Assess and Reform Policies and Practices*.<sup>70</sup>

### Pregnancy While in Immigration Detention

Immigration and Customs Enforcement (ICE) has published standards for medical care for women who are at ICE facilities including Service Processing Centers (SPCs), Contract Detention Facilities (CDFs) and “state or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.”

These standards include prohibiting shackling of pregnant women “absent truly extraordinary circumstances” including during transport to and from the hospital, labor and birth, both in the facility and in the hospital.<sup>71</sup>

### Lactation While in Immigration Detention

ICE standards state that women who are in custody should have access to lactation services. ICE has also issued a memorandum “to exercise discretion during arrests by releasing nursing mothers from detention unless they presented a national security or public safety risk.” This memorandum was issued after public outcry following the case of a woman detained in Ohio who was nursing her 9-month-old baby.<sup>72</sup>

The American Bar Association (ABA) recommends that ICE avoid detaining nursing mothers and that the unique needs of nursing mothers and “other vulnerable populations” be met while in immigration detention.<sup>73</sup>

### Recommendations if the facility does not provide appropriate lactation accommodations:

- Consult with an immigration attorney
- Contact the ACLU and BreastfeedLA if the facility continues to refuse lactation accommodation
- Request an electric breast pump, contact the ACLU for model policies for how best to accommodate the lactating person
- If an electric breast pump is unavailable request a manual hand pump
- If the facility refuses to provide an electric or manual pump, the lactating person should be taught hand expression for immediate relief and to help prevent infections, while advocating for more appropriate accommodations.
- The lactating individual should be given a private place to express breast milk.

## Lactation Rights: Adoptive and Foster Parents

### Taking time off from work

Adoptive and foster parents qualify under several California and Federal laws to take time off from work to care for a child. Adoptive parents qualify for FMLA<sup>74</sup> and CFRA job-protected leave after the placement or adoption of a child. FMLA can also be used prior to placement if the parent needs to “attend counseling sessions, appear in court, consult with their attorney or the birth parent’s representative, submit to a physical examination, or travel to another country to complete an adoption before the actual date of placement.”<sup>75</sup> California’s paid family leave program<sup>76</sup> provides wage replacement for adoptive and foster parents while they take FMLA/CFRA leave. Adoptive and foster parents are also able to use sick leave to take time off from work to care for their children.<sup>77</sup> The Family-School Partnership Act allows adoptive and foster parents to take time off from work to attend school events.<sup>78</sup>

The birth parent would be able to take Pregnancy Disability leave in order to recover from childbirth. Pregnancy disability leave provides time off from work to a person who is physically disabled by pregnancy, childbirth or related conditions.<sup>18</sup>

See *Six Key Laws for Working Parents* on page 12 for more information.

### Breastfeeding and Lactation Rights

An adoptive parent may choose to induce lactation in order to breastfeed an adopted child. An adoptive parent should work with their healthcare provider and a lactation professional when inducing lactation. Inducing lactation can mean either that a parent who previously breastfed stimulates lactation in order to produce breast milk again, or that a parent who has not breastfed stimulates lactation for the first time. The American Academy of Family Physicians position statement on human milk supports inducing lactation.<sup>77</sup>

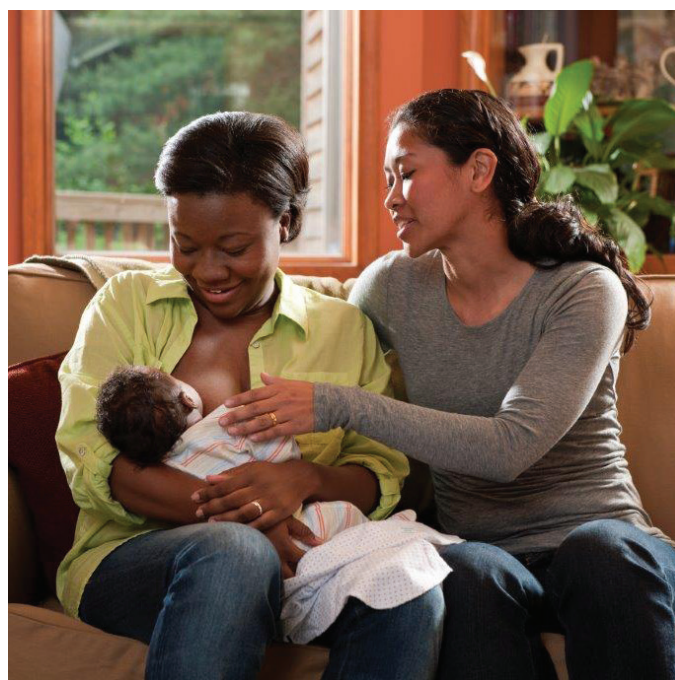
If the birth parent chooses to express breast milk for the infant after the infant is placed for adoption, then the birth parent is entitled to lactation accommodations and protections.

At this time there are no clear legal guidelines for a foster parent who wants to breastfeed. The La Leche League blog featured one foster parent’s experience in December of 2016.<sup>79</sup>

### Work and School

The same laws that protect the expression of breastmilk at work and school should also apply to adoptive parents who choose to induce lactation for their child and to birth parents who express milk after placing their child for adoption. If the parent is facing discrimination for breastfeeding or lactation at the school, employer, or employee would like additional information, they should contact one of the legal resources listed in this toolkit.

See *Breastfeeding at Work* page 17 and *Breastfeeding in Education* page 23 for more information.



## Lactation Rights in Surrogacy

When parents welcome a new child into the family by working with a surrogate, both the surrogate and the intended parents have protections under California law. A surrogate is a person who agrees to carry and birth a child for another person or family. The intended parents will be the legal parents of the child when they are born. The state of California has a specific law that regulates surrogacy agreements<sup>80</sup> and establishing of parental rights<sup>80</sup> for the intended parents. For more information about parental rights, please consult with an attorney who is familiar with surrogacy agreements.

### Taking Time off from Work

Pregnancy disability leave provides time off from work to a person who is physically disabled by pregnancy, childbirth or related conditions.<sup>18</sup> This means that a surrogate would be able to take time off from work to recover from childbirth under pregnancy disability leave. See *Six Key Laws for Working Parents* page 12 for more information about pregnancy disability leave.

Once the intended parents establish legal parental rights for their child, the intended parents qualify to take time off from work to care for a child under a number of laws. FMLA/CFRA<sup>74</sup> provides job-protected leave so that parents can take job-protected leave to care for their child after their child is born. The California Paid Family Leave program provides wage replacement for parents who need to take FMLA/CFRA leave. Parents are also able to take sick leave to care for a child.<sup>77</sup> The Family School Partnership Act provides that parents can take job-protected leave from work in order to attend school events.<sup>78</sup>

See *Six Key Laws for Working Parents* on page 12 for more information about these laws.

### Breastfeeding and Lactation

In a surrogacy situation, the intended parent may choose to induce lactation and breastfeed their baby or the surrogate may choose to pump breast milk for the baby. An intended parent should work with their healthcare provider and a lactation professional when inducing lactation. Inducing lactation can mean either that a parent who previously breastfed stimulates lactation in order to produce breast milk again, or that a parent who has not breastfed stimulates lactation for the first time. The American Academy of Family Physicians position statement on human milk supports inducing lactation.<sup>77</sup>

### Work and School

The same laws that protect the expression of breast-milk at work, should also apply to intended parents who choose to induce lactation for their child and to surrogates who express milk after the birth of the child. If the parent or surrogate is facing discrimination for breastfeeding or lactation at the school, employer, or employee would like additional information, they should contact one of the legal resources listed in this toolkit.

See *Breastfeeding at Work* page 17 and *Breastfeeding in Education* page 23 for more information.



## Lactation Rights for LGBTQAI+ Families\*

Effective January 1, 2016, birth certificates in California no longer identify a mother and father but use parent with checkboxes after each parent's name signifying "mother", "father," or "parent".<sup>81</sup> Parents whose children were born before January 1, 2016 can retroactively change their child's birth certificate.

In California when a legally married couple has a child they are automatically presumed to be the child's legal parents regardless of the parents' gender identity. In California, same-sex parents who have a civil union, or comprehensive domestic partnership are both automatically presumed to be the parents. However, the National Center for Lesbian Rights encourages non-biological and non-adoptive parents get a legal adoption or parentage judgement even if both parents are already named on the child's birth certificate.<sup>82</sup> This provides an additional layer of protection for the parent(s) and child(ren), particularly if they are traveling to other states that might not recognize parentage based on the couple's relationship status at the time of the birth.



