



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 25, 2013

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

Date: Tuesday, February 26, 2013
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 532 Relating to Breastfeeding in the Workplace

I. OVERVIEW OF PROPOSED LEGISLATION

The DLIR recognizes the inherent, inalienable right that exists in natural law for mothers to express breast milk and to provide for their keiki and that this same right exists for access to breast milk for keiki. Therefore, the Department believes Hawaii's labor laws should protect a mother's ability to express breast milk at the workplace in order to facilitate the maintenance of a milk supply and breastfeeding.

The proposal as introduced requires employers to provide adequate place and time at the workplace to express breast milk within the first year of giving birth. The DLIR supports the intent of this measure, but respectfully requests consideration of the attached proposed SD1. The attached proposal provides a broader protection than in the introduced proposal and provides for a timely private right of action via an injunction or class action.

II. CURRENT LAW

Expressing breast milk during a break or meal period is a protected activity under Part I, Section 378-10, Hawaii Revised Statutes. (HRS). Hawaii law does not require a break or meal period.

III. COMMENTS ON THE SENATE BILL

This measure emphasizes how important the mother-child connection in the

development and success of Hawaii keiki. Requiring employers to provide the opportunity to express milk benefits our community and will assist in some of the challenges working mothers face.

The proposed SD1 creates a new part in the Employment Practices Law, Chapter 378 (HRS), which requires employers to provide adequate place and time at the workplace to express breast milk. The suggested language is similar to the federal protections and the federal experience will inform state level enforcement. The proposed SD1 provides a private right of action for enforcement and damages. It also provides penalty of \$1,000 per violation to be deposited into the general fund.

The proposed SD1 moves the breastfeeding provision from the Wage and Hour Law, Chapter 387, HRS, to a new part in the Employment Practices Law, Chapter 378, HRS, which significantly expands the range of protected nursing mothers and does not limit the protection to those subject to the overtime rules like the federal provision.

At the federal level, under the Patient Protection and Affordable Care Act (P.L. 11-148) and Amendments to Section 7 of the Federal Labor Standards Act, (FLSA), only employers and employees subject to FLSA would be subject to the law. This excludes many professional, managerial or supervisory employees who would be considered exempt. It also excludes other types of workers who are exempt from FLSA like domestic workers.

By providing a private right of action in an appropriate court, a nursing mother can get the necessary relief granted as needed on a case by case basis, with opportunity to recover attorney fees. Whether the action is in small claims or circuit court to obtain a simple injunction or bring a class action, this new private action provides opportunity for nursing mothers to identify the damages and relief they seek.

A BILL FOR AN ACT

RELATING TO BREASTFEEDING IN THE WORKPLACE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that expressing
2 breast milk and having access to breast milk is an inherent,
3 inalienable right that exists in natural law and that Hawaii's
4 labor laws should protect a mother's ability to express breast
5 milk at the workplace.

6 The legislature further finds that breastfeeding provides
7 important health benefits to both mother and child. However,
8 only one in five children in Hawaii receive the minimum six
9 months of exclusive breastfeeding recommended by the American
10 Academy of Pediatrics and the World Health Organization to
11 reduce risk of obesity, diabetes, infectious disease, asthma,
12 allergies, and certain childhood cancers. The legislature also
13 finds that mother-child separation due to work presents a
14 serious challenge to breastfeeding when workplaces do not
15 accommodate the needs of breastfeeding employees. According to
16 the Hawaii Pregnancy Risk Assessment Monitoring System, one in

1 five women stop breastfeeding because they need to return to
2 work or school. Without break time or a location to express
3 milk, mothers may find their milk supply dwindling and give up
4 breastfeeding.

5 The purpose of this Act is to require employers to provide
6 a reasonable break time and a location for breastfeeding
7 employees to express milk in order to maintain milk supply and
8 continue breastfeeding.

