

October 20, 2021

Re. The PUMP for Nursing Mothers Act (H.R. 3110)

Dear Representative:

On behalf of A Better Balance, I write to express our strong support for the PUMP for Nursing Mothers Act (“The PUMP Act”; H.R. 3110) because no one in this country should have to choose between feeding their baby and earning an income for their family. The PUMP Act will mean millions of workers, excluded under current law, will have adequate break time and space to express milk at work. **The PUMP Act will further the health of our nation’s parents, babies, and economy. Affording protections to workers so they can pump milk to feed this country’s children should be a priority for every member of Congress. We urge every member to support this bipartisan legislation and vote yes on the PUMP Act.**

A Better Balance is a national legal advocacy organization, using the power of the law to advance justice for workers, so they can care for themselves and their loved ones without risking their economic security. We founded A Better Balance fifteen years ago because we recognized that a lack of fair and supportive work-family laws and policies, or more broadly, a “care crisis”¹ was harming a majority of workers, particularly women, especially Black and Latina women, in low-wage jobs. In the case of nursing parents, too often, parents return to work without the supports they need to continue expressing milk at work and are forced to choose between giving up breastfeeding and maintaining their employment.

As I shared with the House Education and Labor Committee in my March 2021 testimony:

We hear over and over again on A Better Balance’s free legal helpline, new mothers returning to the workplace face unfair treatment because their employers refuse to provide them with the time and space needed to express breast milk, forcing them to choose between a paycheck and providing breast milk for their child. Some workers reduce their schedules, are terminated, or are forced out of the workplace, foregoing vital income and familial economic security because their workplaces are so hostile to their need to express milk.² Others simply stop breastfeeding altogether, sometimes even before entering the workplace, perceiving (typically correctly) the challenges as insurmountable. Too many who continue in their jobs struggle with harassment, health repercussions, and dwindling milk supply to feed their babies. These challenges face many new working parents, but disproportionately low-wage working mothers of color. These harsh workplace conditions for breastfeeding parents represent a fundamental unfairness and

¹ A BETTER BALANCE, MOVING FAMILIES FORWARD: REFLECTIONS ON A DECADE OF CHANGE 3 (2016), https://www.abetterbalance.org/wp-content/uploads/2017/03/Moving_Families_Forward_Report.pdf.

² LIZ MORRIS, JESSICA LEE, & JOAN C. WILLIAMS, CTR. FOR WORKLIFE LAW, EXPOSED: DISCRIMINATION AGAINST BREASTFEEDING WORKERS 4 (2018) [hereinafter EXPOSED], <https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf> (finding that “almost three-fourths of breastfeeding discrimination cases involved economic loss, and nearly two-thirds ended in job loss.”).

inequity in our legal system—and reinforce the stereotype that motherhood and employment are irreconcilable.³

One worker who recently called A Better Balance’s helpline, Sarah, is a certified medication assistant at a large long-term care facility in Kansas. Despite having thousands of employees, her employer disparaged her and put up roadblock after roadblock when she needed to pump at work, telling her once “I gave my baby the bottle—I couldn’t imagine having a baby attached to me.” After her supervisor berated her for needing to pump, and she attempted to find a space in the office to pump to no avail because a co-worker walked in, told her to “hurry up”, and refused to leave the room, Sarah resorted to pumping in her car just once a day. Even then, her supervisor came to the parking lot to try and stop her from pumping. Because she was only allowed to pump once a day, she frequently became engorged and suffered painful clogged milk ducts. Meanwhile, at least of six Sarah’s co-workers took smoke breaks multiple times a day without comment or issue. The contrast is startling and deeply upsetting.

