



Gifts Across Generations

Policies and Laws in Support of Breastfeeding
in Bemidji Area American Indian Communities



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**PUBLIC HEALTH
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Great Lakes Inter-Tribal Epidemiology Center
Great Lakes Inter-Tribal Council, Inc.

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Introduction: History and Significance of Breastfeeding in Indigenous Communities

Breast milk has been the traditional first food and first medicine of Indigenous communities throughout North America since time immemorial. Today, as Tribal Nations assert their sovereignty in the realm of food systems, they are reclaiming the use of traditional foods to nourish the physical, mental, emotional, and spiritual aspects of both the human body and greater community. It was common for Indigenous mothers to breastfeed their babies for at least two years, with some mothers carrying on the practice for longer periods of time, sometimes up to four or five years.¹ Research has revealed what American Indian and Alaska Native people have known for millennia, that the bond between

a mother and her child is sacred and this form of intimate bonding supports healthy child development and consequently, healthy communities. Breastfeeding has been a means to connect Indigenous peoples to their first food and first medicine, and the benefits of breastfeeding are profound. In addition to promoting increased connection and bonding between mother and baby—an inherently healthy connection—breastfeeding brings other important health benefits, including reduced risk of obesity and ear infections for breastfed children, and reduced risk of certain cancers for women who breastfeed.²

The birth of a child in Indigenous communities is more than a medical procedure; the giving of life is a ceremony that also has spiritual elements.

There is an acknowledgement that a spirit entering the physical world requires offerings of sacred tobacco, prayers and songs to be said and sung to welcome this life.³ For the Dakota, the birth of a child represents a blessing because it is the spirit of the child which chooses the child's parents.⁴ The Dakota word for children is *wakan̄heža*, with the root word of *wakan̄*, meaning holy or sacred. When babies entered this world in Indigenous communities, the baby often made contact with Mother Earth immediately after birth as a reminder of the importance of connection to the Earth.⁵ Ojibwe babies were breastfed immediately after birth and breastfed as often as they wanted, which ensured they received the important health benefits of colostrum. Ojibwe elders also believe that breast milk can pass certain characteristics, strengths, and even a sense of respect to babies.⁶

An Ojibwe traditional educator shared her view on breast milk as being “a gift and a medicine a mother gives her child.”⁷ Reports from the Red Lake Nation show that the Ojibwe understand the anti-infective properties of breast milk, reinforcing breast milk's status as medicine. A common Ojibwe practice was to use breast milk to treat eye and ear infections in babies. Breast milk also protects infants from diarrhea, colds, and flu.⁸

The disruption to Indigenous lifeways and traditional practices caused by the United States government and federal Indian law and policies have systematically led to the many health disparities that are experienced across Indian Country. Breastfeeding is one of a myriad of Indigenous cultural practices that supported good health and wellness that was disrupted by these policies. Camie Goldhammer is a renowned Sisseton-Wahpeton lactation counselor, the founder and chair of the Native American Breastfeeding Coalition of Washington, and a founding mother and President-Elect of the National Association of Professional and Peer Lactation Supporters of Color. She has conducted dozens of trainings for Indigenous lactation counselors across Indian Country. In her trainings, she explains:

Breastfeeding is a traditional practice. The way we learned this was from our mothers and our grandmothers and our aunties. It was passed down to us the same way our songs, our prayers, our ceremonies, our dances were passed down to us. That's how we learned how to breastfeed. But when removed mothers from our lives through war, foster care system, boarding schools, all the ways that we, the U.S. government, tried to separate native women from their children, that's how we lost this tradition of breastfeeding. We don't necessarily have that knowledge being passed down to us.⁹

The impacts of this societal and cultural disruption are compounded by the promotion of formula to Indigenous mothers, including, ironically, through services such as the Women, Infants, and Children (WIC) program. The Special Supplemental Nutrition Program for WIC began in 1972 with an amendment to the Child Nutrition Act.¹⁰ This amendment created a two-year pilot WIC program, including pilots in Indian Country, that became permanent in 1975. The WIC Program was established to serve low-income, high-risk populations in the areas of nutrition education, supplemental food support, and breastfeeding education and support.¹¹ Although WIC is tasked with supporting breastfeeding, the average breastfeeding rate for WIC participants across all racial and ethnic groups is lower than the average rate for non-participants.¹²

In the Bemidji Area of the Indian Health Service, WIC's history and operations vary from Tribe to Tribe. In Wisconsin, WIC started serving most of the Tribes located there in 1974. Tribes who were members of the Great Lakes Inter-Tribal Council at the time (except for the Oneida Nation) and the Menominee Nation (which had just won back its status as a federally-recognized Tribe) served as two of the three WIC pilot projects in the state at that time.

