

HB 2228, HD2



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 14, 2012

To: The Honorable Clayton Hee, Chair, Maile Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Wednesday, March 14, 2012

Time: 10:00 a.m.

Place: Conference Room 016, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2228, H.D. 2 Breastfeeding in the Workplace

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2228, H.D. 2, amends the Hawaii Wage and Hour Law, Chapter 387, Hawaii Revised Statutes, by adding a new section to achieve the following.

1. Makes it a violation for employers with twenty or more employees, to prohibit expressing breast milk during meal periods and other breaks.
2. Requiring covered employers to post notice pertaining to this provision.
3. Establishing a fine of \$50 for each violation.

The department supports the intent of H.B. 2228, H.D. 2, but has concerns.

II. CURRENT LAW

Current law has no provisions regarding expressing breast milk.

III. COMMENTS ON HOUSE BILL

Hawaii has a rich tradition of the family concept of "Ohana". To extend the ability to express breast milk exemplifies this tradition of caring for family members.

The department would like to point out that adding the new section in Chapter 387, HRS, as prescribed in H.B. 2228, H.D. 2, will result in the following:

1. Creating three different definitions of "employer" within Chapter 387.
2. Creating a conflict between "employer" as defined in page 1, sections (a) and (b) of the amendment.
3. Having no remedy for employees who are affected by the violations.

The department is concerned it lacks resources to implement this amendment. Broadening the scope of the law, and requiring additional investigation requirements will further serve to increase an already over-burdened staff of five investigators statewide who are responsible for conducting more than 600 investigations and responding to more than 20,000 inquiries annually.



HB 2228 HD2
Relating to Breastfeeding in the Workplace
House Committee on Judiciary and Labor

March 14, 2012

10:00 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS HB 2228 HD2**, which requires employers with twenty or more employees to make reasonable efforts to provide a clean location for breastfeeding employees to express breast milk in privacy, and provides for a civil fine for failure to comply.

OHA's strategic plan includes a health priority, which states that to improve the quality and longevity of life, Native Hawaiians will enjoy healthy lifestyles and experience reduced onset of chronic diseases.

According to the United States Department of Health & Human Services, Office of Women's Health (OWH) and the Agency for Healthcare Research and Quality (AHRQ), breast milk reduces the risks for the onset of chronic diseases in infants by lowering the risks for respiratory infections, Asthma (young children), types I & II Diabetes, obesity and childhood leukemia. Breastfeeding has also been shown to lower the risk of atopic dermatitis in babies (a type of skin rash) and SIDS (Sudden Infant Death Syndrome).

In addition to improving the health of the infant, breastfeeding also improves the health of the lactating mother. Native Hawaiian women are at a higher risk for type II diabetes, as well as breast and ovarian cancer. For a lactating mother, there is a reduced risk for these chronic diseases. The long term health outcomes and wellness enhanced values of breastfeeding to the mother not only create healthier mothers, they create healthier employees, which is good for business outcomes. OHA encourages the State and employers use this opportunity to launch workplaces and worksites that promote health and wellness amongst the employees. Both men and women can benefit from a worksite that promotes wellness.

The health and economic benefits of breastfeeding at the worksite far outweigh the costs of this initiative. Therefore, OHA urges the committee to PASS HB 2228 HD2. Mahalo for the opportunity to testify on this important measure.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU
ADRIENNE KING
CARMILLE LIM
AMY MONK
LISA ELLEN SMITH
CAROL ANNE PHILIPS

Executive Director
Catherine Betts, Esq.

Email:
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March 12, 2012

Testimony in Support of HB 2228, HD 2

To: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

From: Catherine Betts, Esq., Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support of HB 2228, HD 2, Relating to Breastfeeding in the Workplace

On behalf of the Hawaii State Commission on the Status of Women, I would like to express my support of this bill, which would require employers with twenty or more employees to make reasonable efforts to provide a clean location for breastfeeding employees to express breast milk in privacy.