### Taking Time off from Work

LGBTQAI+ parents in California have the right to take time off from work to care for a child under several laws. Pregnancy Disability Leave (PDL) applies to a parent who needs time off from work to recover from physical disability related to pregnancy, childbearing or related conditions.<sup>18</sup> Thus any parent who is pregnant or recovering from childbirth, regardless of gender identity, should qualify for time off from work under pregnancy disability leave law. In fact, California PDL has been amended to specifically protect transgender people.<sup>16</sup>

Both parents who have given birth and parents who have not given birth qualify for FMLA/CFRA<sup>74</sup> job-protected leave to care for a child. The California Paid Family Leave program also covers parents regardless of gender identity.<sup>82</sup> LGBTQAI+ parents are also able to use sick leave to care for a child,<sup>77</sup> and qualify for job-protected time off from work to attend school events under the Family-School Partnership Act.<sup>78</sup>

See *Six Key Laws for Working Parents* page 12 for more information.

\* Lesbian, gay, bisexual, transgender, asexual, intersex and others.

# Lactation Rights for LGBTQAI+ Families

## Breastfeeding and Lactation

LGBTQAI+ parents have protections with regards to breastfeeding and lactation. LGBTQAI+ parents may breastfeed or chestfeed\* their child after giving birth or may induce lactation in order to breastfeed or chestfeed\*.<sup>84</sup> The same laws that protect biological breastfeeding mothers who identify as women apply to induced lactation in non-biological mothers, and breast or chestfeeding by parents who do not identify as women.

A parent should work with their healthcare provider and a lactation professional when inducing lactation. Inducing lactation can mean either that a parent who previously breastfed stimulates lactation in order to produce breast milk again, or that a parent who has not breastfed stimulates lactation for the first time. The American Academy of Family Physicians position statement on human milk supports inducing lactation.<sup>77</sup>

## Work and School

In California, all employers must provide breastfeeding workers, regardless of gender, with break time and reasonable accommodations. The same laws that protect the expression of breastmilk at work and school, also apply to LGBTQAI+ parents who choose to induce lactation for their child or to LGBTQAI+ parents who do not identify as women.

If an LGBTQAI+ parent faces discrimination for breastfeeding, chestfeeding or lactation, they should contact one of the legal resources listed in this toolkit.

See *Breastfeeding at Work* page 17 and *Breastfeeding in Education* page 23 for more information.

\* "Some masculine-identified trans people use this term to describe the act of feeding their baby from their chest, regardless of whether they have had chest surgery. Note that others prefer to say breastfeeding or nursing. The choice is individual, and health care providers should ask clients what they prefer."  
[www.kellymom.com/bf/got-milk/transgender-parents-chestbreastfeeding](http://www.kellymom.com/bf/got-milk/transgender-parents-chestbreastfeeding)

## Public

In California, breastfeeding parents may breastfeed their children in any location public or private where they are both authorized to be present, except the private home or residence of another. Although the California law refers to "nursing mothers", this law has been interpreted to protect breastfeeding people who do not identify as mothers. See *Breastfeeding in Public* page 42 for more information and for who to contact if facing discrimination for breastfeeding in public.

Breastfeeding without Birthing is a great resource for breastfeeding and chestfeeding as well as for finding lactation consultants who are experienced in assisting parents who would like to induce lactation.  
[www.breastfeedingwithoutbirthing.com](http://www.breastfeedingwithoutbirthing.com)

Trevor MacDonald has become an international advocate and educator about transgender individuals and breastfeeding. His blog has additional information and resources at: [www.milkjunkies.net](http://www.milkjunkies.net).

## Breastfeeding and Traveling

Breastfeeding and lactating people have rights while traveling. All fifty states, the District of Columbia, and the Virgin Islands have public accommodation for breastfeeding laws that protect a parent's right to breastfeed in any public or private location. Under the Right to Breastfeed Act, breastfeeding women are allowed to breastfeed on any federal property, including National Parks.<sup>10</sup> Therefore, individuals should be able to breastfeed in most airports, train stations, bus stations, and rest locations throughout the nation without incident.

A breastfeeding parent has different needs when traveling with their baby than when they travel without their baby. When pumping, the parent needs a private, clean, space to express breast milk. A parent may breastfeed their child in any location, public or private, where they are otherwise authorized to be present. See the section *Breastfeeding in Public* for more details.

In California, airports with more than one million travelers per year must provide a room or other location at each airport terminal for travelers to express breast milk. The area must be located behind the airport security screening area, must be private, have a chair and an electrical outlet. The space provided may not be a public restroom.<sup>12</sup>

### Airport Security

Travelers can bring breast milk through security in their carry on luggage. Unlike other liquids, breast milk is allowed to be in containers larger than 3.4 ounces or 100 milliliters and does not need to fit in a quart sized bag.<sup>86</sup>

**A person does not need to be traveling with their child to bring breast milk.**

When traveling, it is best for the lactating person to inform the TSA officer at the beginning of the screening process when carrying breast milk in excess of 3.4 ounces in their carry-on bag. Any breast milk should be removed from the carry-on bag to be screened separately.

It is important for travelers to know that the TSA has alternate screening procedures for breast milk and that breast milk does not have to be X-rayed or opened in order to be screened. Travelers should notify the TSA officer if they would prefer for their breast milk not to be x-rayed.

According to the TSA website "TSA officers may need to test liquids for explosives or concealed prohibited items. Officers may ask to open the container and/or have a small quantity of the liquid transferred to a separate empty container or dispose of a small quantity, if feasible. The TSA officer should be informed if the person does not want the breast milk to be X-rayed or opened. Additional steps will be taken to clear the liquid and you or the traveling guardian will undergo additional screening procedures, to include a pat-down and screening of other carry-on property."<sup>87</sup>

If the traveler is bringing ice packs to keep breast milk cold and the ice packs are partially frozen, the ice packs are subject to the same screening process described above. Travelers can also bring breast pumps either in their carry on or in their checked luggage.

### Expressing Milk While on an Airplane

Although it is best to pump before boarding to avoid pumping on the plane, sometimes it can't be avoided. On longer or international flights, a traveler may need to pump in their seat. Ask the flight attendants if they can suggest a pumping location. The flight attendants can also help to keep people from disturbing the passenger while in pumping in their seat.



## Breastfeeding and Traveling

### Storage and Transport of Breast Milk

Travelers can request a refrigerator when booking a hotel. Many hotels will deliver a refrigerator to the room for medical reasons, including storage of breast milk if requested.

If opting to ship breast milk home, some companies provide reimbursement for shipping expenses when traveling for business. If travelling for work, check with the human resources department for their policies.

### Recommendations and Resources

Print out and carry a copy of the TSA's official guidelines on traveling with breast milk.<sup>87</sup>

[www.tsa.gov/travel/special-procedures/traveling-children](http://www.tsa.gov/travel/special-procedures/traveling-children)

If a traveler feels that the TSA is restricting the amount of breast milk that they are able to carry onto the plane, they should ask for a supervisor or manager or contact TSA directly.

#### **TSA Contact Center**

866-289-9673.

[www.tsa.gov/contact/customer-service](http://www.tsa.gov/contact/customer-service)

TSA Cares is a helpline that breastfeeding and lactating travelers can call 72 hours before traveling to ask questions about the screening process or to ask for additional assistance during the security checkpoint. The helpline also provides information about screening policies and procedures as well as what to expect at the security checkpoint. While at the airport, travelers can also ask a TSA agent for special support or assistance.