9 SECTION 2. Chapter 378, Hawaii Revised Statutes, is
10 amended by adding a new Part to be appropriately designated and
11 to read as follows:

12 "Part ____: Opportunity to Express Milk

13 **§378-A Definitions.** As used in this part:

14 "Employee" means a person who performs a service for wages
15 or other remuneration under a contract for hire, written or
16 oral, express or implied. Employee includes a person employed by
17 the State or a political subdivision of the State.

18 "Employer" means a person who has one or more employees.
19 Employer includes an agent of an employer or of the State or a
20 political subdivision thereof but shall not include the United
21 States.

1 "Person" means an individual, sole proprietorship,
2 partnership, corporation, association, or any other legal
3 entity.

4 §378-B Opportunity to express milk. (a) An employer
5 shall provide:

6 (1) Reasonable break time for an employee to express milk
7 for her nursing child each time the employee has a
8 need to express breast milk; and

9 (2) A location, other than the bathroom, that is shielded
10 from view, and free from intrusion from coworkers and
11 the public, which may be used by an employee to
12 express breast milk.

13 (b) Every employer covered by this section shall post a
14 notice in a conspicuous place accessible to employees, and use
15 other appropriate means to keep the employer's employees
16 informed of the protections and obligations under this part.

17 (c) An employer that employs fewer than twenty employees
18 shall be exempt from the requirements of subsection (a) only if
19 such requirement would impose an undue hardship by causing the
20 employer significant difficulty or expense when considered in
21 relation to the size, financial resources, nature, or structure
22 of the employer's business.

1 §378-C Civil actions for injunctive relief or damages.

2 (a) A person who alleges a violation of this part may bring a
3 civil action for appropriate injunctive relief, or actual
4 damages, or both within two years after the occurrence of the
5 alleged violation of this part.

6 (b) An action commenced pursuant to subsection (a) may be
7 brought in the appropriate court for the circuit where the
8 alleged violation occurred, where the complainant resides, or
9 where the person against whom the civil complaint is filed
10 resides or has a principal place of business.

11 (c) As used in subsection (a), "damages" means damages for
12 injury or loss caused by each violation of this part, including
13 reasonable attorney fees.

14 (d) An employer who violates this part shall be fined
15 \$1,000 for each violation. A civil fine that is ordered
16 pursuant to this section shall be deposited with the director of
17 finance to the credit of the state general fund."

18 SECTION 3. Section 378-10, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§378-10] Breastfeeding. No employer shall prohibit an~~
21 ~~employee from expressing breastmilk during any meal period or~~

1 ~~other break period required by law to be provided by the~~
2 ~~employer or required by collective bargaining agreement."]~~

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken.

5 SECTION 5. This Act shall take effect upon its approval.

6

INTRODUCED BY: _____

Report Title:

Breastfeeding; Workplace Time and Place

Description:

Requires employers to provide reasonable time and a location for breastfeeding employees to express breast milk in privacy; requires employers to post a notice; and establishes a civil fine and a private right of action.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Tuesday, February 26, 2013, 10:00 am
Place: Room 016
Re: Testimony of the ACLU of Hawaii in strong support of S.B. 532, 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

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.*

American Civil Liberties Union of Hawai'i
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Hon. Sen. Hee, Chair, JDL Committee
and Members Thereof
February 26, 2013
Page 2 of 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, to promote breastfeeding, 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.

Sincerely,

Laurie A. Temple
Staff Attorney and Legislative Program Director

The ACLU has been the nation's guardian of liberty since 1925 and the ACLU of Hawaii since 1965. The ACLU works daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our

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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Hon. Sen. Hee, Chair, JDL Committee
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Page 3 of 3

constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

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To: Honorable Senator Clayton Hee, Chair
Honorable Senator Maile Shimabukuro, Vice Chair
Members Senate Judiciary and Labor Committee

From: Deb Trankel, RNC, BSN, CLC, IBCLC
President, Breastfeeding Hawaii

Date of Hearing and Time: Tuesday, February 26, 2013 10am
Conference Room 016, State
Capitol

RE: Support for SB 532 Breastfeeding in the Workplace

Breastfeeding Hawaii is a not for profit State organization of community individuals, whose mission is to promote, protect and support breastfeeding in the State of Hawaii. We do this through the organization of community efforts, outreach, policy change, education, legislation and advocacy.