In 2009, 50% of all mothers with children younger than twelve months old were employed. 69% of these women worked full time.¹ Working mothers face a difficult challenge when returning to work. Steady employment almost always takes priority over the desire to continue breastfeeding their child. Many employers do not recognize the many economic benefits that follow when female employees are allowed to continue breastfeeding. Among the benefits are lower health care costs, lower absenteeism, and lower turnover rates. Employees whose employers provide breastfeeding support report improved morale, better satisfaction with their employment and higher productivity.²

While federal legislation requires employers with more than 50 employees to provide reasonable break time for employees to breastfeed, this legislation would expand the reach to employers with more than 20 employees. While it is the Commission's position that all employers, regardless of the number of employees, should be required to make reasonable efforts to provide a clean location for breastfeeding, we nonetheless support HB 2228, HD 2 and respectfully request that this Committee pass this important piece of legislation.

Thank you for this opportunity,

Catherine Betts, Esq.

¹ U.S. Department of Labor, Bureau of Labor Statistics, Table 6, Employment Status of Mothers (2010).

² The Business Case for Breastfeeding, U.S. Department of Health and Human Services, Health Resources and Services Administration (2008).



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The Twenty-Sixth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
March 14, 2012

H.B. 2228, H.D. 2 - RELATING TO
BREASTFEEDING IN THE WORKPLACE

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 2228, H.D. 2, which requires an employer with twenty or more employees to make reasonable efforts to provide a clean location for breastfeeding employees to express breast milk in privacy; requires covered employers to post a notice pertaining to this provision in a conspicuous location; and establishes a civil fine for the failure of an employer to provide a location or post notice.

Supporting breastfeeding employees is good for business and good for our community. Information from the U.S. Department of Health and Human Services Office on Women's Health states lactation support in the workplace can: 1) lower medical costs and health insurance claims for breastfeeding employees and their infants (up to three times less for breastfeeding employees); 2) reduce turnover rates (86-92 percent of breastfeeding employees returning to work after childbirth when a lactation support program is provided compared to the national average of 59 percent); 3) lower absenteeism rates (up to half the number of 1-day absences); 4) improve productivity; and 5) raise employee morale and loyalty.

The measure would be strengthened by adding that the clean and private location for expressing breast milk be located near a sink with running water for washing hands and rinsing out breast pump parts, and have an electrical outlet. We ask for your consideration and passage of this bill with the suggested amendment. Thank you for the opportunity to testify in support of the intent of H.B. 2228, H.D. 2.

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director



Testimony to the Senate Committee on Judiciary and Labor
Wednesday, March 14, 2012
10:00 a.m.
State Capitol - Conference Room 016

RE: HOUSE BILL NO. 2228 HD2 RELATING TO BREASTFEEDING IN THE
WORKPLACE

Chair Hee, Vice Chair Shimabukuro, and members of the committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). While the Chamber understands the intent of this measure, we would like to offer a suggested amendment to HB 2228 HD2.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

HB 2228 HD2 requires an employer with twenty or more employees to make reasonable efforts to provide a clean location for breastfeeding employees to express breast milk in privacy. The measure also requires covered employers to post a notice pertaining to this provision in a conspicuous location and establishes a civil fine for the failure of an employer to provide a location or post notice.

The Affordable Care Act (ACA) amended Section 7 of the Fair Labor Standards Act, to require employers to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk." See DOL FAQ (<http://www.dol.gov/whd/nursingmothers/faqBTNM.htm>). Therefore, most employers are already required to do what HB 2228 HD1 is mandating.

There may be some small employers that are not covered by ACA because they do not make the \$500,000 annual dollar volume minimum threshold and with 20 or more employees for FLSA coverage. For the small number of employers, this bill would add an additional requirement as they might not have the funds or ability to comply with the mandates.

While we understand the intent of the measure, we respectfully ask that the committee provide an exception to those businesses that have limited resources and that can prove an undue hardship, similar to the exception provided under FLSA, which reads:

"Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business."

Thank you for the opportunity to express our views.

ATTN: COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair, and Members

HEARING DATE: March 14, 2012
HEARING TIME: 10 a.m.

IN STRONG SUPPORT OF HB 2228 – Requiring employers to provide a clean and private location for new mothers to **express breast milk** and to post signs informing employees of their right to breastfeed in the workplace.

Dear Chair Hee, Vice Chair Shimabukuro and committee members,

The Coalition is in strong support of this measure that would provide a comfortable, safe place for employees who are mothers to feed their infants in the workplace. This will insure the physical and mental health of both mother and child at minimal cost to the employer.