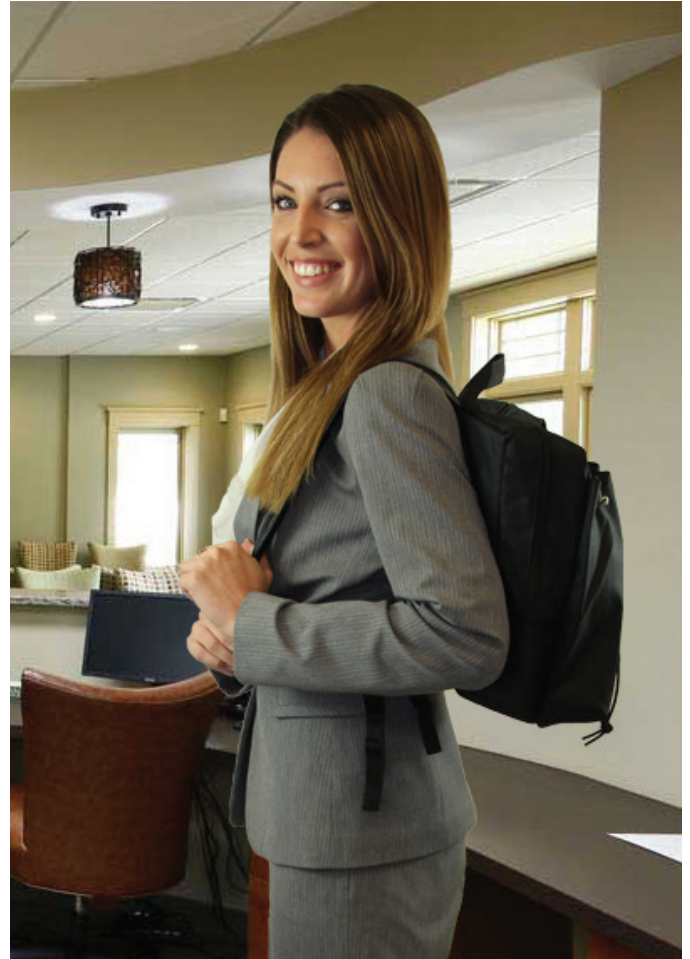
#### **TSA Cares**

855-787-2227

Federal Relay: 711

Weekdays: 8 a.m. to 11 p.m. ET

Weekends/Holidays: 9:00 a.m. to 8:00 p.m. ET



## Breastfeeding in Public



California law<sup>11</sup> states that “a mother may breastfeed her child in any location, public or private, except the private home or residence of another, where the mother and the child are otherwise authorized to be present.” The law does not require the use of a privacy cover while breastfeeding. While this law refers to “nursing mothers”, the law has generally been interpreted as applying to any breastfeeding person, regardless of whether or not the person identifies as a mother.

### Recommendations for how to respond if refused service for breastfeeding or harassed for breastfeeding in public:

1. Take a deep breath.
2. Ask “Are you refusing me service because I am breastfeeding?” or “Are you telling me I must leave because I am breastfeeding?”
3. Give the other person a chance to respond.
4. Immediately document everything that was said.
5. If you are asked to leave or refused service, advise them that under California Law, you have the right to breastfeed in public.
6. Advise the other party that California State Law protects the right to breastfeed in public.
7. Let them know that by refusing service and/or being ask to leave their business, you will be filing a sex discrimination complaint under the Unruh Civil Rights Act.  
[www.leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=51](http://www.leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=51)

If the other party continues to refuse to follow California State Law, see the toolkit section *Advocating for Yourself* page 47 for ideas about other strategies.

## Breastfeeding and Rights in Medical Care

All patients have protected rights to receive adequate and appropriate medical care, including during pregnancy, birth, the postpartum period and lactation. The level of personal care and professional support that a breastfeeding parent receives has enormous influence on whether they are able to meet their breastfeeding goals. It is important that care is centered on the patient's goals and patients are offered comprehensive information and support to be able to make autonomous and informed decisions.

Although all patients have the same rights, there are stark disparities in healthcare outcomes among marginalized communities that result from the way the healthcare system is structured. Marginalized communities include, but are not limited to, individuals with language barriers, people of color, immigrants, LGBTQIA+ (lesbian, gay, bisexual, transgender, queer, intersex, asexual, and others) people, gender non-conforming persons, religious minorities, disabled persons, people with mental health issues, low income people, unemployed individuals, people with unstable housing, and young parents.

Disparities in breastfeeding rates exist across the Country, including California. To see California's In Hospital Breastfeeding Rates broken down by hospital, race, and ethnicity, visit [www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/Topics/Breastfeeding.aspx](http://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/Topics/Breastfeeding.aspx).

These disparities result from policies and procedures within the healthcare system and our overall society, such as a California's Paid Family Leave program, which currently only applies to workers who work for companies with at least 20 employees. Our society does not distribute resources equitably, which affects breastfeeding rates. For example, there can be high out of pocket costs to hire a lactation consultant, which many people cannot afford. Individual care providers also have implicit biases that affect patient care, such as a healthcare provider assuming a parent already knows how to breastfeed because they have three older children, or assuming that a person of a particular background will not breastfeed. For more information about breastfeeding disparities see the Center for Social Inclu-

sion's Report *Removing Barriers to Breastfeeding*.<sup>88</sup>

These issues require broad policy reform to effect change. For instance, if there was a national paid family leave program that covered everyone, then all parents would be able to take paid family leave. Similarly, if everyone had affordable health insurance that properly covered lactation support, then more people would be able to see a lactation consultant after hospital discharge. Healthcare providers and patients should advocate for broad policy changes to address breastfeeding disparities.

On an individual level, providers have a responsibility to promote shared decision making and patients have the right to participate in making decisions about their medical care. When healthcare providers strive to provide equitable care and promote shared medical decision making, health care disparities improve. When patients know their rights, have the information to adequately advocate for their care, and receive the support they need, they are more likely to meet their breastfeeding goals.



### 1. Right to Informed Consent

The California Bill of Patient Rights<sup>89</sup> includes a statement describing a patient's right to informed consent. Informed consent is a process of communication between the patient and the healthcare provider.<sup>90</sup> Informed consent allows a patient to make a voluntary decision about accepting or declining medical care after being properly advised of the relevant medical facts and risks involved. The healthcare provider should give the patient evidence-based information<sup>91</sup> in a non-coercive manner. A patient can give informed consent verbally or by signing a form.<sup>92</sup>

The key information necessary for a patient to give true informed consent about a procedure includes the risks, benefits, alternatives of care and anticipated results.<sup>93</sup> Except in emergency situations, this information should include "a description of the procedure or treatment, medically significant risks involved, alternative courses of treatment or no treatment, and the risks involved in each, and the name of the person who will carry out the procedure or treatment."<sup>89</sup> The patient has the right to ask questions to obtain as much information about any proposed treatment or procedure as they would like.

Health care providers must give information to the patient in language that the patient can understand. The right to informed consent also includes access to an in-person or electronic translator to ensure that the patient can gather all the information they need to make an informed consent or refusal.

One way that patients can participate in medical decisions about their care is to ask questions by using the acronym BRAINS. Intuition is not a legal requirement of informed consent, but is often a part of a patient's decision.

**BENEFITS:** What are the benefits of the proposed treatment?

**RISKS:** What are the risks of the proposed treatment? How common are the risks?

**ALTERNATIVES:** Are there any alternative treatments that could address this problem? What are the benefits and risks of each alternative treatment?

**INTUITION:** What does the patient's intuition say about the proposed treatment? Everyone has different experiences that inform their decisions.

**NOTHING:** What would happen if the patient refused the proposed treatment? What would happen if the patient waited (an hour, a day, a week) before accepting the proposed treatment?

**SECOND OPINION/SHORT BREAK:** The patient can also ask for a second opinion or to take a short break to decide.

Parents can use BRAINS for their own care or to ask questions about their infant's care. As an example, many patients have questions about how medications may affect their breastfed infant. If a doctor has prescribed a particular medication for a lactating parent, they can identify the medication's risks using Lactmed<sup>94</sup>—an online resource that includes the most current evidence about how medications affect a person's breast milk and milk supply—before consenting to treatment.

### 2. Right to refuse treatment while pregnant

The American College of Obstetricians and Gynecologists (ACOG) states that "forced compliances" -- or, going against a patient's wishes and forcing a patient to undergo a treatment after it was refused -- "raises profoundly important issues about patient rights, respect for autonomy, violations of bodily integrity and power differentials and gender inequality".<sup>96</sup> Exercised informed consent includes the right to delay standard procedures or recommended treatments, or to decline them altogether.

According to the ACOG policy statement on informed refusal during pregnancy, **a patient is assumed to be able to make their own medical decisions, unless the patient is formally determined to be unable to make their own medical decisions.** Typically it requires a physician evaluation to determine that someone is incapable of making medical decisions for themselves. The policy also states that pregnant patients have the right to refuse treatment, even if that treatment is needed to maintain life.<sup>96</sup> The patient also has the right "to leave the hospital even against the advice of members of the medical staff".<sup>90</sup>

### 3. Right to a second opinion

According to California Patient Rights, in addition to the right to more information, a person has the right to a timely second opinion regarding a diagnosis and treatment plan.<sup>90</sup>

### 4. Right to interpretation

Shared decision making and informed consent are only possible when a patient has an adequate understanding of the recommended treatment and procedures. According to the ACOG statement on informed consent, physicians can and should help find ways to facilitate communication.<sup>95</sup> This includes access to an in-person and/or electronic translator, awareness of medical illiteracy, handouts in various languages, a visible patient bill of rights, and the presence of the patient's advocate, family, or appointed person.

