

Ensuring Workplace Compliance with Federal Lactation Law: ASTHO Learning Community, Year One

I. Introduction

Beginning in 2014, the Association of State and Territorial Health Officials (ASTHO), funded by the Centers for Disease Control and Prevention (CDC), supported 17 states and the District of Columbia in reducing the barriers to breastfeeding using three evidence-based strategies: 1) Increasing practices supportive of breastfeeding in birthing facilities; 2) Improving access to professional and peer support for breastfeeding; and 3) Ensuring workplace compliance with the federal lactation accommodation law. In 2015, ASTHO awarded the 17 states, as well as South Dakota, additional funding to continue their work through June 2016.

To better understand how states approached their work in year one of the project, ASTHO identified nine states to study, conducting stakeholder interviews and an in-depth analysis of their materials. The [Learning Community Project Summary](#) provides an overall report on the lessons learned during the first year, as well as year one outcomes. This issue brief will:

- Provide detailed background research on the importance of supportive workplace policies and practices to promote breastfeeding.
- Describe two states' efforts in improving workplace policies and practices.
- Summarize the states' lessons learned about this strategy.

All quotations and information included in this document are taken from a stakeholder interviews conducted with Natalie Schubel, formerly of the Vermont Department of Health, and Cindy Chavez from the New Mexico Breastfeeding Task Force and Barbara Howe of the New Mexico Department of Public Health. Summaries of the other two strategies, increasing supportive breastfeeding practices in birthing facilities and improving access to professional and peer support for breastfeeding, are available on ASTHO's website. For more information on all states' efforts, please see [ASTHO's Breastfeeding State Initiatives map](#).

II. The Role of Workplace Policy in Supporting Breastfeeding

Breastfeeding has many well-documented salutary effects for both mothers and infants and can be a powerful, positive experience. Breastfeeding protects infants against a range of acute and chronic health conditions and enhances bonding between mothers and infants.¹ A full description of breastfeeding's positive effects can be found in the [ASTHO Breastfeeding Learning Community Project Summary](#).

Due to the array of positive benefits, maternal and child health experts recommend breastfeeding exclusively through the first six months, and continuing to breastfeed through the first year.² However, most women in the United States do not breastfeed for this amount of time. Although 79 percent of mothers initiate breastfeeding following birth and almost 50 percent of babies are still breastfed at six months, only 19 percent of babies are breastfed exclusively at six months.³ Only about one-quarter of babies are still breastfed at one year.⁴

Women stop breastfeeding for a range of reasons, including challenges faced by women when they return to work after their maternity leave ends. [The Patient Protection and Affordable Care Act](#) (ACA)

(P.L. 111-148) requires that employers with more than 50 employees provide womenⁱ adequate break time to express milk during the work day for one year after the child's birth.⁵ The law requires employers to provide "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." The U.S. Department of Labor provides guidance on the implementation of the law, including requirements for which employees are covered, addressing possible retribution or retaliation, and the parameters for compensated breaks.⁶ Some state laws might offer women more comprehensive rights and protections, such as [California's Lactation Accommodation Law](#) (Labor Code Section 1030-1033).

Although laws ensuring the rights of women to express breast milk, referred to as "pumping," may be reasonable and desirable, employees and employers face challenges in implementation due to worksite policies, facilities, and the nature of some jobs. Employees, particularly if they are the first in the worksite to require accommodations, might not know about their legal rights or might find it difficult to advocate for their rights because of their position within the organization. A recent survey of breastfeeding women showed that while almost 60 percent of respondents felt that their employer was somewhat or extremely supportive of breastfeeding or pumping at work, less than 30 percent said it was easy to pump at work. Women cited specific impediments to their efforts; 66 percent of women cited a lack of time, 26 percent cited a lack of a private room, and 8 percent reported having no facility to pump.⁷

Employers might find it difficult to identify space to create a lactation room or think the efforts will be too expensive to undertake. Other employers might be resistant to granting breaks to employees, either because of practical, logistical challenges, or a perception of reduced productivity.

III. States Focus on Ensuring Workplace Compliance with Federal Lactation Law

In year one, two states in the ASTHO Learning Collaborative, Vermont and New Mexico, used different approaches to ensure worksite compliance with federal lactation accommodation law and improve worksites for lactating women.