Similarly, Tribes in Minnesota began participating in WIC in the mid- to late 1970s. The Mille Lacs

Band WIC program and the Indian Health Board (subcontracted by the city of Minneapolis) began as two pilot sites for WIC in Minnesota. The White Earth Band, Mille Lacs Band and Fond du Lac Band had a unique role in providing WIC program services to both American Indian and non-American Indian populations within their respective areas. The four Sioux Tribes in Minnesota operated their own WIC programs in the late 1970s through the late 1980s. The Red Lake Nation began operating a WIC program in the early 1990s.

Information about the history of WIC across the Tribes in Michigan was sought but was not available online and could not be obtained from the Michigan Department of Health and Human Services.

In addition to these factors, Indigenous women confront the same types of challenges that create barriers to initiating and maintaining breastfeeding for many low-income women and women of color, often to heightened degrees. These challenges include lack of prenatal care, lack of social support for breastfeeding, and lack of economic support. For example, only 66.5% of American Indian/Alaska Native women receive prenatal care starting in the first trimester, compared to 81.3% of all other races in the United States.¹³ Many workplace breastfeeding policies do not provide for paid breaks to express milk, and many hourly jobs do not offer paid parental leave and similar benefits.

As awareness of the many benefits of increased breastfeeding rates in Indigenous communities has increased, there has been a resurgence of American Indian and Alaska Native midwives, doulas, nurses, and a host of other professionals working to establish grassroots organizations to support and advocate for breastfeeding protections. Some recent examples include the Indigenous Breast-

feeding Coalition of Minnesota, the Native Breastfeeding Coalition of Wisconsin, and Mewinza Ondaadiziike Wiigaming. In addition, Tribal groups and Tribal-serving organizations are developing resources to build breastfeeding awareness, support, and policy capacity across Indian Country. For example, the Inter-Tribal Council of Michigan developed the “Breastfeeding Toolkit for the American Indian Worksite,” and the Great Lakes



Inter-Tribal Council established a program called “Breastfeeding: The Traditional Way”^{**} Program. This report aims to supplement those resources by providing an overview of the landscape of breastfeeding law and policy for Tribal Nations and urban American Indian/Alaska Native health clinics in the Bemidji Area of the Indian Health Service (“Bemidji Area”).

* INTER-TRIBAL COUNCIL OF MICHIGAN, BREASTFEEDING, FOLLOWING TRADITION WORKS FOR WORKING WOMEN (2013), <http://www.itcmi.org/wp-content/uploads/2013/05/Breastfeeding-Toolkit-for-the-American-Indian-Worksite.pdf>.

** Great Lakes Inter-Tribal Council Inc., *Breastfeeding: The Traditional Way*, <http://www.glitc.org/programs/BTW/>.

Project Overview and Methodology

The First Food Policy and Law Scan (PALS) Project (“Project” or “First Food PALS Project”) was conducted by the Great Lakes Inter-Tribal Epidemiology Center (GLITEC) in partnership with the Public Health Law Center (PHLC). The goal of the Project is to provide information to the Tribes and urban American Indian health centers in the Bemidji Area about how Tribes and urban health centers are using law and policy to support breastfeeding, and to facilitate the sharing of ideas and approaches across communities. As part of the Project, information about the relevant local, state, and federal breastfeeding laws was also collected and summarized to provide Tribes and urban American Indian/Alaska Native clinics with information about the legal landscapes around them, and to provide an additional source of ideas.

To launch the First Food PALS Project, the legal counsel and health directors of the 34 federally recognized Tribes, and directors of the four urban American Indian health centers within the Bemidji Area were contacted through email and mail. Each contact was sent a formal invitation to participate in the Project, a handout providing an overview of the Project, and a letter requesting access to Tribal code, statutes, ordinances, resolutions and organizational policies related to breastfeeding. In asking for organizational policies, the Project team identified six settings within Tribal jurisdictions where breastfeeding policies would be particularly relevant and important:

- Tribal codes, resolutions, and Tribal government administrative policies;
- health or public health departments, health clinics, health and wellness centers, Trib-

ally operated or federally-operated Indian Health Service Units;

- gaming facilities and resorts;
- cultural events or programming (such as powwows);
- early care and education settings (such as Early Head Start, Head Start, and child care programs); and
- academic settings including Tribally-operated Bureau of Indian Education schools and Tribal colleges and universities.

