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LifeCare Special Report

Workplace Breastfeeding Support: A Legal and Business Imperative

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Dear Colleague,

In recent years, many employers have recognized the positive business benefits of workplace breastfeeding support. Now federal law requires employers to provide break time and a private location for breastfeeding mothers to express milk.

To help you stay informed on this important topic, LifeCare has prepared this special report, **Workplace Breastfeeding Support: A Legal and Business Imperative**. It contains facts about new federal requirements, timely research to support the business case for program implementation, and best practices that have been proven to be successful.

For more than 26 years, LifeCare has been committed to helping employers help their employees and family members with their work/life balance needs. As part of that overarching goal, LifeCare has been working with employers to help breastfeeding mothers successfully transition back to the workforce since 1999.

I hope that you find this information useful.

Best,

Peter G. Burki
CEO

If you would like to learn more about the full spectrum of services that LifeCare offers, please visit us at ***www.lifecare.com****. For 26 years we have been a leading provider of health and productivity solutions for employers nationwide. We offer high-quality results-oriented programs that help clients reduce their most pervasive absenteeism and productivity drains while improving the lives of their employees.*

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In March 2010, the Patient Protection and Affordable Care Act (PPACA) amended the Fair Labor Standards Act (FLSA) to require employers to provide break time and a private location to express breast milk for non-exempt employees.[1] Beyond meeting legal obligations, however, workplace breastfeeding programs make sound business sense. Employers who fully support workplace breastfeeding reap significant rewards in bottom-line savings by mitigating health care costs, reducing absenteeism, enhancing productivity, and increasing employee retention.

100% of the Working Mother "100 Best Companies" offer on-site lactation rooms[2], as compared with **28%** of companies nationwide[3].

I. Background & Summary

Given the prevalence of women in the U.S. labor force, support for working mothers is now a national imperative. Women currently comprise half of the U.S. non-agricultural labor force[4] and 61 percent of women with children under the age of three are employed outside of the home.[5] One-third of mothers return to work within three months of giving birth, over half within six months.[6] As the White House Forum on Workplace Flexibility made clear, without support, working mothers often struggle to manage their job responsibilities while caring for their children. This puts them at risk of becoming less productive, scaling back work hours or leaving their current jobs to find a more supportive work environment. Providing support for working mothers ensures U.S. businesses remain productive, competitive and profitable. Workplace-sponsored breastfeeding programs are vitally important to working mothers and their ability to successfully balance their careers and family needs.

Returning to work while breastfeeding is a significant challenge for working mothers.[7] A poll on mothers' attitudes towards infant feeding reported that 82 percent of mothers say returning to work or school is a barrier to breastfeeding.[8]

Breastfeeding Is a Learned Skill

Contrary to popular belief, breastfeeding is not something that comes easily or naturally to all women and infants. Some new mothers, even those who have breastfed before, need extra help to be successful. Other women do not know that breastfeeding enhances the health of the mother and child and do not know what is required for full-time, long-term breastfeeding. Optimal breastfeeding guidance is not offered by most physicians and their staff are often not trained in breastfeeding guidance. Hospital lactation consultations, when available, are typically only offered to mothers for a limited period. Once home, breastfeeding mothers can often be challenged with difficulties such as breast engorgement or inadequate milk supply. More importantly, to successfully transition back into the workplace, working mothers need ongoing breastfeeding education, guidance and employer support.

Despite research demonstrating the need to support working mothers in establishing and continuing breastfeeding,[9] 72 percent of employers do not offer accommodations for nursing mothers to breastfeed or express milk at work.[10] The business case for company-sponsored support needs to be clarified and employers need guidance about meeting the needs of their nursing mothers and creating a supportive and healthy environment as a result of the new legislation.

As demonstrated later in this report, the return on investment for a company that has a breastfeeding program in place is substantial and needs to be better understood. These programs cost relatively little, yet they generate bottom-line savings by reducing health care costs, decreasing employee absenteeism, enhancing productivity, and improving employee retention and satisfaction levels.

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The financial incentive in providing a workplace breastfeeding program can also be considerable:

- Women who continue to breastfeed after returning to work are absent less often due to baby-related illnesses and they have shorter absences when they do miss work, compared with women who do not breastfeed.[11]
- Working mothers who continue nursing after returning to work have higher morale and tend to return to work earlier from maternity leave.[12]
- $13 billion in direct health care costs could be saved each year if 90 percent of women would breastfeed exclusively for six months.[13]

Employers who support workplace breastfeeding see lower turnover rates, enhanced employer-of-choice status, an advantage in the competition for talent and benefit from valuable public relations opportunities.[14]

II. Federal Law Requires Workplace Support for Breastfeeding Mothers: Section 4207 of the PPACA, "Reasonable Break Time for Nursing Mothers"[15]

Recognizing the need for—and benefits of—supporting employees in meeting the challenges of returning to work while breastfeeding, in March, 2010 the PPACA amended the FLSA effective immediately to require employers to provide non-exempt employees with break time and a private location to express breast milk in the workplace.