The health benefits of breast milk for both infants and mothers have long been established. According to the US Department of Health and Human Services Office on Women's Health, breastfeeding can help improve an infant's immune system, protecting her from germs and illness. It may also prevent illness such as ear infections, stomach viruses, asthma, obesity, types 1 and 2 diabetes, childhood leukemia, and some respiratory infections. Mothers also benefit from breastfeeding, as it lowers the risk of breast and ovarian cancer, type 2 diabetes, and reduces post partum depression.

As the flow of breast milk is slowed by less frequent feeding, returning to the workplace may mean ceasing breastfeeding for some women. Employees who are offered a clean and safe space at work to express milk are able to work without compromising their ability to breastfeed. Currently, the Fair Labor Standards Act requires that employers with more than 50 employees provide reasonable break time for employees to breastfeed as well as a private and clean space for expressing breast milk, other than a bathroom. HB 2228 would expand this requirement to an employer of any size, therefore benefiting more of Hawaii's working mothers.

The bill would also require employers to make postings visible to employees informing them of their right to express breast milk at work. The Coalition agrees that this posting will benefit many employees who are not currently aware that they have this right, as well as serve as a strong reminder to employers.

Mahalo,

Ann S. Freed
Co-Chair Women's Coalition
95-227 Waikalani Dr. A403
Mililani, HI 96789
808-623-5676

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: bill@ejlounge.com
Subject: Testimony for HB2228 on 3/14/2012 10:00:00 AM
Date: Tuesday, March 13, 2012 1:08:09 AM

Testimony for JDL 3/14/2012 10:00:00 AM HB2228

Conference room: 016
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bill Comerford
Organization: Hawaii Bar Owners Association
E-mail: bill@ejlounge.com
Submitted on: 3/13/2012

Comments:

We as a group do not oppose motherhood, we don't oppose a wonderful concept but where is one to add a private clean room in an existing establishment? This is a nice idea but very unrealistic. Must a small businessman add an ADA restroom, ADA access, ADA parking, a non-smoking area, a break room and a room for breastfeeding. Why am I paying rent to accomodate employees? What space remains for doing business? Square footage does not come cheaply in Waikiki or Honolulu. What size room is being demanded here? Bars often employ 20 or more employees. What is the 20 employee determination based upon? This goes beyond employee rights and is strictly a nice accomodation if it did not cost money to construct and give up commercial space to actually doing business?

We are not against motherhood and apple pie but lets take an honest look at the cost to accomodate such a law for a mother who may or may not use it during relatively short period of time.

Please take a look at a realistic number for the number of employees and the expense involved. We ask you to defer this bill.

Sincerely,

Bill Comerford
Spokesman
Hawaii Bar Owners Association

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March 12, 2012

TESTIMONY OF YWCA OF O'AHU
TO SENATE COMMITTEE ON JUDICIARY AND LABOR
CHAIR CLAYTON HEE, VICE CHAIR MAILE SHIMABUKURO, AND MEMBERS OF THE
COMMITTEE
MARCH 14, 2012, 10:00 A.M., CONFERENCE ROOM 016

Testimony in Support of HB 2228, HD 2, Relating to Breastfeeding in the Workplace

Dear Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

YWCA of O'ahu is a membership organization supporting more than 2,500 women and girls through housing, economic self-sufficiency, professional development and health and wellness. Founded in 1900, it is the oldest and largest women's association in Hawai'i. We strive to provide valuable support for women in various stages in life – including working women, and working mothers.

YWCA **strongly supports HB2228, HD2**, which would require employers with twenty or more employees to make reasonable efforts to provide a clean location for breastfeeding employees to express breast milk in privacy.

Mothers are the fastest growing segment of the U.S. workforce.⁽¹⁾ In the past 20 years, the percentage of new mothers in the workforce has increased by more than 80%.⁽²⁾ Breastfeeding is important because it may help to alleviate health care costs, lost productivity and absenteeism.