Sarah is not alone in her struggle. I also shared Izabel’s story with the committee:

Izabel,⁴ a dental assistant in North Carolina, was fired shortly after submitting a doctor’s note requesting three 15-minute pumping breaks during her shift. Prior to submitting the note, she had requested pumping breaks and her employer told her she could only pump once per day during her lunch break—which did not medically meet her breastfeeding needs—even though there were roughly three other dental assistants working in the office who could have helped her with her job duties while she took breaks. Although likely covered by the 2010 Break Time for Nursing Mothers Act, because of the law’s limited enforcement, Izabel’s ability to get her job back or be made whole were extremely limited.⁵

Breastfeeding Has Myriad Benefits for Parents & Babies But, As We Know Firsthand, Too Many Workplaces Lack Adequate Protections for Workers.

Breastfeeding is increasingly common among American parents. According to a recent study by the United States Centers for Disease Control and Prevention survey, more than 84 percent of infants born in 2017 were breastfed for at least some amount of time.⁶ The U.S. Dietary Guidelines for Americans and the American Academy of Pediatrics recommend exclusive breastfeeding for about 6 months, and continuing breastfeeding while introducing complementary foods until a baby is 12 months old or older.⁷ At the same time, more than half of working parents return to their jobs before their babies are three months old; twenty-five percent of workers return within just two weeks of giving birth. This means that working parents who wish to continue breastfeeding will need to pump milk on a regular basis upon returning to work in order to continue feeding their children and to avoid serious health

³ *Fighting for Fairness: Examining Legislation to Confront Workplace Discrimination: Hearing Before the Subcomms. On Civil Rights and Human Services and Workforce Protections of the H. Comm. On Ed. & Lab., 117th Cong. (2021)*, [hereinafter *Bakst 2021 Testimony*], <https://edlabor.house.gov/imo/media/doc/BakstDinaTestimony0318211.pdf> (testimony of Dina Bakst).

⁴ Name changed to protect privacy and confidentiality.

⁵ *Bakst 2021 Testimony*, *supra* note 3, at 18.

⁶ *Breastfeeding Report Card*, CTRS. FOR DISEASE CONTROL & PREVENTION (2020) [hereinafter *Breastfeeding Report Card*], <https://www.cdc.gov/breastfeeding/data/reportcard.htm>.

⁷ *Nutrition, Recommendations and Benefits*, CTRS. FOR DISEASE CONTROL & PREVENTION (2020) <https://www.cdc.gov/nutrition/infantandtoddlernutrition/breastfeeding/recommendations-benefits.html>.

consequences.⁸ However, many parents returning to work find it incredibly challenging to pump because they are not provided with adequate break time or space to do so. This may explain why, although 84 percent of infants born in 2017 breastfed for some period of time, only slightly more than 58 percent were still breastfeeding at six months.⁹

The health benefits of breastfeeding are numerous. As I outlined in my testimony:

Research shows that breastfeeding has substantial health benefits for both mothers and babies. Breastfeeding protects babies from acute illnesses, such as infections and diarrhea, which can be serious especially in very young and vulnerable babies like those born preterm, as well as from longer-term conditions like childhood obesity and asthma.¹⁰ Likewise, as Nikia Sankofa, the Executive Director of the U.S. Breastfeeding Committee, made clear in testimony before the House Subcommittee on Health, Employment, Labor, and Pensions and the Subcommittee on Workforce Protections in January 2020, the health benefits for mothers who breastfeed are significant, and include lower risk of breast cancer and heart disease.¹¹ Medical consensus urges breastfeeding infants for at least their first year of life in order to achieve these health benefits.¹²

Current Federal Law Leaves Behind Millions of Lactating Workers.

In 2010, Congress passed the Break Time for Nursing Mothers Act as part of the Affordable Care Act. The law amended section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) and affords workers “reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk” and “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.”

While groundbreaking, the 2010 law has three critical problems: 1) it excludes millions of workers; 2) it has inadequate remedies for employees whose rights have been violated; and 3) it lacks clarity around breaks and compensation.