Support for breastfeeding mothers in the workplace is no longer just good business sense, it is required by federal law.

1. Who Is Covered?

The PPACA amends the FLSA, which applies to more than 130 million workers, both full-time and part-time, in the private and public sectors.[16] All employees who are not exempt from FLSA's overtime pay requirements (usually referred to as "non-exempt" or "hourly" workers) are protected by the new federal law. While employers are not required under federal law to provide breaks to nursing mothers who are exempt from the overtime pay requirements of FLSA, they may be obligated to provide such breaks under state law. Employees subject to FLSA whose employers qualify as a "small business" (defined as one with less than 50 employees) may not be covered if their employer qualifies for an exemption.

2. Reasonable Breaks

Employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk." The Department of Labor has interpreted this to mean that a nursing mother may take breaks to express milk as frequently as needed and it is expected that the frequency and duration of nursing breaks will vary.

3. Compensation for Nursing Breaks

An employer is not required to compensate employees for breaks taken to express breast milk. However, where an employer already provides compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies. Employers should be aware of state laws that may also apply. As discussed in the section "Relationship to State Breastfeeding Laws" that follows, the new federal law does not prevail over stronger state protections, and employers may be obligated to provide compensated breaks to express milk if required by state law.

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4. Private Location

Employers must provide a location that is "shielded from view" and "free from intrusion from coworkers or the public" for employees to express breast milk. Bathrooms are not permissible locations for milk expression under the new federal law.

The location must be functional as space for expressing breast milk. If the space is not dedicated to the nursing mothers' use, it must be available when needed to comply with the law. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided the space meets the privacy requirements of the new federal law.

5. Exemption for Small Businesses

An employer with fewer than 50 employees may be exempt from compliance with the new law if it will subject the employer to "undue hardship." Undue hardship will be determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of worksite, are counted when determining whether this exemption may apply.

If state law provides greater protections to breastfeeding employees, the state provisions govern. Employers should consult with counsel regarding their specific legal obligations to determine the appropriate next steps for their company.

6. Relationship to State Breastfeeding Laws

The new federal law establishes minimum protections for breastfeeding employees. It does not preempt state laws providing greater support. If state law provides stronger protections, the state law prevails.

According to the National Conference of State Legislatures as of September 2010, 24 states, the District of Columbia and Puerto Rico have laws addressing breastfeeding in the workplace (Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana, Maine, Minnesota, Mississippi, Montana, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington and Wyoming).[17] These laws offer varying degrees of support for breastfeeding mothers in the workplace.

Employers should consult with counsel regarding their specific obligations under the new federal law, as well as any state laws that may apply, to determine the appropriate next steps for their company.

III. Making the Business Case for Workplace Breastfeeding Programs

Employers who acknowledge the advantages of workplace breastfeeding programs and take action now to educate and support working mothers will be "ahead of the curve" in reaping a host of organizational and competitive gains including reduced absenteeism, reduced health care costs, enhanced productivity, and employee retention and satisfaction levels.

Beyond meeting legal obligations, employers need to recognize the bottom-line benefits of workplace breastfeeding programs for their company. Employers who have instituted workplace breastfeeding programs report a host of rewards. These include:

1. Reduced Healthcare Costs

- A 2010 study reported in the Journal, *Pediatrics*, concluded that if 90 percent of U.S. families would breastfeed exclusively for six months, the U.S. would save $13 billion per year and prevent over 900 infant deaths.[18]

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- The U.S. Department of Health and Human Services states that for every 1,000 babies not breastfed there are 2,033 extra physician visits, 212 extra hospitalization days and 609 extra prescriptions for just three illnesses (ear, respiratory, and gastrointestinal infections). These numbers do not take into consideration other childhood illnesses or women's diseases such as pre-menopausal breast cancer, many of which may be reduced when a mother breastfeeds.[19]
- A study co-sponsored by the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and La Leche League International found the workplace breastfeeding program of a major insurance company delivered an annual savings of $240,000 in health care expenses.[20]
- Employer medical costs decrease because of the proven health benefits to infants and mothers. The benefits to babies can include: reduced risk of sudden infant death syndrome; lower risk of childhood leukemia, fewer ear and respiratory infections; decreased risk of childhood asthma; reduced risk of types 1 and 2 diabetes; and fewer chronic digestive diseases. The benefits to mothers can include: decreased risk of ovarian and breast cancers; and reduced risk of type 2 diabetes.[21]