For Tribal Nations, the letters requesting participation were modified depending on whether the Tribe's code was published online. For Tribes where the code is publicly available, the Project team sent a letter offering the option to opt-out of the Project. For those Tribes with codes that are not publicly available or only partially available, the letter requested access to Tribal codes. All Tribes and urban American Indian health center directors were sent letters requesting access to administrative and organizational policies relating to the six settings described above. The letter and overview explained that the Project team would collect and analyze the policies, and would create an aggregate report that would provide highlights from these policies in a de-identified way unless written permission was received to identify the source of the policy, out of respect for privacy and Tribal sovereignty. In addition to formal, written policies, informal policies and practices were collected through email or phone conversations. Pol-

icies were deemed "formal" if they were formally adopted by a decision-making body (e.g., Tribal Council; human resources department of a casino or college; child care program director) *and* in writing (e.g., incorporated into Tribal code; part of a human resources or staff handbook, etc.). Policies were deemed informal if no written policy existed, but the contact person described a policy or practice that is applied by the setting (e.g., availability of a lactation room; a practice of allowing employees to take breaks as needed for milk expression, etc.).

Following the initial outreach to Tribal and organizational contacts, Project team staff followed up with emails and telephone calls to contacts within each of the 34 Tribes and the four urban American Indian clinics and reached out to the leaders at inter-Tribal organizations. Contacts were identified through GLITEC staff, online searches and word-of-mouth referrals. Breastfeeding policies were gathered on a rolling basis, and Project team staff conducted continuous follow up to encourage responses. Responses received were documented and tracked to facilitate follow up.

To promote consistent and systematic analysis, the Project team developed and refined a coding protocol to code each policy for 16 distinct features or components, plus a catch-all "other" category. More information about the coding protocol and process is included in Appendix A.

The following sections summarize the information that was shared by Tribal contacts, including

Policies Covered by this Report

Both informal and formal policies were collected for this Project.

Formal policies: policies that are in writing, and were formally adopted by the Tribal government, agency, or organization. This includes Tribal codes, resolutions, human resources policies, health clinic policies, etc.

Informal policies: policies conveyed through email or telephone that are not written down but nonetheless show a practice or system to support breastfeeding. Such policies include the designation of a lactation room, or creation of a system for employees to take milk expression breaks, etc.

analysis and highlights from the policies. Prior to this report being made public, the Tribal contacts who agreed to participate in this project were asked to review and provide feedback on the policy discussion and could provide or withhold permission to identify their Tribe's policies through quoted language or by naming the Tribe. The Project is also providing short, tailored policy fact sheets for each Tribe and urban health clinic that wished to participate in this project to provide them with community-specific information to support any breastfeeding policy work they might wish to pursue.

Tribal and organizational contacts were generous in sharing the policies from their settings. Contacts from entities in 32 Tribes from across the Bemidji Area, the four urban American Indian health centers, and the Inter-Tribal Council of Michigan, responded to the invitation to participate and provided a total of 66 policies. In some cases, contacts responded to outreach efforts but did not provide policies. For example, a contact may have responded by stating that there was no policy to share or that a policy was being worked on but had not yet been finalized. In some cases, the same policy was provided by more than one contact. In other cases, one contact provided the policy/ies for more than one setting. In terms of how policies were counted, policies were reviewed and analyzed to determine what sectors they applied

to; if they did not apply across a community, they were counted based on the number of settings or sites to which they apply, and the type of site they apply to (e.g., health clinic, Early Head Start program, casino). In most cases, it was straightforward—a casino manager provided a policy for that specific casino, or an ECE director provided a policy for the ECE program.

Sometimes, however, counting was more complicated. For example, if the same Tribal resolution was provided by a contact in Tribal government and a Head Start program director, it was counted as one policy and not two policies because it is a resolution that covers the entire jurisdiction. In another example, if a health director provided an administrative policy that covers both the health department and the casino (but not all Tribal employees), it was counted as two policies because the policy addresses two settings but is not a law or resolution that applies across the entire jurisdiction. If a Tribe has more than one casino and a policy was provided for each casino, each policy was counted as a separate policy (even if it was the same policy) because it applied to multiple gaming sites.

