



# HAWAII CIVIL RIGHTS COMMISSION

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January 31, 2012  
Conference Rm. 309  
9:00 a.m.

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Labor and Public Employment

From: Livia Wang, Acting Chief Counsel  
Bill Hoshijo, Executive Director

Re: H.B. No. 2228

The Hawai'i Civil Rights Commission (HCRC) staff submits this memorandum to inform the Committee that the HCRC has not yet taken a position on H.B. No. 2228, because the HCRC Commissioners have not had the opportunity to review and take a position on this bill. A meeting for Commission review of bills is scheduled for February 3, 2012, at which time the Commissioners will take a position on this and a number of other bills. While the HCRC will not have a position in support or opposition to H.B. No. 2228 until that time, we offer comments and information on the proposed legislation.

H.B. No. 2228 would amend H.R.S. § 378-10 to 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. The proposed amendment partially conforms H.R.S. §378-10 to the provisions of the Fair Labor Standards Act (FLSA, 29 U.S.C. § 207(r)) which requires an employer to provide time and a place, other than a bathroom, that is shielded from view and free from intrusions from coworkers and the public, for an employee to express breast milk. The FLSA break time requirement, which took effect in 2010, applies to employers of 50 or more employees. See U.S. Department of Labor, Wage and Hour Fact Sheet #73: Break Time for Nursing Mothers under the FLSA, at <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.

Not having taken a position on H.B. No. 2228, the HCRC does have concerns with the placement of this new mandate and remedy under the jurisdiction of the HCRC. It is noteworthy that the FLSA requirement falls under the jurisdiction of the U.S. DOL Wage and Hour Division, not the HCRC's federal counterpart, the U.S. EEOC. A similar concern was raised at the time that the legislature added H.R.S. § 378-10 to the H.R.S. chapter 378, part I, under HCRC jurisdiction. The proposed state law version of the FLSA requirement is more of a health and safety regulation and less like the civil rights protections that fall squarely within the civil rights enforcement mandate of the HCRC.

Regardless of the position that the HCRC ultimately takes on H.B. No. 2228, it must again remind the legislature that continuing to add protected bases to the HCRC's jurisdiction, while the HCRC's state enforcement resources have been reduced by more than 25%, exacerbates the detrimental impact of reduction in force, abolishment of positions, budget reductions and furloughs on the effective investigation, conciliation, and prosecution of all discrimination complaints under our jurisdiction.

The HCRC takes its role and authority to testify and make recommendations to the legislature very seriously, and will do everything possible to assist you in your consideration of bills that affect HCRC jurisdiction and civil rights. We hope the temporary constraints we face will not cause inconvenience or difficulty for the House Committee on Labor and Public Employment. Please let us know if we can provide you any background information or answer any questions. Thank you for your understanding and patience.



Committee: Committee on Labor and Public Employment  
Hearing Date/Time: Tuesday, January 31, 2012, 9:00 a.m. - 12:00 p.m.  
Place: Room 309  
Re: Testimony of the ACLU of Hawaii in strong support of H.B. 2228,  
Relating to the Breastfeeding in the Workplace

Dear Chair Rhodes and Members of the Committee on Labor and Public Employment:

In order to ensure full equality for women, workplace policies and practices must appropriately reflect the realities of pregnancy, childbirth, and breastfeeding in many women's lives. Numerous barriers remain to women's continued workforce participation and advancement once they have children, with both short- and long-term consequences for women's earning potential and economic security.<sup>1</sup> Insufficient support for breastfeeding for women who return to the paid workforce after the arrival of a baby is among these barriers. These were among the concerns that animated the enactment of the amendment to the Patient Protection and Affordable Care Act, Public Law 111-148 ("Affordable Care Act"). Citing the growing percentage of women who return to work within three to six weeks of giving birth, Senator Merkley characterized the provision as "simply an act of human decency to protect their right to continue [to] breastfeed after they return to work. . . [t]o help meet their basic needs with [] regard to the care and nourishment of their children."<sup>2</sup> He also cited health benefits for infants and nursing mothers, and savings in health care costs that could be expected as a result of the provision.<sup>3</sup> Moreover, this provision of the Affordable Care Act reflects a strong policy on the part of the federal government, stretching back at least a quarter of a century, of promoting breastfeeding,

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<sup>1</sup> See generally Pamela Stone, *Opting Out? Why Women Really Quit Careers and Head Back Home* (2007) (discussing structural barriers to professional women's continued advancement in the workplace after having children); Sylvia Ann Hewlett, *On-Ramps and Off-Ramps: Keeping Women on the Road to Success* (2007) (documenting that women who took a 2.2 to 3 year break from the workforce lost 18% to 37% of their earning power, and that only 40% were then able to return to paid full-time work despite a desire to do so); Marianne Bertrand *et al.*, *Dynamics of the Gender Gap for Young Professionals in the Financial and Corporate Sectors*, 2 Am. Econ. J.: Applied Econ. 229, 252 (2010) (documenting increasing gap in career progress for female as compared to male M.B.A.s following graduation, and concluding that "[t]he presence of children is the main contributor to the lesser job experience, greater career discontinuity, and shorter work hours for female MBAs").