On behalf of Breastfeeding Hawaii, I would like to express our support of **SB 532 Breastfeeding in the Workplace** and humbly submit the attached **SB 532SD1** version.

In summary, the changes we are proposing are the following:

1. A new part to The Employment Practices Law, Chapter 378 (HRS) which requires employers to provide time and a clean, private place (not the restroom) to express breastmilk
2. Change the laws' jurisdiction over businesses to those with 20 or more employees
3. Violation of the above part of this law shall be \$1000 for

each

violation.

4. Definitions of employer, employee and person

According to a University of Hawaii, School of Nursing research paper, it was found that 75% of businesses in the State of Hawaii have 20 or more employees. Therefore changing the number of employees would affect more employees with this law.

In our work on community advocacy, we have been involved with providing consultation, support and education to businesses and working breastfeeding women and their families, on how to support women when they return to work and improve worksite lactation accommodations. We've used documents, research and educational materials from the Federal government such as "The Business Case for Breastfeeding" developed by the Health and Human Services and Office of Women's Health. Also, we've utilized additional information from the 2011 Surgeon General's Call to Action to Support Breastfeeding in communities in the workplace.

From the above named resources we've identified that employers that provided lactation accommodations which allowed a breastfeeding woman employee to have regular breaks to pump her milk, and pump in a clean, private place:

1. realized lower absenteeism (formula feeding mothers have 3 times as many one day absences form work to care for sick babies)
2. lower health care costs
3. higher employee morale
4. decrease turnover
5. higher productivity

For every dollar spent on providing this accommodation, employers realized \$3 saving. Breastfeeding is the one thing a mother can do that will have a major impact on her health, the health of her child and the bottom line for her employer.

Therefore, Breastfeeding Hawaii strongly encourages the Judiciary and Labor Committee to favorable pass out of your Committee our proposed SB 532 SD1 version of this bill .

Thank you for this opportunity to provide testimony on this important issue for employed breastfeeding mothers and their infants.

Deb Trankel, RNC, BSN, CLC, IBCLC
President, Breastfeeding Hawaii



1350 S. King Street • Suite 309 • Honolulu, Hawaii 96814 • www.pphi.org • Phone: 808-589-1156 • Fax: 808-589-1404

February 25, 2013

Testimony in Support: SB 532

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

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

Re: Testimony in Support of HB 532, Relating to Breastfeeding in the Workplace

Thank you for hearing HB SB 532. Planned Parenthood of Hawaii (PPHI) strongly supports this bill, 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.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

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.³

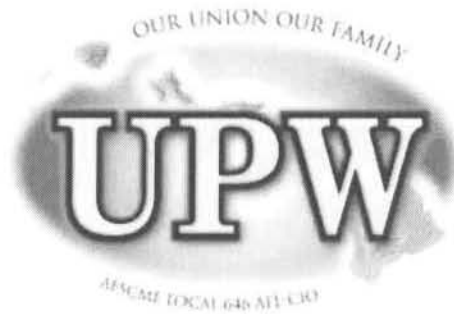
We support the amendments proposed by Breastfeeding Hawaii. In particular, we urge the Committee to include an amendment that would reduce the size of employers who may be exempt from this law to those who employ 20 or fewer employees.

PPHI believes in providing all individuals with the information and tools they need to raise healthy and strong families. Accordingly, we support SB 532 and we ask this Committee to pass it. 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)



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Seventh Legislature
Regular Session of 2013

COMMITTEE ON JUDICIARY AND LABOR

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

DATE OF HEARING: Tuesday, February 26, 2013
TIME OF HEARING: 10:00 AM
PLACE OF HEARING: Conference Room 016

TESTIMONY ON SB532 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 14,000 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.

