



HAWAI‘I CIVIL RIGHTS COMMISSION

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February 9, 2012
9:30 pm
Conference room 016

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

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 2573

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai‘i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

S.B. 2573 would amend H.R.S. §378-10 to require employers with 20 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 require an employer to provide 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 requirements, which took effect in 2010,

apply to employers with 50 or more employees. FLSA protections for breastfeeding fall under the jurisdiction of the U.S. Department of Labor (DOL) Wage and Hour Division, and not the HCRC's federal counterpart, the U.S. Equal Employment Opportunity Commission (EEOC).

The HCRC supports the intent of S.B. 2573, as it has consistently supported proposals requiring or encouraging employers to allow and make accommodation for breast feeding and expression of breast milk. However, the HCRC objects to the placement of this new regulation under the enforcement jurisdiction of the HCRC. While this is good policy, it is unlike the civil rights protections against discrimination in the laws that the HCRC enforces. Again, it is worth noting that the federal FLSA is not enforced by our counterpart, the EEOC, but by the US DOL Wage and Hour Division.

More to the point, the proposed breastfeeding protections are health and safety regulations, rather than civil rights protections within the enforcement mandate of the HCRC. Specifically, the HCRC does not have the expertise or facilities to determine whether a location is "clean".

Accordingly, the HCRC strongly urges the Legislature to move the current breast feeding protections in H.R.S. §378-10 and any new regulation enacted, out of H.R.S. chapter 378, part I, and HCRC jurisdiction. The breast feeding law should be placed under the jurisdiction of an agency that has expertise and facilities required to effectively enforce the law, or under the jurisdiction of the DLIR Wage Standards Division, which is the state counterpart to the U.S. DOL Wage and Hour Division. Finally, there are costs associated with enactment of laws that are a mish-mash of dissimilar protections, in this case a regulation that is not a civil rights protection, without a conceptual framework, and

putting them under the jurisdiction of the HCRC. The HCRC has lost over 25% of its general funded full time permanent enforcement staff (investigators and attorneys), while the legislature continues to add protected bases to the HCRC's enforcement jurisdiction and responsibility. It takes enforcement resources to plan and prepare to enforce new protections, especially novel ones, regardless of the number of complaints that are actually filed. Enforcement resources spent on these newly assigned responsibilities directly affect the investigation, conciliation, and prosecution of all cases involving claims of discrimination involving race, sex, disability, etc.

For these reasons, the HCRC urges this Committee to amend S.B. 2573 to take the existing and proposed breastfeeding protections out of H.R.S. chapter 378, part I, and HCRC jurisdiction, and place this regulation under the DLIR Wage Standards Division or any other appropriate agency that has expertise in employee health and safety. Thank you for considering the HCRC's concerns.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU
ADRIENNE KING
CARMILLE LIM
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February 8, 2012

Testimony in Support of SB 2573

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 SB 2573, 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 one's child. Many employers do not recognize the many economic benefits that follow when female employees are allowed to continue breastfeeding, including 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 SB 2573 and respectfully request that this Committee pass this important piece of legislation. Furthermore, as amended in the companion bill, HB 2228, a civil fine of \$50.00 for each violation is reasonable.

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).



SB 2573
Relating to Breastfeeding in the Workplace
Committee on Judiciary and Labor

February 9, 2012

9:30 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS SB 2573**, 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 SB 2573. Mahalo for the opportunity to testify on this important measure.



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Thursday, February 9, 2012, 9:30 am
Place: Room 016
Re: Testimony of the ACLU of Hawaii in strong support of S.B. 2573, Relating to the Breastfeeding in the Workplace

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

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.¹ 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."² 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.³ 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,

¹ 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").

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

³ *Id.*

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Hon. Sen. Hee, Chair, JDL Committee
and Members Thereof
February 9, 2012
Page 2 of 2

including women's ability to continue breastfeeding upon return to the paid workforce.⁴ 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 1990,⁵ 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."⁶

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

⁴ 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").

⁵ 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>.

⁶ *Surgeon General's Call to Action*, *supra*, at v.

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

Testimony by
Hawaii Government Employees Association
February 9, 2012

S.B. 2573 – RELATING TO
BREASTFEEDING IN
THE WORKPLACE

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2573, 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 S.B. 2573.

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director



Breastfeeding Hawaii

P.O. Box 89649
Honolulu, HI 96830

February 8th, 2012

To:

Sen. CLAYTON HEE, Chair, Judiciary Committee
Sen. Maile Shimabukuro, Vice Chair

From:

Sylvia R. Pager, MD, MS, FAAP, FABM, IBCLC
Pediatrics, Breastfeeding Medicine
Assoc. Clin. Prof. Dept. of Pediatrics, JABSOM
Breastfeeding Hawaii treasurer.
AAP Hawaii Chapter Breastfeeding Coordinator.

Re SB 2573, pertaining to Breastfeeding in the Workplace.

Late testimony

In Support

I commend the legislature for considering this bill, as it is important for safeguarding the rights of employees to provide the best for their infants in our state.

In Hawaii, over 90% of our new mothers (many more than the national average) intend to breastfeed their babies. The American Academy of Pediatrics and many other similar professional organizations recommend that infants receive no feeding other than breastmilk in the first 6 months of life. Sadly, by 6 months after birth, only about 16% of our infants are exclusively breastfed, little more than the national average of 13%.

Addressing this public health problem, the Surgeon General, 1 year ago, issued a Call To Action in Support of Breastfeeding. Many factors were recognized to be involved - hospitals' and healthcare practices, family and societal attitudes, and support in the workplace, to name a few.

The benefits of breastfeeding are well known; less well known are the risks of not breastfeeding. The health of the infant and mother, the environment, and of business' "bottom line" are all impacted. In April 2010, Melissa Bartick published in the journal Pediatrics a study showing that \$13 billion dollars a year could be saved in this country if 90% of mothers breastfed their infants for the recommended 6 months. A proportionate share of this \$13 billion could be saved here in Hawaii.

In order to maintain an adequate breastmilk supply, the breasts must be emptied effectively on a very regular basis, most frequently in the early months, then less so as the infant's rate of growth slows down, and later, after 6 months, starts eating other foods in addition to breastmilk. In fact, if the breast is not emptied frequently, a

chemical message is sent to the milk production system to slow down, or stop production altogether – a most effective feedback system. Then, not only is the milk supply compromised, but pain and suffering ensue. Engorgement of the breast is extremely painful, and often leads to mastitis, an incapacitating complication that frequently involves a staph infection, and sometimes requires surgery. (Imagine not having access to the bathroom when it's time to go!)

We would like to suggest that besides requiring a “private place” (not a bathroom) for pumping milk, and that an appropriate notice be posted, sufficient break time be mandated. These requirements are in general necessary for a brief period in the working life of a good employee – 3-6 months, only – and reduced absenteeism and employee turnover, improved productivity, and greater employee loyalty have all been shown in work environments where such benefits are extended. Of course healthcare costs, and perhaps insurance premiums would be lower.

We would also like to see this bill made mandatory for all employers, irrespective of the number of employees. Many of our small businesses in Hawaii employ less than 20, and those employees do not deserve any less protection. We also recommend that the penalty be increased to \$250. And lastly, the word “reasonable” effort employed in the original wording appears to provide a big loophole.

Finally, while this is not my area of expertise, I would appreciate clarification on the positioning of this law under Civil Rights, rather than the Fair Labor area, as in the federal law of 2010.

I thank you for the opportunity to testify, and encourage you to pass the bill out of committee with the suggested amendments.

Sincerely, with Aloha,

Sylvia R. Pager.

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