### 5. Advocating for breastfeeding in emergencies, natural disasters, and emergency preparedness

ACOG advocates that “emergency plans specifically address the needs of women, infants, and children during disasters”.

[www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Preparing-for-Disasters-Perspectives-on-Women](http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Preparing-for-Disasters-Perspectives-on-Women)

American Academy of Pediatrics provides guidance for healthcare professionals to advocate for breastfeeding during disasters and emergencies.

[www2.aap.org/breastfeeding/files/pdf/infantnutritiondisaster.pdf](http://www2.aap.org/breastfeeding/files/pdf/infantnutritiondisaster.pdf)

La Leche League promotes lactation and relactation during disasters and emergencies with these guidelines.<sup>96</sup>

[www.llli.org/faq/emergency.html](http://www.llli.org/faq/emergency.html)

### Advocating for Best Practices in the First Days of Life

The following are evidence-based best practices for breastfeeding initiation in the first days of life. Hospitals in California will be required to implement many of these steps by 2025.<sup>97</sup> Parents can advocate for these practices if their hospital does not already have these policies in place.

- Uninterrupted Skin-to-Skin: Direct skin contact between mother and baby immediately following the birth and until at least the first breastfeed.<sup>98</sup>
- Delayed Newborn Procedures: nonurgent newborn shots and tests be delayed for up to two hours until after breastfeeding has been initiated.<sup>98</sup>
- Delayed First Bath: Delaying baby's first bath for at least several hours has been shown to support breastfeeding initiation.<sup>99</sup>

- Rooming In: The baby stays in the room with the nursing parent and does not leave for tests, feedings, or to sleep in the nursery.<sup>98</sup> The goal is that infants spend no less than 23 out of 24 hours rooming in.
- “Give no pacifiers or artificial nipples to breastfeeding infants”<sup>98</sup> until breast milk has been established about 3-4 weeks post delivery.<sup>100</sup>
- “Give infants no food or drink other than breast-milk unless medically indicated.”<sup>99</sup>
- Breastfeeding whenever the infant shows feeding cues, or on-demand.<sup>99</sup>

## Breastfeeding and Rights in Medical Care

### Recommendations for Healthcare Providers

Healthcare providers play a crucial role in breastfeeding support. Parents expect their healthcare providers to have the knowledge and clinical skills to assist them with common breastfeeding concerns. A lack of breastfeeding knowledge among healthcare providers can mean that patients receive inappropriate or conflicting information, which contributes to the difficulties parents face when learning to breastfeed and to early weaning.<sup>101</sup>

The Centers for Disease Control have issued guidelines about how different health care providers can support breastfeeding.<sup>102</sup> ACOG has also issued practice guidelines for healthcare providers to best support breastfeeding initiation and duration in underserved communities.<sup>105</sup> Healthcare providers can look to the Baby-Friendly Hospital Initiative<sup>98</sup> and the Nine Steps to Breastfeeding Friendly Guidelines for Community Health Centers and Outpatient Care Settings<sup>103</sup> for best practices that support breastfeeding.

Healthcare providers can support breastfeeding by:

- Providing coordinated, culturally and linguistically appropriate care “that involves practitioners, family members, and child care providers, obstetrician–gynecologists that can help those underserved overcome obstacles and obtain the benefits of breastfeeding for themselves and their infants.”<sup>104</sup>
- Increasing the interprofessional collaboration between obstetrician/gynecologists, pediatricians, Internationally Board Certified Lactation Consultants, and nurses.
- Providing an environment in the hospital, clinic, or office that promotes, advocates, and supports breastfeeding (close follow-up in the early postpartum period (24-48 hours) and good communication between the OBGYN, the nurses and the pediatricians).
- Emphasizing “the benefits of breastfeeding, as well as patient education, counseling, and support strategies [...] during training of residents in obstetrics and gynecology, family medicine, and pediatrics.”<sup>104</sup>
- Promoting ongoing education “for all reproductive health care providers and hospital staff involved in childbirth.”<sup>104</sup>
- Providing resources so breastfeeding and lactating people can know where to seek assistance after discharge from the hospital.

### Policy Recommendations

The California Insurance Commissioner should adopt the USBC Model Payer Policy,<sup>105</sup> which describes best practices for insurers to provide breastfeeding support, supplies and counseling.

Advocates should press the California Insurance Commissioner to conduct an audit of all California health plans to determine if their breastfeeding coverage is adequate. If health insurance plans are found to be insufficient, the best practices outlined in the USBC model policy should be implemented.

All counties in California should require that MediCal managed care plans clearly define “breastfeeding support, supplies and counseling coverage.” MediCal managed care plans should also provide a complete list of lactation providers and durable medical equipment providers. Monterey County’s policy<sup>106</sup> can serve as a model for other counties throughout the State.

# Advocating For Yourself

All breastfeeding and lactating individuals have rights. If a person believes that their rights have been violated, they can do something about it. They are not alone. Community-based organizations like BreastfeedLA, government agencies, legal advocates and others are here to support them.

While all people have rights, some individuals may face additional barriers in exercising their parental or breastfeeding rights due to discrimination based on race, ethnicity, sexual orientation, gender identity, employment status, immigration status, or language barriers. Retaliating against a person for asserting their breastfeeding or lactation rights is illegal. Community and legal support may be beneficial to determine effective strategies to minimize retaliation or discrimination and how to proceed should this occur.

## Actions to take to advocate for yourself or others

### Prepare

- **Write:** Write down everything about the incident as soon as possible after it has happened. Where did it occur? Who was involved? What was said or done?
- **Save:** Save all relevant documentation (e.g. paystubs, copies of HR manuals, calendar or personal journal entries, photos) or emails (or other electronic messages, like texts or instant messenger).
- **Contact:** Contact the local Breastfeeding Coalition and ask for support on which law may apply. To find a listing of local coalitions, go to [www.californiabreastfeeding.org](http://www.californiabreastfeeding.org) or reach out to BreastfeedLA, who can connect to other advocates and legal support.

### Strategize

- **Outcome:** What is the best possible outcome from the complaint?
- **Evidence:** Is there clear evidence that a violation of the law occurred?
- **Risk:** Assess risk. Retaliation for a person asserting their breastfeeding rights is illegal under California law. If a person believes that they are at risk for retaliation or discrimination for asserting their rights, they should contact legal support and community organizations right away.
- **Community Support:** What family and community resources can support them during a complaint process?

### Act

- **Reminder** – for example: reminding a restaurant owner of the right to breastfeed in public
- **Direct Advocacy** – for example: a direct conversation with the employee's supervisor about California's law requiring lactation accommodations at work
- **Official Complaint** – for example: filing a complaint with the EEOC, or another government agency
- **Legal Action** – for example: working with a lawyer and filing a legal complaint against the employer or another entity
- **Collective Action** – for example: organizing a protest, talking to the media, speaking out about one's experience at a public event.

### Re-evaluate and determine next steps

- **Outcome:** Did the action achieve the desired results?
- **Re-evaluate:** If the action did not achieve the desired outcome, would a different strategy be more effective?
- **Legal Support:** If discrimination or retaliation occurred as a result of the action taken, document what happened and contact one of the legal support organizations listed in this toolkit right away.

## Legislative Advocacy



Imagine living in a world without breastfeeding disparities, in which everyone can meet their breastfeeding goals. Imagine a world in which breastfeeding and lactation are celebrated in public, employers support and accommodate lactation, and parents can take job-protected, paid leave to care for their children.

How would you like to be a part of changing our culture and our laws to better reflect the kind of breastfeeding support you would like to see? What do you want the public to understand about breastfeeding and lactation rights?

If you are interested in being a change agent for your community, contact BreastfeedLA and join our Advocacy Committee!

### **BreastfeedLA Advocacy Committee Members**

are volunteers who:

- Created this toolkit and Breastfeeding Advocacy 101 Training
- Visit State and Federal Legislators in Southern California, Sacramento, and Washington D.C. to advocate for breastfeeding-friendly legislation
- Write letters to Federal and California policymakers
- Educate their communities and employers about breastfeeding laws
- Share BreastfeedLA policy positions, action alerts and messages

To share your ideas for what we should do next and to join the committee, please contact: [info@breastfeedla.org](mailto:info@breastfeedla.org).