The UPW supports SB532 that would require certain employers to provide reasonable time and a clean location for breastfeeding employees to express breast milk in privacy.

This measure would support working mothers and their babies, as breast milk has been linked to better mother and infant health. Formula-fed babies are at a greater risk of necrotizing enterocolitis, lower respiratory infections, asthma, obesity, and type 2 diabetes, among other illnesses (per womenshealth.gov). Mothers who breastfeed also tend to take less sick leave, as their babies are ill less often.

For the reasons stated above, we ask that the Committee pass this measure.

Thank you for the opportunity to testify.



To: Honorable Senator Clayton Hee, Chair
Honorable Senator Maile Shimabukuro, Vice Chair
Members Senate Judiciary and Labor Committee

From: Deb Trankel, RNC, BSN, CLC, IBCLC
President, Breastfeeding Hawaii

Date of Hearing and Time: Tuesday, February 26, 2013 10am
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On behalf of Breastfeeding Hawaii, I would like to express our support of **SB 532 Breastfeeding in the Workplace** and humbly submit the **attached SB 532SD1 version.**

In summary, the changes we are proposing are the following:

1. A new part to The Employment Practices Law, Chapter 378 (HRS) which requires employers to provide time and a clean, private place (not the restroom) to express breastmilk
2. Change the laws' jurisdiction over businesses to those with 20 or more employees
3. Violation of the above part of this law shall be \$1000 for

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4. Definitions of employer, employee and person

According to a University of Hawaii, School of Nursing research paper, it was found that 75% of businesses in the State of Hawaii have 20 or more employees. Therefore changing the number of employees would affect more employees with this law.

In our work on community advocacy, we have been involved with providing consultation, support and education to businesses and working breastfeeding women and their families, on how to support women when they return to work and improve worksite lactation accommodations. We've used documents, research and educational materials from the Federal government such as "The Business Case for Breastfeeding" developed by the Health and Human Services and Office of Women's Health. Also, we've utilized additional information from the 2011 Surgeon General's Call to Action to Support Breastfeeding in communities in the workplace.

From the above named resources we've identified that employers that provided lactation accommodations which allowed a breastfeeding woman employee to have regular breaks to pump her milk, and pump in a clean, private place:

1. realized lower absenteeism (formula feeding mothers have 3 times as many one day absences from work to care for sick babies)
2. lower health care costs
3. higher employee morale
4. decrease turnover
5. higher productivity

For every dollar spent on providing this accommodation, employers realized \$3 saving. Breastfeeding is the one thing a mother can do that will have a major impact on her health, the health of her child and the bottom line for her employer.

Therefore, Breastfeeding Hawaii strongly encourages the Judiciary and Labor Committee to favorably pass out of your Committee our proposed SB 532 SD1 version of this bill .

Thank you for this opportunity to provide testimony on this important issue for employed breastfeeding mothers and their infants.

Deb Trankel, RNC, BSN, CLC, IBCLC
President, Breastfeeding Hawaii

A BILL FOR AN ACT

RELATING TO BREASTFEEDING IN THE WORKPLACE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that breastfeeding provides important health benefits to both mother and child. However, only one in five children in Hawaii receive the minimum six months of exclusive breastfeeding recommended by the American Academy of Pediatrics and the World Health Organization to reduce risk of obesity, diabetes, infectious disease, asthma, allergies, and certain childhood cancers. The legislature also finds that mother-child separation due to work presents a serious challenge to breastfeeding when workplaces do not accommodate the needs of breastfeeding employees. According to the Hawaii Pregnancy Risk Assessment Monitoring System, one in five women stop breastfeeding because they need to return to work or school. Without break time or a location to express milk, mothers may find their milk supply dwindling and give up breastfeeding.