The White House Task Force on Childhood Obesity Report to the President includes recommendations which involve breastfeeding as an obesity preventive measure.[22]

2. Reduced Absenteeism

- Breastfed babies may be healthier than formula-fed babies. As a result, breastfeeding mothers are absent less often. According to the U.S. Department of Health and Human Services, workplace breastfeeding programs can lower one-day absences by up to 50 percent.[23]
- The U.S. Department of Health and Human Services reports that Home Depot realized an annual savings of $42,000 from absenteeism averted by its breastfeeding support program.[24]
- A study co-sponsored by the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and La Leche League International found that the workplace breastfeeding program of a major insurance company delivered a $60,000 savings due to reduced absenteeism.[25]

3. Reduced Turnover Rates

- The U.S. Department of Health and Human Services states that workplace breastfeeding programs can reduce turnover rates: 86 percent to 92 percent of breastfeeding employees return to work after giving birth when they have access to a workplace breastfeeding program, compared to the national average of 59 percent.[26]
- *Pediatric Nursing* reported on a study of several companies with breastfeeding programs that showed a retention rate of over 94 percent.[27]

4. Enhanced Productivity and Loyalty Levels

- The Los Angeles Department of Water and Power found that 83 percent of employees were more positive about the company as a result of its breastfeeding program and 67 percent intended to make it their long-term employer.[28]

5. Significant Return on Investment

- The U.S. Breastfeeding Committee calculated that workplace breastfeeding programs have a $3:1 return on investment.[29]
- The Massachusetts Breastfeeding Coalition recently reported that lactation support company Sanvita finds that employers see a return of $1.50 to $4.50 for each dollar invested in breastfeeding support.[30]

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IV. Implementing Best Practices in Workplace Breastfeeding Programs

When launching or enhancing a workplace breastfeeding program employers should first assess their organization's particular needs and potential challenges. Key questions that need to be asked include:

- What are our legal obligations?
- How should we design the program to fit into the current corporate culture?
- Are there senior managers who will champion the program?
- Approximately how many employees will use the program and in what timeframe?
- What physical space is available that can be used by breastfeeding employees that conforms to legal requirements?
- Who will oversee the program, track utilization, measure results, handle administrative issues, etc.?
- Who will be responsible for promoting the program among employees on an ongoing basis?
- What formal policies need to be revised or developed and what should they address (e.g., policies supporting the flexible scheduling needed for a lactation program)?
- Should a pilot program be implemented before launching the full program?
- What steps need to be taken to educate and communicate with managers, clearly and on a regular basis, about legal requirements, the policies in place to comply with the law, and the value of these policies to the organization?

In addition, employers of choice are publicly acknowledging their support of workplace breastfeeding by incorporating the program as part of their health benefit, issuing press releases and helping to support and promote state legislation that provides stronger protections for breastfeeding mothers in the workplace.

1. Space Requirements

As discussed earlier, employers are now legally required to provide a private, clean location that is not a bathroom for employees to use to pump breast milk. Some employers allow breastfeeding workers to express milk in their individual offices. While this is one option for consideration, designating a private room for this purpose is widely considered to be the most effective solution. Many employers convert existing physical space (an unused office or storage room) into a "Mothers' Room," which can help to minimize initial expenses. The room itself does not need to be much larger than four feet by five feet. However, federal law specifies that a space designated for milk expression must be "functional" for that purpose. Employers with sizable employee populations might need to consider creating more than one Mothers' Room. If a space is not dedicated exclusively for the use of breastfeeding mothers, federal law mandates that employers must designate a space that will be available to them when needed. State laws may impose additional requirements.

In determining what type of space is most effective for their organization employers should consider the cost of their options (e.g., building a new space, converting existing space, other accommodations) as compared to the value of the benefits accrued to the company and its employees by the program (e.g., reduced absenteeism and health care costs, and enhanced productivity, satisfaction and retention).

To help put employees who use the room at ease, the room should have a door that locks and should have appropriate signage (such as "Do Not Disturb," "Private" or "Mothers' Room").

2. Additional Accommodations within the Room

A well-equipped lactation room might contain some or all the following amenities:

- A sink (or nearby access) with hot and cold water.

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- Cleaning supplies (such as soap, disinfectants and paper towels) for washing hands and cleaning equipment.
- A place to put clothing (a hook, clothes rail or closet with hangers).
- Good lighting, ventilation and an electrical outlet (for a breast pump).
- A small refrigerator or cooler to store breast milk.
- A table or counter at desk height (to accommodate the breast pump and other equipment) and near the outlet so the pump can be plugged in easily.
- A comfortable chair located near the table or counter.
- Window coverings to ensure privacy.
- Instructions for using the facility (schedule/ sign-up sheet, etc.).
- A waste basket.