New Mexico

New Mexico engaged in a systems-change project to create a system of support for breastfeeding employees in two pilot communities. New Mexico's worksite accommodations are more comprehensive than the ACA, and employers and employees struggle to meet the requirements of the law. Prior to this project, the New Mexico Breastfeeding Task Force conducted an assessment of 17,000 employers that examined the economic impact of breastfeeding in the state, as well as how knowledgeable employers were about supporting employees' breastfeeding efforts.⁸ Nearly all of the responding businesses (95 percent) reported that they are aware of the legal right to breastfeed in public. However, a little over half were unaware of the law protecting an employee's right to express milk in the workplace and did not know how to make a workplace "breastfeeding friendly."⁹ Cindy Chavez of the New Mexico Breastfeeding Task Force said "supporting breastfeeding mothers in the workplace is such a foreign concept to many people."¹⁰ It is truly a cultural shift we need to make this concept commonplace."ⁱⁱ

ⁱ Only employees who are not exempt from Section 7 of the Fair Labor Standards Act are entitled to breaks to express milk. Women who are exempt from these provisions under the ACA, such as teachers, may be entitled to breaks under state law, collective bargaining agreements, or other arrangements.

ⁱⁱ All New Mexico quotes are from Barbara Howe, New Mexico Department of Health and Cindy Chavez, New Mexico Breastfeeding Coalition.

In response, the New Mexico Department of Health and the New Mexico Breastfeeding Task Force designed a two-pronged approach to, as Cindy Chavez said, “take the onus off of employees around pumping in the workplace and create [worksites] where employers have the tools and resources to better support employees.” Using existing and combined health department and New Mexico Breastfeeding Task Force infrastructure, the team offered technical assistance to self-selected businesses interested in becoming more breastfeeding-friendly. A breastfeeding worksite liaison partnered with the Chambers of Commerce in two pilot counties and participated in networking events, built relationships with business leaders, and shared information about the initiative. The team also conducted outreach in the community, presenting at Chamber of Commerce events, as well as conferences for school health and early childhood educators. The liaison provided support to employers requesting assistance, including a toolkit, handouts, door hangers for pumping rooms, and other resources from or based on the Health Resources and Services Administration’s (HRSA) [Business Case for Breastfeeding](#).¹¹ The team’s overall goal was to begin the conversation with employers and encourage them to take “sequential steps, such as having a written policy for supporting breastfeeding employees, flexible break times...and private, clean space for milk expression,” said Chavez. Using these basic tenets, the team worked with employers to address each step at their own pace, on a voluntary basis. For example, New Mexico State University is working with the team and another university mentor to establish lactation rooms campus-wide.

The team concurrently sought to assist women in their negotiations with employers for breastfeeding accommodations in compliance with the law. The team found through their work that “women go back to work far earlier than they would like, which is a huge barrier to their breastfeeding goals,” said Chavez. “The women most impacted...don’t have a voice when it comes to negotiating with their employers about their right to pump at work, their right to pump in a place that is not a bathroom, their right to flexible break time.” To address this, the team piloted an approach in which breastfeeding counselors in the Supplemental Nutrition Program for Women, Infants, and Children (WIC) worked closely with mothers prenatally, sometimes in the hospital, and then through post-delivery WIC nutrition counseling. The WIC counselor would then also be in a trusted position to advise women about their rights to lactation accommodations and help them to negotiate arrangements with employers. The initial pilot offered lessons that the team plans to expand efforts and create a breastfeeding-friendly New Mexico.

Vermont

In their initiative, the Vermont Department of Health built upon ongoing worksite wellness efforts, including an ongoing breastfeeding-friendly employer project, as a basis for their Learning Community project. The Vermont Department of Health’s (VDH) Divisions of Maternal and Child Health and Physical Activity and Nutrition collaborated on the new, expanded effort, in conjunction with WIC and VDH’s regional chronic disease designees. The enhanced VDH collaboration led to the two VDH divisions working to achieve joint outcome measures, maximizing effectiveness and coordination.

To meet the goal of increasing breastfeeding-friendly worksites, the VDH team offered small grants of \$1,000 to up to 15 businesses. The funds, awarded through a competitive process, were intended to help employers make changes in their worksites to accommodate breastfeeding mothers, such as adding a refrigerator or reconfiguring space to accommodate private lactation spaces. To receive funds, worksites were required to draft and implement a worksite breastfeeding policy. They worked closely

with WIC and regional health offices to do outreach generating interest in the process, specifically targeting schools, childcare centers, libraries, and for-profit businesses.