According to the U.S. Department of Health and Human Services (HRSA) and their toolkit entitled "The Business Case for Breastfeeding", "companies successful at retaining valued employees after childbirth find that two components can make the difference: (1) providing dedicated space for breastfeeding employees to express milk in privacy, and (2) providing worksite lactation support. The payoff is significant: more satisfied, loyal employees and cost savings to the business. These savings are seen in such areas as: (1) retention of experienced employees, (2) reduction in sick time taken by both moms and dads for children's illnesses, and (3) lower health care and insurance costs. Supporting breastfeeding employees contributes to the company's return on investment" to support breastfeeding employees when they return to work.

The purpose of this Act is to require employers to provide a reasonable break time and a location for breastfeeding employees to express milk in order to maintain milk supply and continue breastfeeding.

SECTION 2. Chapter 378, Hawaii Revised Statutes, is amended by adding a new Part to be appropriately designated and to read as follows:

"Part _____ : Opportunity to Express Milk

§378-A Definitions. As used in this part:

"Employee" means a person who performs a service for wages or

other remuneration under a contract for hire, written or oral, express or implied. Employee includes a person employed by the State or a political subdivision of the State.

"Employer" means a person who has one or more employees. Employer includes an agent of an employer or of the State or a political subdivision thereof but shall not include the United States.

"Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

§378-B Opportunity to express milk. (a) An employer shall provide:

- (1) Reasonable break time for an employee to express milk for her breastfeeding child each time the employee has a need to express breast milk; and
- (2) A location, other than the 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.

(b) Every employer covered by this section shall post a notice in a conspicuous place accessible to employees and use other appropriate means to keep the employer's employees informed of the protections and obligations under this part.

(c) An employer that employs fewer than twenty employees

shall be exempt from the requirements of subsection (a) only if such requirement would impose an 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.

(d) An employer who violates this part shall be fined \$1,000 for each violation. A civil fine that is ordered pursuant to this section shall be deposited with the director of finance to the credit of the state general fund."

SECTION 3. Section 378-10, Hawaii Revised Statutes, is repealed.

~~["~~§378-10~~ **Breastfeeding.** No employer shall prohibit an employee from expressing breastmilk during any meal period or other break-period required by law to be provided by the employer or required by collective bargaining agreement."]~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Breastfeeding; Workplace Time and Place

Description:

Requires employers to provide reasonable time and a location for

breastfeeding employees to express breast milk in privacy. Requires employers to post a notice. Establishes a civil fine and a private right of action.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 25, 2013 10:04 AM
To: JDLTestimony
Cc: sylpager@hawaii.edu
Subject: Submitted testimony for SB532 on Feb 26, 2013 10:00AM
Attachments: SB532SD1s-2.25.13.docx

SB532

Submitted on: 2/25/2013

Testimony for JDL on Feb 26, 2013 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Sylvia R. Pager, MD, MS, IBCLC	American Academy of Pediatrics, Hawaii Chapter	Support	Yes

Comments: February 25, 2013 To: The Honorable Clayton Hee, Chair, The Honorable Maile Shimabukuro, Vice Chair, and Members of the House Committee on Judiciary Date: Tuesday, February 26, 2013 Time: 10:00 a.m. Place: Conference Room 016, State Capitol From: Sylvia R. Pager AAP Hawaii Chapter Breastfeeding Coordinator In Support. Re: S.B. No. 532 Relating to Breastfeeding in the Workplace Hawaii's mothers, most of whom must return to work too soon after their babies are born, deserve protection of their need to prolong their ability to breastfeed their infants. Breasts must be regularly emptied in order to continue to make more milk. This emptying should be done in privacy, not in a bathroom, and often enough to enable milk production to continue. Longer is better. Too few of our infants receive the recommended 6 months of only breastmilk feedings, which reduces risks of many health problems for the infants, their mothers, and society in general, via cost savings. Future generations, too, will benefit. Our laws should protect a mother's ability to express breastmilk at the workplace, (or directly feed the infant, should someone bring her or him to her workplace). While concerns of extra costs to business are important to remember, It should be noted that numerous studies have documented cost savings to businesses which have supported mothers in their efforts - and it is not easy - to provide the best for their infants by breastfeeding them, even after returning to work. This bill represents a refinement and improvement of a similar provision in the 2010 Affordable Care Act – "Obamacare" – inclusion of which then reflected the recognized importance of the benefit to public health of enhanced breastfeeding of our children. So we urge you to pass this bill on for the sake of our mothers and babies. We thank you for the opportunity to testify. Sylvia Pager, MD, MS, FAAP, FABM, IBCLC