HEALTH

Breastfeeding is a fundamental part of the overall reproductive cycle for the mother, resulting in faster recovery from pregnancy, thus promoting an earlier return from maternity leave. For every 1,000 babies not breastfed, there are an extra 2,033 physician visits, 212 days in the hospital and 609 prescriptions.⁽³⁾ The United States would save \$13 billion per year — medical care costs are lower for fully-breastfed infants than never-breastfed infants.⁽⁴⁾ Breastfeeding may also decrease employee absences that are associated with caring for a sick child, since breastfed infants typically need fewer sick care visits, prescriptions, and hospitalizations. Breastfeeding has important short- and long-term health benefits for both children and women, including but not limited to reduced risk of asthma, diabetes and certain types of cancer.⁽⁴⁾⁽⁵⁾

ECONOMIC

A healthy mother (and her child) means an employee who is absent less often and is able to contribute more productively to her workplace. Providing family-centered support to help employees balance family and work commitments can positively impact employee retention rates, resulting in potential cost savings to the company. A study of multiple companies with supportive breastfeeding work environments found an average employee-retention rate of 94%.⁽⁵⁾

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ENVIRONMENT

By encouraging more breastfeeding-friendly work places, we are also indirectly doing better for the environment. With breastfeeding, there is less trash and plastic waste compared to what is produced by formula cans and bottle supplies.⁽⁴⁾ The industrial process to create artificial baby feeding products itself uses large quantities of energy and natural resources. The production plants where formula is manufactured also contribute to pollution. Further, the production and packaging of infant formula, bottles and bottle supplies, like rubber nipples, results in the use of a high quantity of paper, glass, plastic, and metals that are rarely recycled.⁽⁶⁾

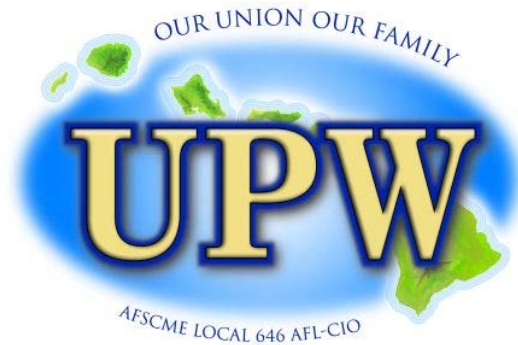
The Fair Labor Standards Act requires that employers with more than 50 employees provide reasonable break time for employees to breastfeed, as well as a private and clean space for expressing breast milk, other than a bathroom.⁽⁷⁾ HB 2228 would expand this requirement to smaller employers who employ at least 20 people, therefore benefiting more of Hawai'i's working mothers.

Breastfeeding reaps health, economic and environmental benefits. **Please pass HB2228 HD2.** Thank you.

Respectfully,

Carmille Lim
Fund Development & Advocacy Manager

- (1) "Workplace breastfeeding support." United States Breastfeeding Committee. Raleigh, NC: United States Breastfeeding Committee; 2002.
- (2) U.S. Department of Labor Women's Bureau. Employment status of women and men in 2008. http://www.dol.gov/wb/factsheets/Qf-ESWM08_txt.htm.
- (3) "Investing in Workplace Breastfeeding Program and Policies." National Business Group on Health: Center for Prevention and Health Services. http://www.businessgrouphealth.org/healthtopics/breastfeeding/docs/BF_entire_toolkit_FINAL.pdf
- (4) "Breastfeeding". Women'sHealth.gov, a Project of the U.S. Department of Health and Human Services Office on Women's Health: <http://www.womenshealth.gov/breastfeeding/why-breastfeeding-is-important/#c>
- (5) "Workplace Breastfeeding Programs: Employer Case Studies." National Business Group on Health: Center for Prevention and Health Services. http://www.businessgrouphealth.org/pdfs/NBGH%20Breastfeeding%20IB_Final%20Proof.pdf
- (6) "Health Milk, Healthy Baby: Chemical Pollution and Mother's Milk". Natural Resources Defense Council. <http://www.nrdc.org/breastmilk/formula.asp>
- (7) Fair Labor Standards Act, 29 U.S.C. §207(r)(1) 2010.