Table 1 below provides a count of the policies received from settings within Tribal Nations in Michigan, Minnesota, and Wisconsin, by setting. As Table 1 reflects, cultural events and programming was ultimately not counted as a separate set-

Table 1. Count of Policies by Setting for Tribal Nations in Michigan, Minnesota and Wisconsin Combined

Sector/setting	Formal policy	Informal policy	Total
Tribal code or administrative policy	10	3	13
Health center or health services agency	12	4	16
Gaming setting	1	15	16
Early care and education	6	4	10
Academic setting	3	3	6
Total	32	29	61

ting, and instead, the coding process was used to identify when policies included a reference to traditional language, culture or cultural events. This approach seemed to better reflect how breastfeeding is being addressed at cultural events and programming based on the policies that were shared. (Note that the numbers in Table 1 do not include policies received from the urban American Indian/Alaska Native health centers and a policy from the Inter-Tribal Council of Michigan.)

Table 2 below provides an overview of the policies that were received, categorized by state and by

organization type. The policies were sorted by focus area, meaning what the coders determined to be the main or primary focus of the policy. These focus areas are:

- policies that allow employees to bring their infants to work to nurse or care for them or to otherwise breastfeed a baby on-site (“Baby-on-site (BOS)”);
- policies that address break time and space for breastfeeding employees to pump (“Milk expression (ME)”);
- policies that address both types of breast-

Table 2: Foci and Key Provisions from Policies within Bemidji Area Tribal Settings (Categorized by State), Urban American Indian/Alaska Native (AI/AN) Health Centers, and the Inter-Tribal Council of Michigan (ITCM)

	Michigan	Minnesota	Wisconsin	ITCM and urban AI/AN health centers	Total
Policies received	16	21	24	5	66
Formal policies	12	8	12	4	36
Informal policies	4	13	12	1	30
Policy focus					
Baby-on-site (BOS)	0	0	1	1	2
Milk expression (ME)	2	10	11	2	25
Both BOS and ME	8	9	4	2	23
Breast milk use	1	3	0	0	4
Right to breastfeed	1	0	3	0	4
Other	4	1	5	0	10
Selected policy components					
Culture-related provisions	3	0	5	0	8
Paid breaks	1	2	1	1	5
Anti-discrimination language	4	2	6	0	12
Baby age limits over 12 months	3	1	1	0	5
Evaluation	0	1	1	0	2

- feeding needs (“Both (BOS & ME)”);
 - policies that focus on standards for use and handling of breast milk (“Breast Milk Use”);
 - policies that primarily focus on establishing or recognizing a broad right to breastfeed across the community (“Right to Breastfeed”); and
 - policies that support breastfeeding in some way but did not clearly fit within the other categories (“Policy Focus—Other”).
- In addition, the following policy features were noted because of their salience:
- provisions addressing cultural activities or reflecting culturally relevant language or concepts;
 - language that mentioned or provided for

Glossary of Key Terms and Concepts

Terms related to law and policy

Civil law. A system of non-criminal law that defines and protects the private rights of citizens, offers legal remedies for disputes, and typically covers areas of law such as contracts, torts, property, family law, business regulations, and the like.¹

Criminal law. A system of law that primarily focuses on punishment of those who commit crimes.²

Law. “A binding custom or practice of a community; a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority” such as by a Tribal council or President.³

Ordinance. An authoritative law or decree that forbids, authorizes, and/or regulates an activity.⁴ Ordinances are typically incorporated into a jurisdiction’s code.

Policy. Typically, a written plan or course of action designed to influence and determine decisions.⁵ Policies can be informal as well as formal. Policies can have the authority of government behind them (and would include laws, resolutions, codes, regulations, etc. in this context) and also can be adopted by organizations or non-governmental entities to guide their decisions and practices.

Resolution. Resolutions are used to formally express “the sense, will, or action” of a government body, such as a Tribal council or other legislative

body.⁶ They may be used to formally adopt an administrative policy, such as a worksite breastfeeding policy for Tribal employees.

Tribal code. A systematic compilation or revision of ordinances, laws, rules, or regulations of a Tribe.⁷

Terms related to Tribal sovereignty and U.S. Indian policy

Federally-recognized tribe. “An American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States [F]ederally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States.”⁸

State-recognized tribe. A Tribal entity that has been formally recognized by a state. State recognition is usually accomplished through action by the state legislature. It does not confer the same benefits as federal recognition and does not guarantee funding from the state but can be a useful tool to build state-tribal collaboration.⁹ A Tribe may be both federally-recognized and state-recognized.