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

A BILL FOR AN ACT

RELATING TO BREASTFEEDING IN THE WORKPLACE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that breastfeeding provides important health benefits to both mother and child, as well as to the community at large. Businesses, too, benefit, with reduced costly absenteeism, improved loyalty, and reduced health care costs; all these provide a demonstrated return on often minimal investment. However, only one in five children in Hawaii are fed only breast milk for the first six months of life, as recommended by the American Academy of Pediatrics and the World Health Organization, to reduce the risk of infections, allergies, asthma, certain childhood cancers, obesity, and later, diabetes, and cardiovascular diseases. The legislature also finds that mother-child separation due to work presents a serious challenge to breastfeeding when workplaces do not accommodate the needs of breastfeeding employees. According to the Hawaii Pregnancy Risk Assessment Monitoring System, one in five women

stop breastfeeding because they need to return to work or school. Without break time and a location to regularly express milk, mothers may find their milk supply dwindling, and give up breastfeeding. The purpose of this Act is to require employers to provide a reasonable break time and a location for breastfeeding employees to express milk in order to maintain milk supply and continue breastfeeding.

SECTION 2. Chapter 378, Hawaii Revised Statutes, is amended by adding a new Part to be appropriately designated and to read as follows:

"Part _____ : Opportunity to Express Milk

§378-A Definitions. As used in this part:

"Employee" means a person who performs a service for wages or other remuneration under a contract for hire, written or oral, express or implied. Employee includes a person employed by the State or a political subdivision of the State.

"Employer" means a person who has one or more employees. Employer includes an agent of an employer or of the State or a political subdivision thereof but shall not include the United States.

"Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

§378-B Opportunity to express milk. (a) An employer shall provide:

(1) Reasonable break time for an employee to express milk for her breastfeeding child each time the employee has a need to express breast milk; and

(2) A location, other than the 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. t

(b) Every employer covered by this section shall post a notice in a conspicuous place accessible to employees and use other appropriate means to keep the employer's employees informed of the protections and obligations under this part.

(c) An employer that employs fewer than twenty employees shall be exempt from the requirements of subsection (a) only if such requirement would impose an 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.

(d) An employer who violates this part shall be fined \$1,000 for each violation. A civil fine that is ordered pursuant to this section shall be deposited with the director of finance to the credit of the state general fund."

SECTION 3. Section 378-10, Hawaii Revised Statutes, is repealed.

~~["§378-10 **Breastfeeding.** No employer shall prohibit an employee from expressing breastmilk during any meal period or other break period required by law to be provided by the employer or required by collective bargaining agreement."]~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____
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Report Title:

Breastfeeding; Workplace Time and Place

Description:

Requires employers to provide reasonable time and a location for breastfeeding employees to express breast milk in privacy. Requires employers to post a notice. Establishes a civil fine and a private right of action.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



To: Honorable Senator Clayton Hee, Chair
Honorable Senator Maile Shimabukuro, Vice Chair
Members Senate Judiciary and Labor Committee

From: Deb Trankel, RNC, BSN, CLC, IBCLC
President, Breastfeeding Hawaii

Date of Hearing and Time: Tuesday, February 26, 2013 10am
Conference Room 016, State
Capitol

RE: Support for SB 532 Breastfeeding in the Workplace

Breastfeeding Hawaii is a not for profit State organization of community individuals, whose mission is to promote, protect and support breastfeeding in the State of Hawaii. We do this through the organization of community efforts, outreach, policy change, education, legislation and advocacy.