## Acknowledgments

*We wish to thank many people for their contribution to this project.*

Katie Waters-Smith for her valuable leadership on this project. We could not have done this project without you.

Carrie Canning, Jessica Diggs, Tanya Colligan, Hilary Rau, Jessica Lee, Grace Yee, Lori Berkemer, Carmen Rezak, Celine Malanum, Arissa Palmer, Erica Glinsky, Wendy De Leon, Cindy Young, Christine Staricka, Annie Ima, Ruth Dawson, Jenya Cassidy, Robbie Gonzalez-Dow, Amy Poyer, Rebecca Oh, Jocelyn Harrison, Sophia Cheng, Sara Howard, Kelly McDonald, Sally Saleh, Ravae Sinclair, Helen O'Connor, Melissa Goodman, and others for their help contributing to content and editing.

Thank you so much to Andrea Caivano-Reed, Marcelo Caivano, and Delma Caivano for translating the entire toolkit into Spanish.

A sincere thank you to our Breastfeeding Advocacy 101 Day sponsors: First 5 California, California Women's Law Center, ACLU Southern California, MomsRising, Moms Orange County, Hillary Gray, South Los Angeles Health Projects, Limerick Inc., California Breastfeeding Coalition, Employee Development Department, Center for Worklife Law, Cover My Heart, North East Valley Health Corporation, and PHFE WIC.

A sincere thank you to others who donated money to support this project: Sandy Hill, Sarah Diaz, Trista Benitez, Mary Radinsky, Carole Chacon, Melissa Botten, Rosa Medina, Cindy Young, Sara Howard, California WIC Association.

Special thanks to Legal Aid at Work, California Work & Family Coalition, California Breastfeeding Coalition, Center for Worklife Law, The California Women's Law Center, ROC-LA, Genevieve Colvin, Tanya Reyes, Nakeisha Robinson, Stacey Armato, and Maggie Whitman for helping to facilitate Breastfeeding Advocacy 101 Day.

Thank you to Alicia in Wonderland Photography for the cover photo.

### **Our greatest thank you goes to YOU! Our Community.**

Thank you for your advocacy and for joining us in the movement to support breastfeeding and lactating families in Los Angeles and beyond.



### **Our wholehearted gratitude to our Advocacy Toolkit sponsors.**

Diamond Level Sponsor  
First 5 California

Gold Level Sponsors  
Center for Worklife Law,  
ACLU Southern California,  
California Women's Law Center.

## Endnotes

1. BreastfeedLA (2016). Breastfeeding Laws - Comprehensive List. Retrieved from <http://breastfeedla.org/breastfeeding-laws-comprehensive>. (Accessed March 22, 2017 )
2. US Department of Labor. (2010). Break Time for Nursing Mothers. Retrieved from <https://www.dol.gov/whd/nursingmothers/>. (Accessed March 22, 2017 )
3. The United State Department of Justice. (Updated August 7, 2015). Overview of title ix of the education amendments of 1972, 20 u.s.c. a§ 1681 et. Seq. Retrieved from <https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq> (Accessed May 29, 2017)
4. U.S. Equal Employment Opportunity Commission (July 14, 2014). EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues. Retrieved from [https://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm) (Accessed August 08, 2017)
5. U.S. Equal Employment Opportunity Commission (Approved October 31, 1978). The Pregnancy Discrimination Act of 1978. Retrieved from <https://www1.eeoc.gov/laws/statutes/pregnancy.cfm?renderforprint=1>. (Accessed July 24, 2017)
6. United State Department of Labor (June 2015). The Employee's Guide to FMLA . Retrieved from <https://www.dol.gov/whd/fmla/employeeguide.htm>. (Accessed July 24, 2017)
7. The Network for Public Health Law. (Last Updated 10/11). Health care reform and nursing mothers. Retrieved from [https://www.networkforphl.org/\\_asset/w5r10v/PHLN-nursing-mothers-05-16-FINAL.pdf](https://www.networkforphl.org/_asset/w5r10v/PHLN-nursing-mothers-05-16-FINAL.pdf). (Accessed May 23, 2017)
8. United State Department of Labor Wage and Hour Division (WHD) (August 2010). Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision. Retrieved from [https://www.dol.gov/whd/nursingmothers/Sec7rFLSA\\_btnm.htm](https://www.dol.gov/whd/nursingmothers/Sec7rFLSA_btnm.htm) . (Accessed May 23, 2017).
9. United State Department of Labor Wage and Hour Division (WHD) (August 2013). Fact Sheet #73: Break Time for Nursing Mothers under the FLSA. Retrieved from <https://www.dol.gov/whd/regs/compliance/whdfs73.pdf>. (Accessed March 22, 2017)
10. GovTrack.us (May 18, 1999). H.R. 1848 (106th): Right to Breastfeed Act. Retrieved from <https://www.govtrack.us/congress/bills/106/hr1848/text> . (Accessed July 27, 2017)
11. California Legislative Information (January 1st, 1998). Civil Code 43.3. Retrieved from [http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=43.3&lawCode=CIV](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=43.3&lawCode=CIV) (Accessed March 22, 2017)
12. California Legislative Information (September 26, 2014). AB-1787 Airports: commercial operations: lactation accommodation. Retrieved from [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1787](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1787). (Accessed July 27, 2017)
13. California Department of Public Health (2015). Reducing Breastfeeding Disparities in California through Lactation Accommodation. Retrieved from <https://breastfeedla.app.box.com/s/k69iovk4jb4q0n23e612l36jfc6kwrj> (Accessed March 22, 2017)
14. California Legislative Information (April 3, 2013). Bill No: SB 402. Retrieved from [http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0401-0450/sb\\_402\\_cfa\\_20130401\\_151904\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_402_cfa_20130401_151904_sen_comm.html). (Accessed March 22, 2017)
15. The California Work and Family Coalition. (2013). Six Key Laws for Parents. Retrieved from [https://d3n8a8pro7vhm.cloudfront.net/workfamilyca/pages/22/attachments/original/1456685461/KeyLawPoster\\_ENG\\_2013.pdf?1456685461](https://d3n8a8pro7vhm.cloudfront.net/workfamilyca/pages/22/attachments/original/1456685461/KeyLawPoster_ENG_2013.pdf?1456685461). (Accessed March 22, 2017)
16. Barclays Official California Code of Regulations (August 8, 2017). 2 CCR § 11035. Retrieved from [https://govt.westlaw.com/calregs/Document/I2B4E0BE485DF412CBA5E0710A10E66F0?viewType=FullText&originationContext=documenttoc&transitionType=DocumentItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I2B4E0BE485DF412CBA5E0710A10E66F0?viewType=FullText&originationContext=documenttoc&transitionType=DocumentItem&contextData=(sc.Default)) (Accessed August 15, 2017)
17. Barclays Official California Code of Regulations (August 8, 2017). 2 CCR § 11035, § 11050. Retrieved from [https://govt.westlaw.com/calregs/Document/I2B4E0BE485DF412CBA5E0710A10E66F0?viewType=FullText&originationContext=documenttoc&transitionType=DocumentItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I2B4E0BE485DF412CBA5E0710A10E66F0?viewType=FullText&originationContext=documenttoc&transitionType=DocumentItem&contextData=(sc.Default)) (Accessed August 15, 2017)
18. California Legislative Information (1980). Unlawful Practices, Generally [12940 - 12951]. Cal. Gov. Code § 12945(a)(3). Retrieved from [http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=12945](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=12945). (Accessed June 1st, 2017)
19. Barclays Official California Code of Regulations (August 8, 2017). 2 CCR § 11035, § 11040. Retrieved from [https://govt.westlaw.com/calregs/Document/I2B4E0BE485DF412CBA5E0710A10E66F0?viewType=FullText&originationContext=documenttoc&transitionType=DocumentItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I2B4E0BE485DF412CBA5E0710A10E66F0?viewType=FullText&originationContext=documenttoc&transitionType=DocumentItem&contextData=(sc.Default)) (Accessed August 15, 2017)
20. Legal Information Institute (2009). 29 U.S. Code § 2611. Retrieved from <https://www.law.cornell.edu/uscode/text/29/2611> (Accessed June 1st, 2017)
21. Legal Information Institute (2009). 29 U.S. Code § 2612. Retrieved from <https://www.law.cornell.edu/uscode/text/29/2612> (Accessed June 1st, 2017)
22. Barclays Official California Code of Regulations (August 8, 2017). Relationship between CFRA and Pregnancy Leaves. 2 CA ADC § 11046. Retrieved from [https://govt.westlaw.com/calregs/Document/IBF2381323B7840399C9F5D9EB2F01CB9?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IBF2381323B7840399C9F5D9EB2F01CB9?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (Accessed June 1st, 2017)
23. Department of Industrial Relations. (2013). §11090. Order Regulating Wages, Hours, and Working Conditions in the Transportation Industry. Retrieved from <https://www.dir.ca.gov/t8/11090.html> (Accessed June 1st, 2017)
24. Barclays Official California Code of Regulations (August 8, 2017). Relationship between CFRA and Pregnancy Leaves. 2 CA ADC §§11045 & 11046. Retrieved from [https://govt.westlaw.com/calregs/Document/IBF2381323B7840399C9F5D9EB2F01CB9?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IBF2381323B7840399C9F5D9EB2F01CB9?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (Accessed June 1st, 2017)
25. Employment Development Department (August 3rd 2017). Fact Sheet: California Paid Family Leave. Retrieved from [http://www.edd.ca.gov/pdf\\_pub\\_ctr/de8714cf.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de8714cf.pdf) (Accessed August 18, 2017)
26. California Legislative Information (April 11, 2016). AB-908 Disability compensation: disability insurance. Retrieved from [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB908](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB908) (Accessed June 1st, 2017)
27. Office of Labor Standards Enforcement (5/18/17) Paid Parental Leave Ordinance. Retrieved from <http://sfgov.org/olse/paid-parental-leave-ordinance> (Accessed August 24, 2017)
28. California Legislative Information. (1937). Labor code – lab-Division 2. Employment regulation and supervision [200 - 2699.5] General Occupations [200 - 244]. California Labor Code §§ 233. Retrieved from [http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=233](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=233) (Accessed June 1st, 2017)
29. California Legislative Information (1937). Labor code – lab-Division 2. Employment regulation and supervision [200 - 2699.5]. Paid Sick Days [245 - 249] (2014). California Labor Code §§ 245.5, 246.5(a). Retrieved from [http://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=246.5&lawCode=LAB](http://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=246.5&lawCode=LAB) (Accessed August 9, 2017)