Once they awarded grants to 15 worksites in nine districts, VDH, in collaboration with WIC and regional chronic disease designees, provided ongoing technical assistance, particularly on drafting breastfeeding policies. Less than half—45 percent—of the worksites had an existing policy and the remaining sites needed substantial technical assistance to draft a policy. WIC staff conducted site visits to help worksites select furniture and equipment, taking photos of each site to document changes and provide updates to VDH. The team also worked with school liaisons to create lactation support for teachers, who face unique logistical challenges in the worksite. Because schools have requirements around wellness policies and wellness teams, VDH found working with schools a natural fit. Through their project, VDH increased the number of employers that provide space and time for nursing mothers to express breast milk by 136% over baseline.

VDH used a previously arranged statewide worksite wellness conference to recognize 47 worksite leaders on breastfeeding-friendly policies, an increase of 161% over 2014. They used a three-tiered (Gold, Silver, and Bronze) recognition scale to honor the work of all participating worksites.

IV. Lessons Learned: Ensuring Workplace Compliance with the Federal Lactation Accommodation Law

Using the stakeholder interviews and supplemental information from the states, ASTHO analyzed themes and lessons learned about states' efforts to ensure worksite compliance with federal and state lactation laws. These include:

- ***Some employers found even a small amount of money a sufficient incentive to engage in this work.*** Sometimes, businesses needed less than the \$1,000 offered to make changes. Vermont will take their lessons learned from year one and amend their Request for Proposals for their next grant cycle, asking applicants to submit budgets tailored to their unique needs.
- ***Having sample policies and tools for technical assistance (such as logos, materials, sample policies, etc.) made it easier for project leaders to quickly respond to employers' technical assistance requests.*** New Mexico found that tailoring existing toolkits enhanced credibility to their efforts and reduced staff burden for creating new materials. By providing sample policies that met the intent of the law, all employers in New Mexico started from a common understanding of lactation policies, which also helped employers understand that they were likely offering similar or identical benefits as other businesses.
- ***Employer groups or those focused on worksite support, such as the Chambers of Commerce or the worksite wellness team at a health department, can build connections and relationships to employers.*** Businesses sometimes represent a new partner for health department program leaders and having connections to respected entities, such as the Chambers of Commerce or worksite wellness programs, can facilitate introductions.

Additional project lessons learned can be found in the [ASTHO Breastfeeding Learning Community Year One Project Summary](#).

V. Conclusion

These state teams, joined by their colleagues, will continue to learn from one another as they concentrate on their specific state challenges in ensuring workplace compliance with federal lactation accommodation law, as well as unique state laws and policies. During the project's second year,

Vermont and New Mexico will continue to support worksites' adoption of strong lactation policies through a mini-grant process, recognition of businesses, and inclusion of additional partners, such as human resources managers, peer counselors, and home visiting programs. Together, these efforts combine to create a broader range of methods to best support breastfeeding women across the nation.

VI. Acknowledgements

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Vermont: Natalie Schubel (formerly of the Vermont Department of Health) and Tricia Cassi (WIC Breastfeeding Coordinator)

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¹ Ip S, Chung M, Raman G, Chew P, Magula N, DeVine D, Trikalinos T, Lau J. [Breastfeeding and Maternal and Infant Health Outcomes in Developed Countries. Evidence Report/Technology Assessment No. 153](#). AHRQ Publication No. 07-E007. Rockville, MD: Agency for Healthcare Research and Quality. April 2007. Accessed on August 3, 2015.

² U.S. Department of Health and Human Services. [The Surgeon General's Call to Action to Support Breastfeeding](#); 2011. Accessed on August 3, 2015.

³ U.S. Department of Health and Human Services. Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity. [Breastfeeding Report Card: United States 2014](#). Accessed on June 14, 2015.

⁴ *Ibid.*

⁵ Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 et seq. (2010).

⁶ U.S. Department of Labor. [Fact Sheet #73: Break Time for Nursing Mothers Under the FLSA](#). Accessed on June 29, 2015.

⁷ Molla R. [What are the barriers to breastfeeding? Bravado Designs Survey](#). Wall Street Journal. April 17, 2014. Accessed on August 5, 2015.

⁸ Bhandari, D. and Nepal (2015) The cost-benefit analysis of increasing breastfeeding rates in New Mexico. Unpublished manuscript. Bureau of Business and Economic Research, University of New Mexico.

⁹ *Ibid.*

¹⁰ Chavez, Cindy, Program Manager, New Mexico Breastfeeding Task Force. Interviewed by phone on June 17, 2015.

¹¹ U.S. Department of Health and Human Services, Health Resources and Services Administration. [Business Case for Breastfeeding](#). Accessed on June 29, 2015.