On behalf of Breastfeeding Hawaii, I would like to express our support of **SB 532 Breastfeeding in the Workplace** and **humbly submit the attached SB 532SD1 version.**

In summary, the changes we are proposing are the following:

1. **A new part to The Employment Practices Law, Chapter 378 (HRS) which requires employers to provide time and a clean, private place (not the restroom) to express breastmilk**
2. **Change the laws' jurisdiction over businesses to those with 20 or more employees**
3. **Violation of the above part of this law shall be \$1000 for**

each

violation.

4. Definitions of employer, employee and person

According to a University of Hawaii, School of Nursing research paper, it was found that 75% of businesses in the State of Hawaii have 20 or more employees. Therefore changing the number of employees would affect more employees with this law.

In our work on community advocacy, we have been involved with providing consultation, support and education to businesses and working breastfeeding women and their families, on how to support women when they return to work and improve worksite lactation accommodations. We've used documents, research and educational materials from the Federal government such as "The Business Case for Breastfeeding" developed by the Health and Human Services and Office of Women's Health. Also, we've utilized additional information from the 2011 Surgeon General's Call to Action to Support Breastfeeding in communities in the workplace.

From the above named resources we've identified that employers that provided lactation accommodations which allowed a breastfeeding woman employee to have regular breaks to pump her milk, and pump in a clean, private place:

1. realized lower absenteeism (formula feeding mothers have 3 times as many one day absences form work to care for sick babies)
2. lower health care costs
3. higher employee morale
4. decrease turnover
5. higher productivity

For every dollar spent on providing this accommodation, employers realized \$3 saving. Breastfeeding is the one thing a mother can do that will have a major impact on her health, the health of her child and the bottom line for her employer.

Therefore, Breastfeeding Hawaii strongly encourages the Judiciary and Labor Committee to favorable pass out of your Committee our proposed SB 532 SD1 version of this bill .

Thank you for this opportunity to provide testimony on this important issue for employed breastfeeding mothers and their infants.

Deb Trankel, RNC, BSN, CLC, IBCLC
President, Breastfeeding Hawaii

A BILL FOR AN ACT

RELATING TO BREASTFEEDING IN THE WORKPLACE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that breastfeeding provides important health benefits to both mother and child. However, only one in five children in Hawaii receive the minimum six months of exclusive breastfeeding recommended by the American Academy of Pediatrics and the World Health Organization to reduce risk of obesity, diabetes, infectious disease, asthma, allergies, and certain childhood cancers. The legislature also finds that mother-child separation due to work presents a serious challenge to breastfeeding when workplaces do not accommodate the needs of breastfeeding employees. According to the Hawaii Pregnancy Risk Assessment Monitoring System, one in five women stop breastfeeding because they need to return to work or school. Without break time or a location to express milk, mothers may find their milk supply dwindling and give up breastfeeding.

According to the U.S. Department of Health and Human Services (HRSA) and their toolkit entitled "The Business Case for Breastfeeding", "companies successful at retaining valued employees after childbirth find that two components can make the difference: (1) providing dedicated space for breastfeeding employees to express milk in privacy, and (2) providing worksite lactation support. The payoff is significant: more satisfied, loyal employees and cost savings to the business. These savings are seen in such areas as: (1) retention of experienced employees, (2) reduction in sick time taken by both moms and dads for children's illnesses, and (3) lower health care and insurance costs. Supporting breastfeeding employees contributes to the company's return on investment" to support breastfeeding employees when they return to work.

The purpose of this Act is to require employers to provide a reasonable break time and a location for breastfeeding employees to express milk in order to maintain milk supply and continue breastfeeding.

SECTION 2. Chapter 378, Hawaii Revised Statutes, is amended by adding a new Part to be appropriately designated and to read as follows:

"Part _____ : Opportunity to Express Milk

§378-A Definitions. As used in this part:

"Employee" means a person who performs a service for wages or

other remuneration under a contract for hire, written or oral, express or implied. Employee includes a person employed by the State or a political subdivision of the State.