## Endnotes

30. Office of Wages Standard. City of Los Angeles (2017). Retrieved from [wagesla.lacity.org](http://wagesla.lacity.org) (Accessed August 09th, 2017)
31. California Legislative Information. (1937). Labor code – lab-Division 2. Employment regulation and supervision [200 - 2699.5] General Occupations [200 - 244]. California Labor Code §§ 230.8. Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=230.8](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=230.8) (Accessed August 18, 2017)
32. California Legislative Information (1937). Labor code – lab-Division 2. Employment regulation and supervision [200 - 2699.5]. Lactation Accommodation [1030 - 1033] (2001). California Labor Code §§ 1030. Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=1030](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=1030). (Accessed June 1st, 2017).
33. California Legislative Information (1937). Labor code – lab-Division 1. Department of Industrial Relations [50 - 176]. Division of Labor Standards Enforcement [79 - 107] (1976). California Labor Code §§ 98.7. Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=98.7](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=98.7) (Accessed August, 9, 2017)
34. Department of Industrial Relations. (2013). §11040. Order Regulating Wages, Hours, and Working Conditions in Professional, Technical, Clerical, Mechanical, and Similar Occupations. Retrieved from <https://www.dir.ca.gov/t8/11040.html> (Accessed June 1st, 2017)
35. California Department of Fair Employment and Housing (2017). Pregnancy Disability Leave FAQs. Retrieved from <https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/pregnancy-disability-leave-faqs/> (Accessed August 08)
36. California Legislative Information (1980). Unlawful Practices, Generally [12940 - 12951]. Cal Gov. Code §12940(a), 2. Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=12940](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=12940). (Accessed June 1st, 2017).
37. Department of Industrial Relations. (2013). § 11030. Order Regulating Wages, Hours, and Working Conditions in the Canning, Freezing, and Preserving Industry. Retrieved from <https://www.dir.ca.gov/t8/11030.html> (Accessed June 1st, 2017)
38. California Legislative Information (1980). Unlawful Practices, Generally [12940 - 12951]. Cal Gov. Code §12940(h) & (u), 2. Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=12940](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=12940). (Accessed June 1st, 2017).
39. California Legislative Information (1980). Unlawful Practices, Generally [12940 - 12951]. Cal. Gov. Code § 12945.2(1). Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=12945](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=12945). (Accessed June 1st, 2017)
40. United State Department of Labor\_ Wage and Hour Division (December 2010). Division Reasonable Break Time for Nursing Mothers. Retrieved from <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=24540&Month=12&Year=2010> (Accessed August 8, 2017)
41. U.S. Supreme Court. NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975). National Labor Relations Board v. J. Weingarten, Inc. No. 73-1363. Retrieved from <https://supreme.justia.com/cases/federal/us/420/251/case.html> (Accessed June 1st, 2017)
42. Shealy KR, Li R, Benton-Davis S, Grummer-Strawn LM. Support for breastfeeding in the workplace. In: The CDC guide to breastfeeding interventions. Atlanta (GA): Centers for Disease Control and Prevention; 2005. p. 7–12. Retrieved from: [http://www.cdc.gov/breastfeeding/pdf/BF\\_guide\\_2.pdf](http://www.cdc.gov/breastfeeding/pdf/BF_guide_2.pdf). (Accessed July 24th, 2017)
43. California Legislative Information. (October 2013). SB-252 CalWORKs: welfare-to-work requirements. Retrieved from [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB252](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB252) (Accessed August 8, 2017)
44. California Legislative Information (1976). Education Code – Edc Title 1 General Education Code Provisions [1. - 32500]. Division 1. Part 1 General Provisions [1. - 446]. Chapter 2. Educational Equity [200 - 283](1998). ARTICLE 4. Sex Equity in Education Act [221.5 - 231.5] . Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=EDC&division=1.&title=1.&part=1.&chapter=2.&article=4](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=EDC&division=1.&title=1.&part=1.&chapter=2.&article=4) (Accessed June 1st, 2017)
45. California Legislative Information (1976). Education Code – Edc Title 1 General Education Code Provisions [1. - 32500]. Division 1. Part 1 General Provisions [1. - 446]. Chapter 2. Educational Equity [200 - 283](1998). ARTICLE 4. Sex Equity in Education Act [221.5 - 231.5]. CA Education Code, Section § 222. Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=EDC&division=1.&title=1.&part=1.&chapter=2.&article=4](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=EDC&division=1.&title=1.&part=1.&chapter=2.&article=4) (Accessed June 1st, 2017)
46. Legal Information Institute (1986). 20 U.S. Code § 1681 - Sex. Retrieved from <https://www.law.cornell.edu/uscode/text/29/2612> (Accessed July 22, 2017)
47. California Legislative Information (1988). Civil Code – Civ. Division 1. Persons [38 - 86]. Part 2. Personal Rights [43 - 53.7]. Cal. Civil Code § § 51(b), (e)(5). Retrieved from [https://docs.google.com/document/d/1na\\_vjqr3WENfo2DQz\\_bYLjrBmpYQ4uuqhJ6BP2xWl8/edit#](https://docs.google.com/document/d/1na_vjqr3WENfo2DQz_bYLjrBmpYQ4uuqhJ6BP2xWl8/edit#) (Accessed June 1st, 2017)
48. US Department of Education (2000). Part 106 nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance. 34 C.F.R. § 106.40. Retrieved from <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html> (June 1st, 2017)
49. Barclays Official California Code of Regulations (August 4, 2017). 5 Cal. Code Regs. § 4950. Retrieved from [\(https://govt.westlaw.com/calregs/Document/I885301D0D47F11DEBC02831C6D6C108E?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I885301D0D47F11DEBC02831C6D6C108E?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (Accessed June 1st, 2017)
50. United State Department of Justice (1980). Federal Coordination and Compliance Section. 34 C.F.R. § 106.1 - 106.71. Title 34 – Education. Chapter I-- Office For Civil Rights, Department Of Education. PART 106--Nondiscrimination On The Basis Of Sex In Education Programs And Activities Receiving Or Benefiting From Federal Financial Assistance <http://www.Justice.Gov/Crt/Federal-Coordination-And-Compliance-Section-84>
51. California Legislative Information (1976). Education Code – Edc. Title 3. Postsecondary Education [66000 - 101060] . Article 4. Sex Equity In Education [66271.5 - 66281.7]. Cal. Code § 66281.7. (Access June 1st, 2017)
52. US Department of Education (1972). Supporting the Academic Success of Pregnant and Parenting Students\_ Under Title IX of the Education Amendments of 1972. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf> (Accessed June 1st, 2017)
53. University of California Policy – PPSM 84 (2013). Accommodations for Nursing Mothers. Retrieved from <http://policy.ucop.edu/doc/4000609/PPSM-84> (Accessed June 1st, 2017)
54. BreastfeedLA (June 2017). Lactation 101\_Lactation Accommodations in Los Angeles County Higher Education. Retrieved from <https://breastfeedla.app.box.com/s/jud58rfngf0o0ktxqkx7ksucafi68ft3> (Accessed June 1st, 2017).
55. California Legislative Information (2000). AB-1814 Jury service: breast-feeding. Assembly Bill No. 1814. Retrieved from [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=199920000AB1814](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=199920000AB1814) (Accessed July 22, 2017)
56. California Code, Government Code - GOV § 11135. Retrieved from <http://codes.findlaw.com/ca/government-code/gov-sect-11135.html> (Accessed July 22, 2017)