⁸ See, e.g., Tara Haelle, *Women Who Have to Delay Pumping Risk Painful Breast Engorgement*, NPR (May 26, 2016, 1:53 PM), <https://www.npr.org/sections/health-shots/2016/05/26/479288270/women-who-have-to-delay-pumping-risk-painful-breast-engorgement>.

⁹ *Breastfeeding Report Card*, *supra* note 6.

¹⁰ See, e.g., Liesbeth Duijts et al., *Prolonged and Exclusive Breastfeeding Reduces the Risk of Infectious Diseases in Infancy*, 126 PEDIATRICS e18 (2010); Laura M. Lamberti et al., *Breastfeeding and the Risk for Diarrhea Morbidity and Mortality*, 11 BMC PUB. HEALTH 1 (2011); Thomas Harder et al., *Duration of Breastfeeding and Risk of Overweight: A Meta-Analysis*, 162 AM. J. EPIDEMIOLOGY 397 (2005); Christian M. Dogaru et al., *Breastfeeding and Childhood Asthma: Systematic Review and Meta-Analysis*, 179 AM. J. EPIDEMIOLOGY 1153 (2014).

¹¹ *Expecting More: Addressing America’s Maternal and Infant Health Crisis: Hearing Before the Subcomm. on Health, Employment, Labor, & Pensions of the H. Comm. on Ed. & Lab. & the Subcomm. on Workforce Protections of the H. Comm. on Ed. & Lab.*, 116th Cong. (2020) [hereinafter *Sankofa Testimony*], <https://edlabor.house.gov/imo/media/doc/SankofaTestimony01282020.pdf> (testimony of Nikia Sankofa); see also Stanley Ip et al., *Breastfeeding and Maternal and Infant Health Outcomes in Developed Countries*, 153 EVIDENCE REP./TECH. ASSESSMENT 1 (2007); Sanne A.E. Peters et al., *Breastfeeding and the Risk of Maternal Cardiovascular Disease: A Prospective Study of 300,000 Chinese Women*, 6 J. AM. HEART. ASS’N 1 (2017).

¹² *Bakst 2021 Testimony*, *supra* note 3, at 19 (Citing *Sankofa Testimony*, *supra* note 11, at 1–2); see also, e.g., AM. ACAD. OF PEDIATRICS, *Where We Stand: Breastfeeding*, <https://www.healthychildren.org/English/ages-stages/baby/breastfeeding/Pages/Where-We-Stand-Breastfeeding.aspx> (last visited March 13, 2021).

1. **Current law excludes millions of nursing parents.** The 2010 law is housed in the overtime provisions of the Fair Labor Standard Act (“FLSA”) which means that those workers exempted from overtime—nearly nine million women of childbearing age—are also excluded from the law’s protections.¹³ These millions of workers, including transportation workers, executive, administrative and professional workers, and many others, have no federal right requiring their employer to provide them break time and space to express breast milk. As I emphasized in my testimony, “There is no principled reason why these employees should be denied the law’s protections: each industry is fully capable of standard or innovative solutions to ensure their employees do not have to choose between breastfeeding and their jobs... The U.S. Department of Health and Human Services’ Office on Women’s Health maintains an extensive and detailed website describing how various industries, such as restaurant and retail, can provide lactation break time and space, including video testimonials, employer best practices examples, and other resources.¹⁴ In 2021, there is simply no excuse not to meet the needs of breastfeeding workers.”¹⁵

2. **Current law has inadequate remedies for workers who experienced violations.** Given the current law’s placement in the overtime provisions of the FLSA, the remedy for violations of the Nursing Mothers law is misaligned. Currently, the available remedy is to pay a worker any overtime owed to them. As I explained to the Education and Labor Committee in March, “Such a remedy makes sense in the context of overtime: an employee who works forty-five hours in a week without overtime pay should be compensated with the missing payment to be made whole. For a breastfeeding worker who has been denied time and space to pump, however, this remedy is nonsensical. A breastfeeding worker who is told she cannot clock out to pump has been denied an *unpaid* break. Therefore, she has no entitlement to payment and the law’s contemplated remedy—compensation for wages—is meaningless to her... These weak enforcement mechanisms are antithetical to the goal of ensuring that breastfeeding workers can get the timely accommodations they need to continue breastfeeding and keep their jobs”¹⁶

3. **Current law lacks clarity regarding pumping breaks and compensation.** Under current law, pumping breaks that are not taken during a paid break do not need to be paid. However, often, workers who are pumping may clock out but will still take phone calls, emails, or other work requests while pumping, and are then denied compensation for their time worked while pumping. Because the language in the law says that breaks may be uncompensated, confusion persists and violations can occur when employers continue to require employees to work while taking an unpaid pumping break.

¹³ EXPOSED, *supra* note 2, at 26.

¹⁴ *Lactation Break Time and Space in All Industries*, U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE ON WOMEN’S HEALTH, <https://www.womenshealth.gov/supporting-nursing-moms-work/lactation-break-time-and-space-all-industries> (last visited Mar. 13, 2021).

¹⁵ *Bakst 2021 Testimony*, *supra* note 3. at 20.

¹⁶ *Id.* at 21.

The PUMP Act Would Close Gaps in the Law, Provide Appropriate Remedies for Employees, and Give Clarity Around Compensation. Alternative Proposals Fall Well Short of This Goal.

The PUMP Act will close the gaps in current law and extend the 2010 law’s protections to nearly nine million employees who are currently uncovered, including nurses, teachers, and software engineers. Corporate leadership, coupled with employees, advocates, and government agencies, have already devised innovative, affordable, and flexible solutions for nearly every workplace environment. In addition, the Committee on Education & Labor also added language at the bill markup requiring the U.S. Department of Labor to work with the Department of Health and Human Services to build out guidance for employers.

The legislation will also provide employers additional clarity as to when break time can be unpaid, and will provide remedies that are already available for other FLSA violations if a worker’s rights are violated. At the Education & Labor Committee mark-up of the bill, the Committee also added language ensuring fairness for employers by requiring employees to inform their employers about inadequate space to express breast milk 10 days before they file suit for violating the requirement. The PUMP Act will benefit workers and business alike, as there are well-recognized bottom-line benefits for employers in providing break time and space for lactating employees, such as reduced absenteeism, lower healthcare costs, and greater recruitment and retention.¹⁷ This is why the U.S. Chamber of Commerce supports this legislation.¹⁸

At the Committee markup, the minority introduced an Amendment in the Nature of a Substitute, and subsequently, a bill which mirrored that substitute amendment. This alternative **does not afford the protections that breastfeeding parents need because it does not address the two main problems that the PUMP Act is addressing.** The alternative bill continues to exclude millions of workers from break time and space protections and continues to leave workers with no meaningful remedies. Supporting the alternative bill and not the PUMP Act is hollow at best and offensive to working parents who need real protections.

The PUMP Act will finally close the gaps in the law that have left too many working parents without the ability to pump at work and thrust into the painful position of choosing between breastfeeding and their job. Congress has the opportunity to right a fundamental wrong and pass the PUMP Act. We urge you to support nursing parents in a meaningful way and pass the PUMP Act.

Sincerely,

Dina Bakst
Co-Founder & Co-President
A Better Balance

¹⁷ *What Are the Benefits to Employers?* U.S. BREASTFEEDING COMMITTEE, <http://www.usbreastfeeding.org/p/cm/ld/fid=234> (last visited Mar. 15, 2021).

¹⁸ U.S. CHAMBER LETTER ON H.R. 3110, THE “PROVIDING URGENT MATERNAL PROTECTIONS (PUMP) FOR NURSING MOTHERS ACT (May 26, 2021), <https://www.uschamber.com/letters-congress/us-chamber-letter-hr-3110-the-providing-urgent-maternal-protections-pump-nursing>.