Public Law 280 (PL 280). Public Law 83-280, adopted in 1953, in the middle of the Termination

- paid nursing breaks for employees (“Paid Breaks”);
- language forbidding discrimination against breastfeeding women (“Anti-discrimination Language”);
- language extending breastfeeding protections beyond one year from baby’s birth (“Baby Age Limits Over 12 Months”); and

- language calling for periodic evaluation of the policy (“Evaluation”).

This study has several important limitations. It is likely that policies were missed or not shared. This could be for many reasons, including concerns about privacy, a policy was in development but not finalized at the time the contact was made, lack of success in connecting with the right contact

Period (when Congress acted to withdraw federal recognition and support to Tribal Nations). This law unilaterally and mandatorily conveyed concurrent state *criminal* jurisdiction and *civil court* jurisdiction over Tribal lands in six states, including Minnesota (except the Red Lake Nation) and Wisconsin, and allowed other states the option to exercise such jurisdiction over Tribal lands in their states. Although this law had no legal impact on Tribal jurisdiction and authority, it reduced federal assistance and allowed states to exercise concurrent jurisdiction with Tribes in the affected states.¹⁰

Sovereignty. The authority to self-govern, including to determine governance structures, pass

laws, and enforce laws through police departments and Tribal courts.¹¹

Breastfeeding-related terms

Breastfeeding. Feeding a baby or toddler human breast milk from a breast.¹²

Lactation. The production and secretion of breast milk.¹³ When used in policies, it may be unclear whether it refers to breastfeeding or milk expression or both.

Milk expression. Generally used to refer to pumping (or “expressing”) of breast milk; usually does not include breastfeeding or nursing a child.

1 See Civil law, Legal Dictionary, <https://legaldictionary.net/civil-law/>.

2 See Criminal law, Legal Information Instit., https://www.law.cornell.edu/wex/criminal_law

3 Law, Merriam-Webster, <https://www.merriam-webster.com/dictionary/law>.

4 See Ordinance Definition, BLACK’S LAW DICTIONARY (10th ed. 2014) (Westlaw).

5 See, e.g., Policy, Vocabulary.com, <https://www.vocabulary.com/dictionary/policy>.

6 Resolution Definition, BLACK’S LAW DICTIONARY (10th ed. 2014) (Westlaw).

7 See Code Definition, BLACK’S LAW DICTIONARY (10th ed. 2014) (Westlaw).

8 U.S. Dep’t of Interior, Bureau of Indian Affairs, *Frequently Asked Questions (What Is a Federally-Recognized Tribe?)*, <https://www.bia.gov/frequently-asked-questions>.

9 See Nat’l Conf. of State Legislatures, *State Recognition of American Indian Tribes* (Oct. 2016), <http://www.ncsl.org/research/state-tribal-institute/state-recognition-of-american-indian-tribes.aspx>.

10 See U.S. Dep’t of Interior, Bureau of Indian Affairs, *Frequently Asked Questions (What Is Public Law 280 and Where Does it Apply?)*, <https://www.bia.gov/frequently-asked-questions>.

11 Nat’l Congress of American Indians, *Tribal Governance*, <http://www.ncai.org/policy-issues/tribal-governance>. See also, Nat’l Congress of American Indians, *Tribal Nations and the United States, An Introduction* (May 2019), http://www.ncai.org/tribalnations/introduction/Tribal_Nations_and_the_United_States_An_Introduction-web-pdf.

12 See Breastfeed, Merriam-Webster, <https://www.merriam-webster.com/dictionary/breastfeed>.

13 Lactation, Merriam-Webster, <https://www.merriam-webster.com/dictionary/lactation>.

person, or the contact for the setting had other priorities to attend to and could not respond.

In addition, the coding was at times challenging because of confusing terminology. For example, the term “lactation” or “breastfeeding” was sometimes used in ways that included “milk expression,” but sometimes did not. Another limitation is that other than having the written policy or a brief communication from a setting contact about an informal policy, the Project team had little information about how the policy is actually being implemented or interpreted, and collecting that qualitative information was beyond the scope of this scan. For example, it is likely that some agencies or organizations offer paid nursing breaks or support breastfeeding women regardless of the age of their babies. However, if the policy did not expressly state this or if the contact did not explain that this was part of an informal policy, this information was not captured.

Similarly, cultural programs and activities may incorporate breastfeeding practices and systems to a greater degree than was revealed through this research; those activities likely would be shown through implementation. Also, cultural events can be sacred and intensely private events, and so it would not be expected that information about them would be shared with non-Tribal members. Despite these limitations, the response this Project received was much greater than anticipated, and the Project team felt deep gratitude and appreciation for the interest in this Project.

Tribal policies that support women in breastfeeding their babies help promote breastfeeding as a social and cultural norm. Tribes and American Indian serving organizations across the Bemidji Area have developed a range of laws and policies to support breastfeeding across a variety of settings in their communities, from child care programs to colleges to clinics to Tribal government offices.

Federal and State Legal Landscapes within the Bemidji Area of the Indian Health Service

The Federal Legal Landscape

Federal law provides basic support for nursing mothers through health insurance requirements and worker protections. The Patient Protection and Affordable Care Act of 2010¹⁴ (ACA) requires most health insurance plans to cover all the costs for breastfeeding support and counseling services from a trained provider, and also for equipment rental or purchase.¹⁵ For nursing mothers who also work outside the home and need time off or work breaks to breastfeed, federal law provides employment protections through the Family Medical Leave Act¹⁶ and amendments to the Fair Labor Standards Act¹⁷ (FLSA) also made

through the ACA.¹⁸ The federal Family and Medical Leave Act provides some job protection and a right to up to 12 weeks of unpaid leave for parents after the birth or placement of a child, which can include time for breastfeeding initiation. Employers covered by the federal Fair Labor Standards Act are required to provide a suitable space and reasonable break times for nursing mothers to express, or pump, breast milk while at work for babies up to one year old. The reasonable break time requirements established in the FLSA are summarized in Table 3. For more detailed information about these federal protections, see Appendix B to this report.

Table 3. FLSA Reasonable Break Time Requirements for Nursing Mothers at Work¹⁹

Which workers are protected	Workers who are also covered by the Fair Labor Standards Act's overtime pay requirements ("non-exempt" employees). Workers who work for employers with less than 50 employees may not be covered if the employer can prove undue hardship (as defined by the law). Protections apply regardless of mother's citizenship status.
Break time requirements	Reasonable break times must be provided for milk expression (breastfeeding a baby at a work site is not addressed). No limits are specified as to number of or length of breaks. Breaks do not have to be paid unless the employer provides paid break time to other workers, and the nursing mother is using paid break time to pump.
Space requirements	The space must be private, shielded from view and free from intrusion by the public and other workers. It must be available when the worker needs it. It must not be a bathroom.
Age limits for babies	Break times must be provided for nursing mothers up to one year after the baby's birth.
Whistleblower protections	Discrimination or retaliation against workers who file verbal or written complaints related to or under the FLSA is prohibited.

State and Local Legal Landscapes

Federally-recognized Tribes are sovereign nations that have a government-to-government relationship with the U.S.; states do not have jurisdiction over Tribes except as delegated by Congress or determined by federal courts.²⁰ One of the more well-known and also often misinterpreted examples of Congressional delegation of jurisdiction is Public Law 280.²¹ This 1953 law unilaterally and mandatorily conveyed concurrent state *criminal* jurisdiction and *civil court* jurisdiction over Tribal lands in six states, including Minnesota (except the Red Lake Nation) and Wisconsin, and allowed other states the option to exercise criminal and civil court jurisdiction over Tribal lands in their states. This law reduced federal criminal jurisdiction over Tribal lands in the states where Public Law 280 was mandatory; it had no legal impact on Tribal jurisdiction. It also did *not* convey state civil

or regulatory jurisdiction within Indian Country. Thus, state (and local) breastfeeding laws—which are civil and regulatory laws—do not apply and are not enforceable within Tribal jurisdictions. Nonetheless, these types of breastfeeding laws may provide some useful ideas for informing breastfeeding policy development by Tribal governments and organizations. Thus, summaries of the state laws that are encompassed within the Bemidji Area are also provided.