THE HAWAII STATE SENATE
The Twenty-Sixth Legislature
Regular Session of 2012

COMMITTEE ON JUDICIARY AND LABOR

The Honorable Sen. Clayton Hee, Chair
The Honorable Sen. Maile S. L. Shimabukuro, Vice Chair

DATE OF HEARING: Wednesday, March 14, 2012
TIME OF HEARING: 10:00 a.m.
PLACE OF HEARING: Conference Room 016

**TESTIMONY ON HB 2228 HD2 RELATING TO BREASTFEEDING IN THE
WORKPLACE**

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB 2228 HD2 requires an employer with 20 or more employees to make reasonable efforts to provide a clean location for breastfeeding employees to express breast milk in privacy and to post a notice pertaining to this provision in a place that is visible to all employees. It also establishes a fine of \$50 for failure to provide such a location or post such a notice. UPW supports this measure.

New mothers have to make tough choices when returning to work, especially during these difficult economic times. Whether or not to continue to breastfeed is just one such choice, despite the long established health benefits of breastfeeding for both mother and child. Currently,

federal law requires that employers with 50 or more employees provide both time and a private space for breastfeeding. This legislation goes further, thereby covering more new mothers.

Additionally, providing the private space and time for new mothers to breastfeed will reduce absenteeism and improve morale in the workplace.

Thank you for the opportunity to testify on this measure.

My name is George Kent. I am writing in support of HB2228 relating to breastfeeding in the workplace.

I have recently retired from my role as professor of political science at the University of Hawai'i, Manoa. Much of my work has been on policy issues relating to children's nutrition. I have published several books and many articles on the issue. My latest book, *Regulating Infant Formula*, was published last year, and I have an article on "The Nutritional Adequacy of Infant Formula" in press in the journal, *Clinical Lactation*.

This bill should be passed because infants who are fed with infant formula regularly have worse health outcomes than children who are breastfed. Formula-fed infants also suffer throughout their lives from impaired physical and cognitive development. Breastfeeding is also good for the mother's health and well-being. This is all very well documented. Even the formula manufacturers acknowledge that breast is best.

The costs that would be associated with implementation of this bill would be trivial, especially when compared to the benefits that breastfeeding brings to both mothers and children.

At the global level, the International Labor Organization, the United Nations Children's Fund, and the Food and Agriculture Organization of the United Nations all support the provision of facilities for expressing breastmilk at the workplace. The U.S. federal government supports this as well.

The government of the State of Hawaii should take a strong and clear position on this. I strongly support passage of this bill.

Aloha, George Kent



March 14, 2012

To: Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair and
Members of the Committee on Judiciary and Labor

From: Jeanne Ohta, Co-Chair

RE: HB 2228 HD2 Relating to Breastfeeding in the Workplace
Hearing: March 14, 2012, 10:00 a.m., Room 016

Position: Support

Good morning, I am Jeanne Ohta, Co-Chair of the Hawai'i State Democratic Women's Caucus testifying in support of HB 2228 HD2, Relating to Breastfeeding in the Workplace. The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawai'i's women and girls. It is because of this mission, the Women's Caucus supports this measure.

According to the US Department of Health and Human Services Office on Women's Health, breastfeeding can help improve an infant's immune system, protecting her from germs and illness. It may also prevent illness such as ear infections, stomach viruses, asthma, obesity, types 1 and 2 diabetes, childhood leukemia, and some respiratory infections.¹ Mothers also benefit from breastfeeding, as it lowers the risk of breast and ovarian cancer, type 2 diabetes and reduces post partum depression.²

Nursing mothers returning to the workplace need adequate time and space to express breast milk while at work. In 2010, the Fair Labor Standards Act was amended to require that employers with more than 50 employees provide reasonable break time for employees to breastfeed as well as a private and clean space for expressing breast milk, other than a bathroom.³ Because we believe that all women deserve this same protection, we support HB 2228 HD2 as it expands that requirement to include employers of any size.

Employment rights only benefit employees when they are clear and well known. We are aware that many employers and employees alike are unaware of the new breastfeeding provisions in FLSA. This measure requires employers to make postings visible to employees informing them of their right to express breast milk at work.

Because it protects the health of women and their children as well as promotes equality in the workplace, we support HB 2228 HD2. Please pass this measure. Thank you.

¹ US Dept. of Health and Human Services, Office of Women's Health, *Breastfeeding Fact Sheet*, <http://www.womenshealth.gov/publications/our-publications/fact-sheet/breastfeeding.cfm#a>

² Id.

³ Fair Labor Standards Act, 29 U.S.C. §207(r)(1) (2010)