<sup>2</sup> Markup Hearing on H.R. 3590 Before the S. Comm. on Health, Education, Labor, & Pensions, 111th Cong., 1<sup>st</sup> Sess. (Jun. 23, 2009) (comments of Senator Merkley, Senate Sponsor).

<sup>3</sup> *Id.*

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Hon. Rep. Rhodes, Chair, LAB Committee  
and Members Thereof  
January 31, 2012  
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including women's ability to continue breastfeeding upon return to the paid workforce.<sup>4</sup> From the first federal summit on breastfeeding in 1984 to the signing of the World Health Organization *Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding* in 1990,<sup>5</sup> to as recently as this year, when the Surgeon General issued a "Call to Action to Support Breastfeeding" outlining steps that various sectors might take to improve breastfeeding rates, promotion of breastfeeding has been a "key public health issue in the United States."<sup>6</sup>

In light of the legislative concerns motivating this provision of the Fair Labor Standards Act (FLSA), and the strong federal public policy in favor of breastfeeding promotion, we strongly urge this Committee to expand the requirements of H.R.S. §378-10 to ensure that employers provide breastfeeding women with an appropriate space in their place of employment to express their breast milk.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Sincerely,

Laurie A. Temple  
Staff Attorney

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<sup>4</sup> See United States Department of Health and Human Services, Office of the Surgeon General, *The Surgeon General's Call to Action to Support Breastfeeding* at 5 (2011) [hereinafter "Surgeon General's Call to Action"] (discussing Federal Policy on Breastfeeding").

<sup>5</sup> See Department of Health and Human Services, Office of Women's Health, *HHS Blueprint for Action on Breastfeeding* (2000), <http://www.womenshealth.gov/archive/breastfeeding/programs/blueprints/bluprntbk2.pdf>; United Nations Children's Fund, World Health Organization, *Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding* (1990) (Adopted by U.S. at WHO/UNICEF policymakers' meeting *Breastfeeding in the 1990s: A Global Initiative*, co-sponsored by the United States Agency for International Development and the Swedish International Development Authority (SIDA), in Florence, Italy), <http://www.unicef.org/programme/breastfeeding/innocenti.htm>.

<sup>6</sup> *Surgeon General's Call to Action, supra*, at v.

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HAWAII  
STATE  
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ON THE  
STATUS  
OF  
WOMEN



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January 30, 2012

LATE

**Testimony in Support of HB 2228**

**To:** Chair Karl Rhoads  
Vice Chair Kyle T. Yamashita  
Members of the House Committee on Labor and Public Employment

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

**Re:** Testimony in Support of HB 2228, 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.<sup>1</sup> 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.<sup>2</sup>

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 and respectfully request that this Committee pass this important piece of legislation.

Thank you for this opportunity,

Catherine Betts, Esq.

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

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



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January 30, 2012

LATE

**Testimony in Support: HB 2228**

**To:** Chair Karl Rhoads, Vice Chair Kyle Yamashita, and Members of the House Committee on Labor and Public Employment

**From:** Katie Polidoro, Director of Government Relations & Public Affairs

**Re:** Testimony in Support of HB 2228, Relating to Breastfeeding In the Workplace

Thank you for hearing HB 2228. Planned Parenthood of Hawaii (PPHI) strongly supports HB 2228, which would require 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.

Many new mothers are faced with difficult choices when returning to the workplace, including the ability to continue breastfeeding. 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.<sup>1</sup> Mothers also benefit from breastfeeding, as it lowers the risk of breast and ovarian cancer, type 2 diabetes, and reduces post partum depression.<sup>2</sup>

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.<sup>3</sup> 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. PPHI believes 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.

PPHI believes in providing all individuals with the information and tools they need to raise healthy and strong families. Accordingly, we support HB 2228 and we ask this Committee to pass it. Thank you.

<sup>1</sup> 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>

<sup>2</sup> Id.

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

**yamashita2 ----Aulii**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 30, 2012 11:54 PM  
**To:** LABtestimony  
**Cc:** annfreed@hotmail.com  
**Subject:** Testimony for HB2228 on 1/31/2012 9:00:00 AM  
**Attachments:** Testimony Brst Feed HB2228

LATE

Testimony for LAB 1/31/2012 9:00:00 AM HB2228

Conference room: 309  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Ann S Freed  
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Submitted on: 1/30/2012

Comments: