

# **BREASTFEEDING & EXPRESSING HUMAN MILK AT WORK**

**MAY 5, 2021**

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**MODERATOR:**

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# AGENDA

Introductions

Terminology and Jurisdictional Overview

Laws, Common Themes and Resources for the Work

- Tribal Governments
- Federal Government
- Minnesota State Government

Q&A

# THE PUBLIC HEALTH LAW CENTER



## Equality









## Equity





# LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby

# PRESENTERS

Melanie Plucinski, Public Health Law Center

David Skovholt, Minnesota Department of Labor and Industry

Corey Walton, United States Department of Labor

# JOURNEY TO TRIBAL POLICY WORK





# Why focus on breastfeeding policies?

- Human milk is a traditional medicinal first food
- Baby bonding instills lifelong sense of belonging - protective factor
- Reduces risk of cancers, ear infections, obesity and other illnesses
- Policy asserts Tribal sovereignty to strengthen Indigenous foodways and support community health



# Terminology important to Tribal breastfeeding policy work

- Tribal sovereignty
- Historical trauma
- Breastfeeding or chestfeeding
- First food - food sovereignty
- Human milk
- Lactation
- Milk expression



# TRIBAL SOVEREIGNTY

**SOVEREIGNTY – “THE RIGHT TO SELF-GOVERN”.**

**“INDIAN NATIONS HAD ALWAYS BEEN CONSIDERED AS DISTINCT, INDEPENDENT POLITICAL COMMUNITIES, RETAINING THEIR ORIGINAL NATURAL RIGHTS, AS THE UNDISPUTED POSSESSORS OF THE SOIL... THE VERY TERM “NATION” SO GENERALLY APPLIED TO THEM MEANS ‘A PEOPLE DISTINCT FROM OTHERS.’”**

**- CHIEF JUSTICE MARSHALL, UNITED STATES**

**SUPREME COURT**

**IN MOST CASES, STATE LAW DOES NOT APPLY WITHIN TRIBAL JURISDICTION**



# Historical Trauma Related to Low Rates of Breastfeeding

- Evidence of historic trauma in contemporary society may be seen in the disproportionate removal of American Indian children from their families.
- Other evidence of historical trauma:
  - educational achievement gap
  - high drop-out rates
  - high number of American Indian children in youth corrections facilities
  - Lower rates of breastfeeding compared to general population



# HOW DO WE CHANGE THE STORY?

# Breastfeeding policy to advance equity



- Benefits to baby
  - Immune support
  - Protective against bacterial and viral infections
  - Reduces risk of SIDS
  - Associated with less obesity and disease

# Importance of breastfeeding policies

- Benefits to mothers
  - Promotes emotional health
  - Reduces risk of postpartum depression
  - Lower rates of diabetes, cancer, osteoporosis



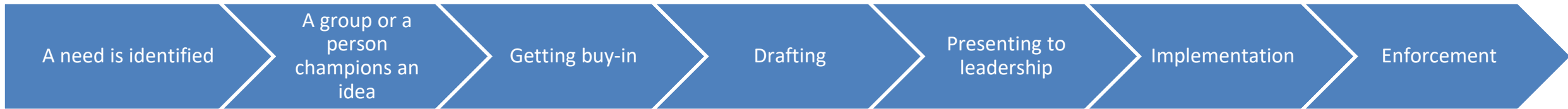
# Importance of breastfeeding policies



- Benefits to employers
  - Better recruitment and retention of people of childbearing age
  - Breastfeeding mothers who are supported at work...
    - are more productive
    - have fewer distractions
    - less absenteeism
    - have more loyalty to the business
    - have improved job satisfaction



# TRIBAL POLICY DEVELOPMENT



# WAYS TO GATHER BUY-IN WITH TECHNICAL ASSISTANCE

- Coalition building
- Facilitating consensus with community members
- Planning meaningful education events
- One on one relationship building for trust
- Being responsive and culturally-relevant
- Meeting people where they are at with policy knowledge
- FOOD



# TYPES OF TRIBAL WORKPLACE POLICIES



- Space
- Time
- Flexibility
- Protections

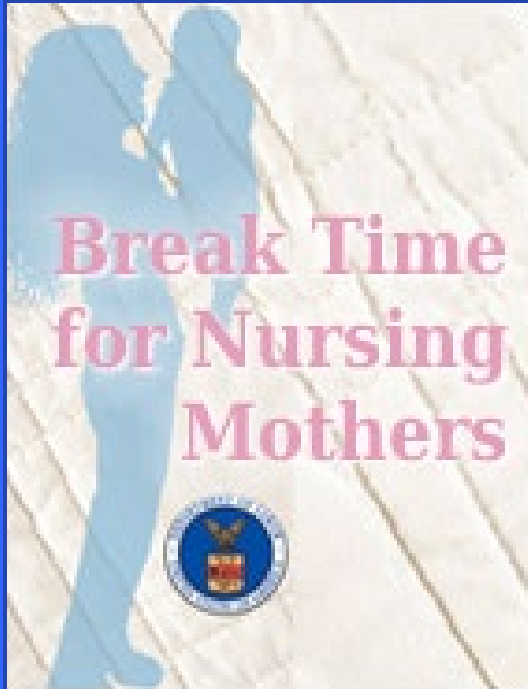
Every federally-recognized Tribe is its own Nation and policies look different



# Resources

- [Breastfeeding and Expressing Human Milk at Work Webinar, May 5th](#)
- [Drafting Effective Tribal Public Health Laws and Policies](#)
- [Reclaiming Indigenous Food Relationships - Improving Food with Culture](#)
- [Mother's Milk is Medicine](#)
- [Breastfeeding in the American Indian Workplace Toolkit](#)
- [GPTLHB breastfeeding posters](#)
- [Model policy from CRST](#)
- [Breastfeeding RED Talk Video](#)





# Break Time for Nursing Mothers

## Under the Fair Labor Standards Act

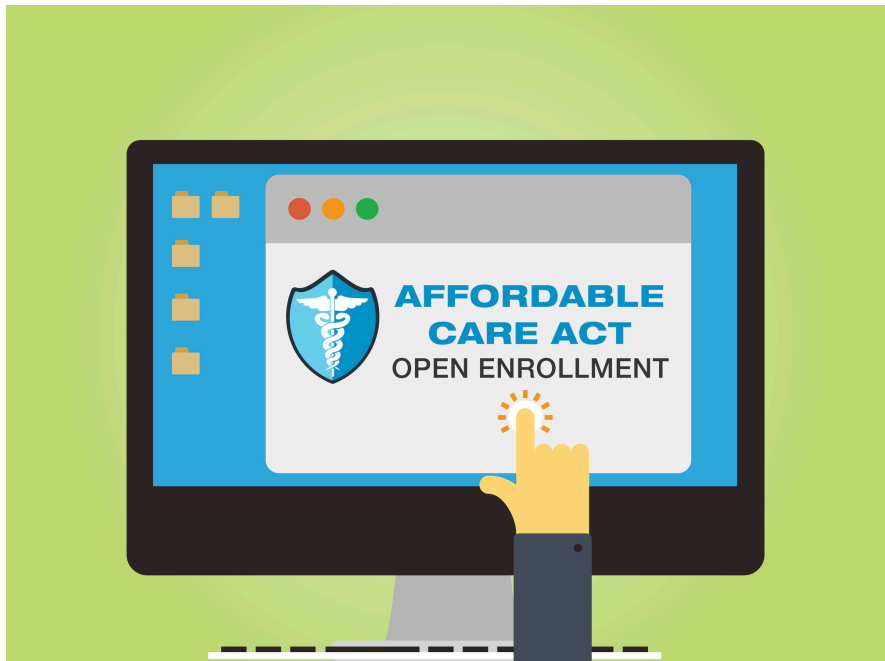
Corey Walton  
USDOL-WHD



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

dol.gov/whd  
5/5/2021  
1-866-487-9243

# BREAK TIME FOR NURSING MOTHERS



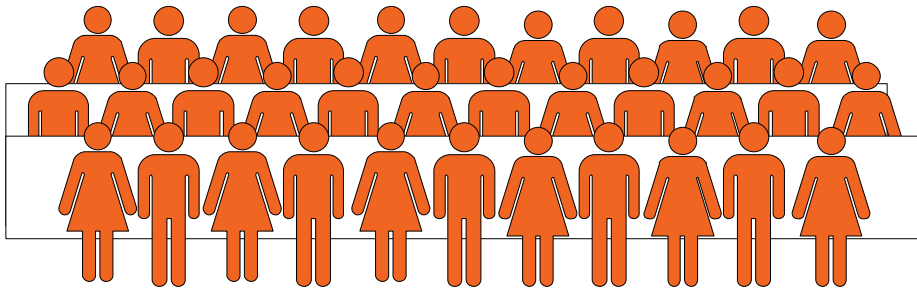
- Section 7 of the FLSA was amended by the Affordable Care Act to provide nursing employees with:
  - Reasonable break time to express breast milk
  - A place, other than a bathroom, that may be used to express milk
  - For up to 1 year after the child's birth
- Effective March 23, 2010

# ELIGIBLE EMPLOYEES



- Employees who work for a covered employer
- Employees who are covered on an individual basis
- Employees who are covered by Section 7 of the FLSA (generally, employees entitled to overtime pay)

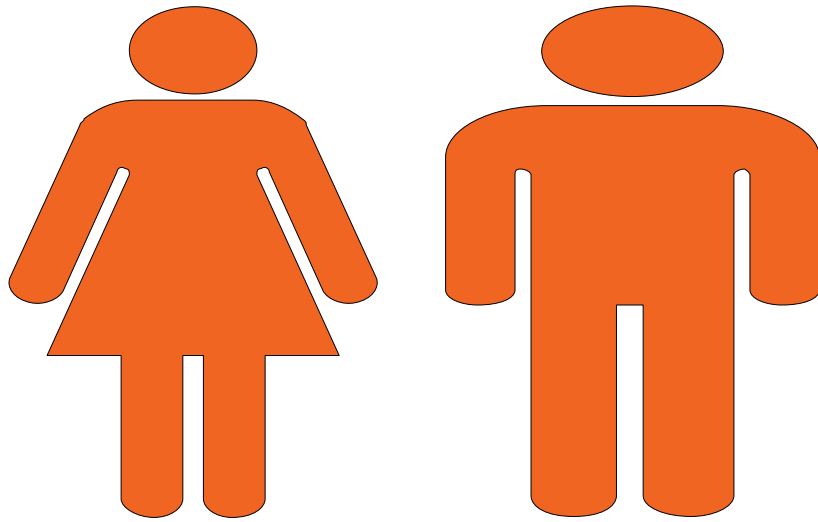
# Employer Coverage



- Enterprise coverage:
  - At least two (2) employees
  - At least \$500,000 a year in business
- If an employer is covered, all the employees of the employer are entitled to FLSA protections, unless the employee falls within one of the FLSA's exemptions.



# Individual Coverage



Even if the employer is not a covered enterprise, individual employees may be covered and entitled to FLSA protections if they are engaged in interstate commerce.

Activities that constitute engaging in interstate commerce may include making telephone calls to other states; typing letters to send to other states; processing credit card transactions; or traveling to other states.

# Exemptions from Break Time for Nursing Mothers Requirements



- The most common of the overtime pay exemptions that apply to the nursing mothers break time requirement is the “white collar” exemption, which applies to certain:
  - Executive Employees
  - Administrative Employees
  - Professional Employees

# Compensation for Break Time



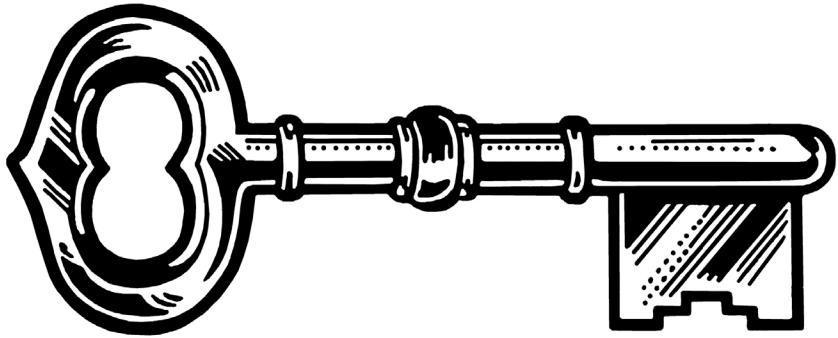
- Employers are not required to provide compensated break time.
- As with other breaks under the FLSA, the employee must be completely relieved from duty, or the break time must be compensated as work time.
- If an employer already provides paid break time and if an employee chooses to use that time to express breast milk, she must be compensated for that time just as other employees would be compensated for break time.

# Space Requirements



- An employer shall provide:
  - A place, other than a bathroom.
  - Shielded from view.
  - Free from intrusion from coworkers and the public.
  - That may be used by an employee to express breast milk.
- An employer may temporarily designate a space or make a space available when needed by the employee; the location must be functional as a space for expressing milk.

# Additional Issues to Consider



- Securing space from intrusion
- Space adjacent to restrooms
- Dual use rooms
- Storage of milk and pumps
- Notice

# Undue Hardship Defense

- An employer that employs fewer than 50 employees is not required to provide break time and space if it would pose an undue hardship
- Number of employees is determined by counting employees at all worksites, regardless of location or part-time status.
- Undue hardship is defined as “causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.”

# Additional Resources

## Federal resources

- *Department of Health and Human Services (HHS) tool kit: “The Business Case for Breastfeeding”*
- [The Business Case for Breastfeeding](#)
- *Centers for Disease Control and Prevention (CDC) Toolkit/Paper about workplace lactation Programs*
- [Division of Nutrition, Physical Activity, and Obesity](#)

# Additional Resources

## Other resources

- *U.S. Breastfeeding Committee (federal and non-federal partners) maintains a state directory of organizations*
- [United States Breastfeeding Committee](#)
- *International Lactation Consultant Association maintains a workplace lactation directory so ERs can find local consultants to help set up workplace lactation programs*
- [International Lactation Consultant Association Directory](#)

*Note: These resources provide general guidance on workplace lactation and do not address the FLSA requirement to provide breaks for nursing mothers. WHD does not endorse these organizations or guarantee the accuracy of the information they provide.*



# Wage and Hour Division

## **Disclaimer**

This presentation is intended as general information only and does not carry the force of legal opinion. The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modifications of these pages. Therefore, we make no express or implied guarantees. The *Federal Register* and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.



## Women's Economic Security Act (WESA)

Dave Skovholt | Outreach coordinator

The Women's Economic and Security Act (WESA) aims to strengthen workplace accommodations for pregnant and nursing employees in the workforce and includes provisions regarding wage disclosure, nursing mothers, pregnancy and parental leave, sick and safe leave and pregnancy accommodations.

## **Pregnancy accommodations:**

- More frequent food, water, and bathroom breaks
- Seating accommodations
- Limits on lifting over 20 pounds
- Any other reasonable accommodation requested, such as transfer to a less strenuous or demanding position

## **Nursing accommodations:**

- Enough unpaid break time to nurse or pump
- A private room to nurse or pump
- A room other than a bathroom or toilet stall
- A room close to the work area
- A room with access to an electrical outlet

# Nursing mothers - Minn. Stat. § 181.939

Employers who employ at least one person must:

- provide reasonable unpaid break time for nursing mothers to express milk; and
- make reasonable efforts to provide space other than a bathroom that is shielded from view and free from intrusion that includes access to an electrical outlet.

Anti-retaliation:

- Employers are prohibited from retaliating against an employee for asserting rights under this law.



# Exceptions to nursing mothers protections

Break time not required if it “unduly disrupts” the employer’s operation.

An employer must make “reasonable effort” to provide a place for the employee to express milk.



# Pregnancy accommodation – Minn. Stat. § 181.9414

Employers must provide “reasonable accommodation” to employees with health conditions related to pregnancy or childbirth.

The following are required employer accommodations:

- more frequent restroom, food, and water breaks;
- seating;
- limits on lifting over 20 pounds; and
- additional accommodations may be reasonable depending on the situation, including temporary transfer to a less strenuous position



# Pregnancy accommodation (continued)

Employer cannot require an employee to take or accept pregnancy accommodations.

Employers are prohibited from retaliating against an employee for asserting rights under this law.



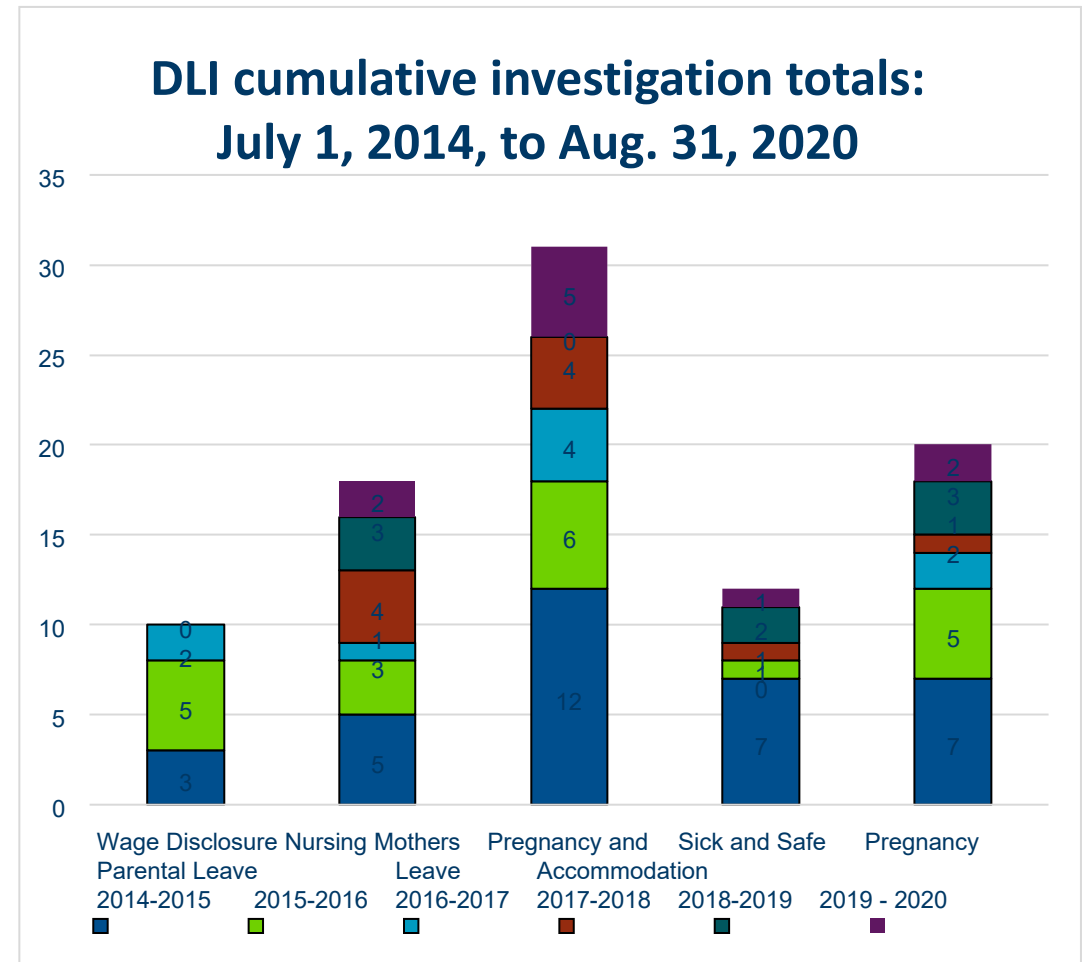


# DLI WESA Enforcement

From July 2014 through August 2020, DLI completed 90 investigations of alleged violations of the five WESA provisions within its legal authority.

Contact Labor Standards at:

- 651-284-5075
- [dli.laborstandards@state.mn.us](mailto:dli.laborstandards@state.mn.us)



# DLI WESA resources

- WESA landing page
- Fact sheets
- WESA annual report:  
<https://www.dli.mn.gov/business/employment-practices/womens-economic-security-act-faqs>
- Outreach and education: More than 100 events in 2019 and 2020 that included WESA outreach.

The screenshot shows the website for the Minnesota Department of Labor and Industry. The header includes the logo and navigation links: DIRECTIONS, CONTACT US, CHECK A LICENSE, GET A PERMIT, RENEW A LICENSE, MAKE A PAYMENT, and a search bar. Below the header, there are links for ABOUT THE DEPARTMENT, FOR BUSINESS, and FOR WORKERS. A red banner below the header contains the text: "DLI offices are closed to walk-in customers." The main content area is titled "PREGNANT AND NEW PARENTS" and features a breadcrumb trail: "For workers and the public > Worker rights and protections > Pregnant and new parents". The page includes a large image showing a woman holding a baby, a woman in a yellow safety vest, and a pregnant woman at a desk. Below the image, the text reads: "Are you pregnant or a new parent? In Minnesota, you have legal protections to help keep you safe and healthy in the workplace. State legislation to support working parents and employers covers three categories:" followed by a numbered list: 1. Pregnancy at work, 2. Pregnancy or parental leave from work, 3. Expressing milk at work. Below the list, it says: "Know your rights. Speak up. Most employers are willing to comply with laws that support their pregnant and nursing employees. If they are unwilling, we can help you." At the bottom of the page, there are two buttons: "EMAIL US" and "CALL US". A sidebar on the left lists various services: BE AN APPRENTICE, BOILER ENGINEERS, BUILDING OFFICIALS, ELECTRICIANS, ELECTRICAL INSTALLERS AND ELEVATOR CONSTRUCTORS, HOMEOWNERS, PIPEFITTERS, PLUMBERS, RESIDENTIAL CONTRACTORS, REMODELERS, ROOFERS, and WORKER RIGHTS AND PROTECTIONS. Under the last category, there are links for: Age restrictions for working teens, Brochures and fact sheets about labor standards, Child labor laws, Complaints, Contact Labor Standards, Disabled-worker application for subminimum-wage permit, and Disabled-worker employment information.



# THANK YOU!!

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