"Employer" means a person who has one or more employees. Employer includes an agent of an employer or of the State or a political subdivision thereof but shall not include the United States.

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§378-B Opportunity to express milk. (a) An employer shall provide:

- (1) Reasonable break time for an employee to express milk for her breastfeeding child each time the employee has a need to express breast milk; and
- (2) A location, other than the 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.

(b) Every employer covered by this section shall post a notice in a conspicuous place accessible to employees and use other appropriate means to keep the employer's employees informed of the protections and obligations under this part.

(c) An employer that employs fewer than twenty employees

shall be exempt from the requirements of subsection (a) only if such requirement would impose an 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.

(d) An employer who violates this part shall be fined \$1,000 for each violation. A civil fine that is ordered pursuant to this section shall be deposited with the director of finance to the credit of the state general fund."

SECTION 3. Section 378-10, Hawaii Revised Statutes, is repealed.

~~["§378-10] Breastfeeding. No employer shall prohibit an employee from expressing breastmilk during any meal period or other break-period required by law to be provided by the employer or required by collective bargaining agreement."~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

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Report Title:

Breastfeeding; Workplace Time and Place

Description:

Requires employers to provide reasonable time and a location for

breastfeeding employees to express breast milk in privacy. Requires employers to post a notice. Establishes a civil fine and a private right of action.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

February 24, 2013

Date: February 26, 2013 Tuesday

Time: 10am

Place: Conference Room 016, State Capitol, 415 South Beretania Street

RE: TESTIMONY IN STRONG SUPPORT OF **SB532** RELATING TO BREASTFEEDING IN THE WORKPLACE

Requires certain employers to provide reasonable time and a clean location for breastfeeding employees to express breast milk in privacy. Requires covered employers to post a notice. Establishes a civil fine.

My name is Katie Caldwell and I am a resident of Honolulu, HI. Though I am not a Mother, I believe this bill is massively important in recognizing the many difficulties that women still face in a work environment. These difficulties are often confounded or completely created by "higher-ups" that do not acknowledge that women carry with them an enormous gift *and* burden...being a Mother. Fathers are not socially, physically, or intellectually held to this extremely difficult standard. Creating an environment that is unwelcoming, uncomfortable, or in some situations, even hostile for breastfeeding women is a ridiculous violation of human rights. Women are under enormous pressure to leave their home life, at home, while at work. This masculinized viewpoint is preposterous and altogether unjust. Women are capable of both completing their workload *and* breastfeeding. In our patriarchal society's viewpoint, we are taught that breastfeeding is an act that should be done in secret. Women are judged for being "inappropriate" if they attempt to feed their child in public. Under our existing masculinized society, both men *and* women receive the message that breasts are, most importantly, for male pleasure. We have numerous devices to make them larger, firmer, and more attractive to all men. They are readily featured in magazines, billboards, movies, tv shows, the internet...everywhere you turn there is a woman baring her breasts for the pleasure or approval of a man. But when a woman openly breastfeeds, she is eschewing this notion; she is stating that breasts are for feeding children, not simply

for the attention of men. This directly offends many, which aptly keeps women in their place: as a thing to be admired instead of respected. Breastfeeding is an essential piece in Mother/child bonding, for inexpensive and natural nutrition for a child, and has been touted as far superior to formula in terms of child health and development. We should no longer shame our women for this...we should encourage and celebrate it. It is for these reasons that I fully support this bill. Please give our Mothers a safe, clean place to breastfeed or pump milk without judgment or condemnation.

Thank you kindly for taking the time to hear this hear this much-needed legislation.

Sincerely,

Katie Caldwell

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 24, 2013 9:43 AM
To: JDLTestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB532 on Feb 26, 2013 10:00AM*

SB532

Submitted on: 2/24/2013

Testimony for JDL on Feb 26, 2013 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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