## Endnotes

57. Congress.Gov (2017). H.R.1174 - Fairness For Breastfeeding Mothers Act of 2017. Retrieved from <https://www.congress.gov/bill/115th-congress/house-bill/1174/all-actions?overview=closed#tabs> (Accessed August 14)
58. Justia-California Civil Jury Instructions (CACI) (2003). 3020. Unruh Civil Rights Act (Civ. Code, §§ 51, 52) - Essential Factual Elements. Retrieved from <https://www.justia.com/trials-litigation/docs/caci/3000/3020.html> (Accessed July 22, 2017)
59. ACLU of California (Jan 2016). Reproductive Health Behind Bars in California. Retrieved from <https://www.aclusocal.org/sites/default/files/wp-content/uploads/2016/01/Reproductive-Health-Behind-Bars-in-California.pdf> (Accessed August 09, 2017)
60. California Legislative Information (1980) Government Code-Gov\_ Department of Fair Employment and Housing [12900 - 12996]. Cal. Gov. Code § 12926(r) (1). Retrieved from [https://docs.google.com/document/d/1na\\_vjqcr3WENfo2DQz\\_bYLjrBmpYQ4uuqhJ6BP2xWl8/edit](https://docs.google.com/document/d/1na_vjqcr3WENfo2DQz_bYLjrBmpYQ4uuqhJ6BP2xWl8/edit) (Accessed August 18, 2017)
61. State Standards for Pregnancy-Related Health Care and Abortion for Women in Prison. American Civil Liberties Union Web site. <https://www.aclu.org/state-standards-pregnancy-related-health-care-and-abortion-women-prison> 0?redirect=reproductiverights/gen/pregnancycareinprison.html Published 2017. Accessed March 23, 2017.
62. California Code, Penal Code - PEN § 3407. Retrieved from <http://codes.findlaw.com/ca/penal-code/pen-sect-3407.html> (Accessed August 9, 2017)
63. The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers (2006). Retrieved from [https://www.aclu.org/files/assets/anti-shackling\\_briefing\\_paper\\_stand\\_alone.pdf](https://www.aclu.org/files/assets/anti-shackling_briefing_paper_stand_alone.pdf) (Accessed July 22, 2017)
64. County Public Health Division (2013). Jail Medical Service\_Patient Healthcare\_Lactation accommodation and Support. Retrieved from <https://breastfeedla.app.box.com/s/rz4jt4nv4cz5sbxr8c9kpkx7oe48hf5> . (Accessed July 13, 2017)
65. Justia US Supreme Court (1976). Estelle v. Gamble 429 U.S. 97 (1976). No. 75-929. Retrieved from <https://supreme.justia.com/cases/federal/us/429/97/case.html> (Accessed August 18 2017)
66. Taggart K. How do prisons treat their pregnant inmates? California Watch. October 28, 2010. Retrieved from <http://californiawatch.org/dailyreport/how-do-prisons-treat-their-pregnant-inmates-6168> Accessed March 23, 2017.
67. California Code of Regulations. Title 15. Crime Prevention and Corrections. (2016) Cal. Code Regs. tit.15 § 3355.2(l). Retrieved from [http://www.cdcr.ca.gov/Regulations/Adult\\_Operations/docs/Title15-2016.pdf](http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/Title15-2016.pdf) ( Accessed July 22, 2017)
68. The American College of Obstetricians and Gynecologist-Committee Opinion (2012). Health Care Systems for Underserved Women. Retrieved from <https://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-Systems-for-Underserved-Women>. (Accessed July 22, 2017)
69. ACOG Committee Opinion 511, 2011; APHA Standards for Health Services in Correctional Institutions VII.A Health Services for Women, pg. 108.
70. ACLU (2016). Reproductive Health Care in California Jails: A Tool to Assess and Reform Policies and Practices. Retrieved from [https://www.aclunc.org/docs/201601-reproductive\\_health\\_care\\_in\\_ca\\_jails\\_toolkit.pdf](https://www.aclunc.org/docs/201601-reproductive_health_care_in_ca_jails_toolkit.pdf) (Accessed July 22, 2017)
71. 2011 Operations Manual ICE Performance-Based National Detention Standards (modified 2013). Medical Care (Women). Retrieved from [https://www.ice.gov/doclib/detention-standards/2011/medical\\_care\\_women.pdf](https://www.ice.gov/doclib/detention-standards/2011/medical_care_women.pdf). (Accessed August 18th)
72. Julia Preston (November 2007). Immigration Quandary: A Mother Torn From Her Baby. The New York Times. Retrieved from <http://www.nytimes.com/2007/11/17/us/17citizen.html> (Accessed August 18th, 2017)
73. American Bare Association (2014). Civil Immigration Detention Standard. Retrieved from <https://www.americanbar.org/content/dam/aba/administrative/immigration/abaimdetstds.authcheckdam.pdf>. (Accessed August 18th)
74. U.S. Department of Labor Wage and Hour Division (July 2015). Fact Sheet #28B. Retrieved from <https://www.dol.gov/whd/regs/compliance/whdfs28B.pdf> (Accessed August 15, 2017)
75. United States Department Of Labor. elaws: Employment Laws Assistance for Workers & Small Businesses - Family and Medical Leave Act Advisor. Retrieved from <https://webapps.dol.gov/elaws/whd/fmla/10a1.aspx> (Accessed August 15, 2017)
76. State of California\_Employment Development Departement (2017). Paid Family Leave - Foster Care and Adoptive Parents. Retrieved from [http://www.edd.ca.gov/Disability/PFL\\_Foster\\_Care\\_Adoptive\\_Parents.htm](http://www.edd.ca.gov/Disability/PFL_Foster_Care_Adoptive_Parents.htm) (Accessed August 15, 2017)
77. California Legislative Information. Labor Code – Lab. Employment Regulation And Supervision [200 - 2699.5](1937). Paid Sick Days [245 - 249] (2014). Cal. Labor Code §246.5. Retrieved from [https://docs.google.com/document/d/1na\\_vjqcr3WENfo2DQz\\_bYLjrBmpYQ4uuqhJ6BP2xWl8/edit](https://docs.google.com/document/d/1na_vjqcr3WENfo2DQz_bYLjrBmpYQ4uuqhJ6BP2xWl8/edit) (Accessed August 15, 2017).
78. California Legislative Information. Labor Code – Lab. Employment Regulation And Supervision [200 - 2699.5](1937). Payment of Wages [200 - 273]. Cal. Labor Code §230.8(a). Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=230.8](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=230.8) (Accessed August 15, 2017)
79. Breastfeeding today (2016). Breastfeeding a foster baby. Retrieved from <http://breastfeedingtoday-llli.org/breastfeeding-a-foster-baby/> (Accessed August 18, 2017).
80. California Legislative Information. (2012) AB-1217 Surrogacy agreements. Assembly Bill No. 1217. Retrieved from [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120AB1217](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1217) (Accessed August 15, 2017)
81. California Legislative Information (2014). AB-1951 Vital records: birth certificates. Assembly Bill No. 1951. Retrieved from [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1951](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1951) (Accessed August 15, 2017).
82. National Center for Lesbian Rights (2016). Legal Recognition of LGBTQ families. Retrieved from [http://www.nclrights.org/wp-content/uploads/2013/07/Legal\\_Recognition\\_of\\_LGBT\\_Families.pdf](http://www.nclrights.org/wp-content/uploads/2013/07/Legal_Recognition_of_LGBT_Families.pdf) (Accessed July 22, 2017).
83. National Center for Lesbian Rights (2013). California Public Benefits Issues for Lesbian, Gay, Bisexual, and Transgender Clients: A Guide for Attorneys and Advocates. Retrieved from [http://www.nclrights.org/wp-content/uploads/2013/04/Resources\\_PublicBenefits\\_Attorney\\_Advocate\\_Guide.pdf](http://www.nclrights.org/wp-content/uploads/2013/04/Resources_PublicBenefits_Attorney_Advocate_Guide.pdf) (Accessed August 15, 2017).
84. Trevor MacDonald (2016). Transgender parents and chest/breastfeeding. Kelly Mom Parenting Breastfeeding. Retrieved from <http://kellymom.com/bf/got-milk/transgender-parents-chestbreastfeeding/> (Accessed August 18, 2017)
85. Idaho Breastfeeding Laws (2012). Breastfeeding in Idaho. Idaho Code § 2-212 (2002). Retrieved from <http://idahobreastfeedinglaws.com/> (Accessed July 31, 2017)