3. Lactation Consultants

Providing workers with breastfeeding support through subsidized access to certified lactation consultants (particularly those who have been certified by the International Board of Lactation Consultant Examiners) significantly enhances their chances of a successful breastfeeding experience, of returning to work early, and of maintaining their productivity on the job. To maximize effectiveness, support should be a continuum that begins during pregnancy, and continues through the duration of breastfeeding (including during leave).

Lactation consultants who are certified by the International Board of Lactation Consultant Examiners—known as International Board Certified Lactation Consultants (IBCLCs)—are health care professionals who specialize in the clinical management of breastfeeding. These individuals are expert at assisting employees with all of the challenges that arise during breastfeeding. They're also invaluable experts for employers who are building a new workplace breastfeeding program or evaluating the effectiveness of an existing program. IBCLCs can identify organizational challenges that may arise when creating a program, the best approaches toward overcoming these challenges, how to build consensus and internal support for a program.

4. Breast Pumps and Discounted Purchases

Some employers purchase or rent a breast pump that can be shared by employees using their Mothers' Room. Others subsidize their employees' own breast pump purchases, provide all nursing mothers with a free pump or access to discounts on pumps.

Whichever approach they choose, employers should keep in mind that not all breast pumps are manufactured at the same level of quality. Hospital-grade pumps are built for durability and power, and they make pumping more efficient and less time consuming. Consequently, this type of heavy duty pump is ideal for an employer who provides a communal pump. Pumps with double pumping capability help to minimize break times. Many employers and mothers opt for the convenience of a portable double-electric pump. These pumps are designed for mothers to take with them to and from work or while travelling. They are lightweight and come in a discreet carrying case that also includes a cooler section designed to safely store and transport milk collected during the day.

5. Educational Resources

Basic breastfeeding education can be extremely important to an organization's working mothers as well as the success of its corporate breastfeeding initiative. In fact, in addition to requiring workplaces to implement support for breastfeeding mothers the PPACA requires all new health plans to offer counseling and support for mothers who want to breastfeed and for nursing mothers as a required, fully-covered preventive service.[31]

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As with support, education is most effective when it is ongoing from pregnancy through the duration of breastfeeding. Educational resources should address topics such as the health value of breastfeeding, pre- and post-natal issues; breastfeeding techniques; how to support spouses; the short- and long-term challenges of breastfeeding; and how to balance breastfeeding and work. It is important to be aware of the various levels of literacy and diversity within a company's employee base to ensure educational resources are accessible to all employees. It is beneficial to make this educational information available to male employees, as well.

Educational resources can be delivered to employees in many forms including hard-copy books and pamphlets; online articles and interactive tools; social media; onsite and/or offsite classes, seminars, discussion and support groups, a worksite library of CDs and DVDs; online and telephonic access to certified lactation consultants; and one-on-one counseling sessions in the home, office or hospital.

To maximize its effectiveness, the basics of breastfeeding education should not be limited to working mothers and their spouses or partners. It is essential to provide ongoing education and training to managers and supervisors so that they understand and are sensitive to breastfeeding employees' needs and challenges, and the value to the company of supporting nursing mothers.

6. Written Policies

Putting written policies into place ensures compliance with applicable laws and helps to avoid confusion and misunderstanding. It also signals an employer's commitment to the needs of its working mothers and children. An organization's breastfeeding-related policies should discuss such things as the program in general, pump subsidies or discounts, proper use of the Mothers' Room, discussion of "reasonable breaks" and flexible scheduling to accommodate pumping needs, etc. They may also reference related policies such as FMLA/disability/maternity leave or work scheduling options (part-time work, job sharing, flexible schedules, telecommuting, or a compressed work week).

Policies should be communicated to managers and employees clearly during orientation and then on a regular basis thereafter to ensure the company is in compliance with applicable law(s) and to emphasize the value of the program and the company's support of nursing mothers.

V. Conclusion

Workplace support for breastfeeding employees is now required by federal law. Beyond legal necessity, however, the substantial presence of working mothers in the labor force has made support for them a business necessity if companies are to remain productive, competitive and profitable. Put simply, workplace breastfeeding programs make sound business sense. They deliver significant returns on investment through: reductions in healthcare costs, absenteeism and turnover; increases in productivity, satisfaction, and retention; and in enhanced employer-of-choice status, an advantage in the competition for talent and valuable public relations opportunities. Programs incorporating the best practices described in this paper maximize an employers' opportunity for return on investment and the success of a program among employees.

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