## Endnotes

86. Official website of the Department of Homeland Security. Transportation Security Administration. Travelling with Children. Retrieved from [https://www.tsa.gov/travel/special-procedures/traveling-children#quickset-traveling\\_with\\_children\\_1](https://www.tsa.gov/travel/special-procedures/traveling-children#quickset-traveling_with_children_1) (Accessed August 9, 2017)
87. Official website of the Department of Homeland Security. Transportation Security Administration. Travelling with Children. Retrieved from <https://www.tsa.gov/travel/special-procedures/traveling-children> (Accessed July 24th, 2017)
88. Centre for Social Inclusion (2015). Removing barriers to breastfeeding. Retrieved from <http://www.centerforsocialinclusion.org/wp-content/uploads/2015/10/CSI-Removing-Barriers-to-Breastfeeding-REPORT.pdf> (Accessed August 18th, 2017)
89. California Hospital Association (2017). Patient Rights Poster. Retrieved from <https://www.calhospital.org/publication/patient-rights-poster-0> (Accessed July 24th, 2017)
90. The Joint Commission. Know your Rights\_Speak Up program. Retrieved from [https://www.jointcommission.org/assets/1/6/Know\\_Your\\_Rights\\_brochure.pdf](https://www.jointcommission.org/assets/1/6/Know_Your_Rights_brochure.pdf) (Accessed August 18, 2017)
91. Holly Goldberg. Informed Decision Making in Maternity Care. *Journal of Perinatal Education*, Vol. 18, No.1,32-39 (Winter 2009)
92. The chronicle of Nursing (2008). Informed consent. American Society of Registered Nurses. Retrieved from <https://www.asrn.org/journal-chronicle-nursing/343-informed-consent.html#sthash.o8CTILow.dpuf%00> (Accessed August 18th, 2017)
93. American College of Obstetricians and Gynecologists. Ethics in obstetrics and gynecology. 2nd ed. Washington, D.C.: ACOG;9-17, (2004)
94. Lactmed \_A Toxnet Database (2017) Drugs and Lactation Database. Retrieved from <http://toxnet.nlm.nih.gov/newtoxnet/lactmed.htm> (Accessed August 18th, 2017)
95. The American College of Obstetricians and Gynecologist-Committee Opinion (2005). Refusal of Medically Recommended Treatment During Pregnancy. Retrieved from <https://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Ethics/Refusal-of-Medically-Recommended-Treatment-During-Pregnancy> (Accessed July 31st, 2017)
96. La Leche league International (2016). Breastfeeding during emergency. Retrieved from <http://www.llli.org/faq/emergency.html> (Accessed July 31, 2017)
97. California Legislative Information (2013). SB-402 Breastfeeding. Senate Bill No. 402. Retrieved from [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB402](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB402) (Accessed August 18th, 2017)
98. Baby friendly USA (2012). The Ten Steps To Successful Breastfeeding. Retrieved from <https://www.babyfriendlyusa.org/about-us/baby-friendly-hospital-initiative/the-ten-steps> (Accessed July 24th, 2017)
99. Preer G, Pisegna JM, Cook JT, Henri AM, Philipp BL. (2013) *Breastfeed Med.*;8(6):485-90. doi: 10.1089/bfm.2012.0158. Epub 2013 May 2.
100. Laura R. Kair, Daniel Kenron, Konnette Etheredge, Arthur C. Jaffe, Carrie A. Phillipi (2013). Pacifier Restriction and Exclusive Breastfeeding. *Pediatrics*. April 2013, Volume 131 / Issue 4
101. Radzynski, S., & Callister, L. C. (2015). Health Professionals' Attitudes and Beliefs About Breastfeeding. *The Journal of Perinatal Education*, 24(2), 102-109. <http://doi.org/10.1891/1058-1243.24.2.102-109>
102. Center for Disease Control (2016). How Health Care can support Breastfeeding. Retrieved from <https://www.cdc.gov/breastfeeding/promotion/healthcare.htm> (Accessed July 31st, 2017)
103. California Department of Public Health (2015). 9 Steps to Breastfeeding Friendly: Guidelines for Community Health Centers and Outpatient Care Settings. Retrieved from <https://archive.cdph.ca.gov/programs/NEOPB/Documents/9StepGuide.pdf> (Accessed July 31st, 2017)
104. Breastfeeding in Underserved Women. ACOG Committee Opinion No. 570, August 2013, Reaffirmed 2016. American College of Obstetricians and Gynecologists.
105. United States Breastfeeding Committee (USBC) (2017). Model Policy: Payer Coverage of Breastfeeding Support and Counseling Services, Pumps and Supplies. Retrieved from <http://www.usbreastfeeding.org/model-payer-policy> (Accessed July 31st, 2017)
106. Central California Alliance for Health (2017). Breastfeeding Support & Breast Pump Services. Retrieved from <http://www.ccah-alliance.org/providerspdfs/HEB/BreastfeedingBenefitDescription.pdf> (Accessed July 31st, 2017)
107. Figures extrapolated from Bartick M, Reinhold A. The Burden of Suboptimal Breastfeeding in the United States: A Pediatric Cost Analysis. *Pediatrics*, 2010. Extrapolating formula based on population data of 130,000 births in Los Angeles County annually (LA County Department of Public Health) and 4,140,000 births in U.S. annually (US Census).
108. Bartick, M.C., et al. Cost Analysis of Maternal Disease with Suboptimal Breastfeeding, ACOG, 2013
109. Center for Disease Control and Prevention, "Breastfeeding among U.S. Children Born 2002-2012, CDC National Immunization Surveys" [http://www.cdc.gov/breastfeeding/data/nis\\_data/index.htm](http://www.cdc.gov/breastfeeding/data/nis_data/index.htm).
110. Eugene R. Declercq, Carol Sakala, Maureen P. Corry, Sandra Applebaum, and Ariel Herrlich. *Listening to Mothers III: New Mothers Speak Out*.
111. Sylvia Guendelman, Jessica Lang Kosa, Michelle Pearl, Steve Graham, Julia Goodman, and Martin Kharrazi. "Juggling work and Breastfeeding: effects of maternity leave and occupational characteristics." *Pediatrics* 123, no. 1 (2009): e38-e46.
112. Abt Associates Inc. *Family Medical Leave in 2012: Technical Report*. 2013. <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>, Exhibit 5.3.14. *Employment Status of the civilian noninstitutional population by age, sex, and race* (Table 3). 2013. <https://www.bls.gov/cps/cpsaat03.htm>
113. Eileen Appelbaum and Ruth Milkman. "Leaves that pay: Employer and worker experiences with paid family leave in California." Washington: Center for Economic and Policy Research. 2011. <http://www.cepr.net/documents/publications/paid-family-leave-1-2011.pdf>.
114. Katy B. Kozhimannil, Judy Jou, et al. "Access to Workplace Accommodations to Support Breastfeeding after Passage of the Affordable Care Act," *Women's Health Issues*, 2015;1: 6-13.
115. 4.8 Million College Students are Raising Children - Institute for Women's Policy Research Institute for Women's Policy Research, <https://iwpr.org/publications/4-8-million-college-students-are-raising-children/> (Accessed Jun 9., 2017).