ILLINOIS

Although many states have laws protecting nursing mothers in public spaces and workplaces, Illinois has a particularly wide variety of breastfeeding protection laws. It has a law declaring that breastfeeding is not an act of indecency,²² and a

right-to-breastfeed law that states that a mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be (although in places of worship, the mother must follow the appropriate norms within that place).²³

Illinois also has adopted breastfeeding protection laws that apply in specific settings, including worksites. The state's "Nursing Mothers in the Workplace Act" requires that employers provide reasonable *paid* breaks each day to employees who need to express breast milk or nurse a baby, up to one year after the baby's birth. The law also requires employers to make reasonable efforts to provide a room or other location, other than a bathroom, where employees can express milk in privacy.²⁴ Illinois law requires public schools to provide reasonable accommodations for breastfeeding students on a school campus to express breast milk, breastfeed an infant child, or address

other needs related to breastfeeding,²⁵ and allows nursing mothers to be excused from jury duty.²⁶ Additionally, Illinois has a law requiring every facility that houses a circuit court to designate at least one lactation room or area for the public to use. The lactation room or area cannot be in a restroom, and must include a chair, a table, an electrical outlet, and, where possible, a sink with running water. Notice must be posted within the building regarding location and access, and the Illinois Supreme Court is requested to issue minimum standards for training court personnel about location and access requirements.²⁷

Illinois has also adopted a law requiring airport managers in airports operated by local governments and that have more than one million enplanements per year to provide a room or other location space at each airport terminal behind the airport security screening area for members of the public to express breast milk in private in a place





that is not a public restroom.²⁸

Another Illinois law requires that every hospital that provides birthing services adopt an infant feeding policy that promotes breastfeeding. The hospital must routinely communicate this policy to staff and post the policy in a conspicuous place in the obstetric or neonatal area, or on the hospital's website.²⁹ Illinois also has authorized the state's Department of Public Health to engage in educational campaigns to support breastfeeding.³⁰ Further, Illinois legislators have adopted resolutions recognizing the health, economic, and societal benefits of breastfeeding to babies, mothers, families, and communities, and calling for barriers to breastfeeding to be removed.³¹

The American Indian Health Service of Chicago is located in Chicago. Although Chicago's city code does not have any generally applicable breastfeeding support laws, the city does have a Lactation Accommodation ordinance that states that there must be a place for nursing mothers to express breast milk at an airport terminal and

this space must include a lockable door, a chair, a table, an electrical outlet and a sink with running water. Additionally, this place cannot be a public restroom.³² See Appendix C for more information about Illinois laws relevant to breastfeeding protections.

INDIANA

Indiana has a strong set of workplace protection laws for nursing mothers. Indiana law requires state and political subdivisions (such as city and county governments) to provide for reasonable *paid* breaks for employees to express milk, to provide a private space near the employee's workspace that is not a bathroom for milk expression, and to make reasonable efforts to provide a refrigerator for storing expressed breast milk.³³ State law also provides that employers with more than 25 employees must provide a private location, other than a bathroom, where an employee can express the employee's breast milk in private, and, if pos-

sible, to provide a refrigerator for storing breast milk that has been expressed.³⁴ Indiana also has a right to breastfeed law which states that a woman may breastfeed her child anywhere the woman has a right to be.³⁵ See Appendix D for more information about Indiana laws relevant to breastfeeding protections.

MICHIGAN

Michigan's Breastfeeding Anti-discrimination Act³⁶ protects the right of women to breastfeed in any place of public accommodation or public service. This law provides that a mother may breastfeed her child in any place of public accommodation or public service and cannot be denied services, or be told that she is unwelcome, because she is breastfeeding a child.³⁷ This means nursing mothers are allowed to breastfeed in restaurants, stores, parks, malls, and other locations. This law allows someone who has been injured by a violation of this law to bring a lawsuit for actual or presumed damages, injunctive relief, and attorney's fees.³⁸ Breastfeeding in public also is not a violation of Michigan's indecent exposure laws, even if a woman's nipple or aureole is exposed.³⁹ Neither Michigan nor the City of Detroit (where the American Indian Health and Family Services of Southeastern Michigan is located) have a worksite protection law for nursing mothers. For more information about Michigan's laws relating to breastfeeding protections, see Appendix E.

The Inter-Tribal Council of Michigan, a Tribally-designated non-profit, has developed a comprehensive [toolkit](#)* on Tribal worksite policies to support breastfeeding, which includes an assessment tool, outline of policy components, sample Tribal policies, evaluation tools, and other resources.

* INTER-TRIBAL COUNCIL OF MICHIGAN, BREASTFEEDING, FOLLOWING TRADITION WORKS FOR WORKING WOMEN (2013), <http://www.itcmi.org/wp-content/uploads/2013/05/Breastfeeding-Toolkit-for-the-American-Indian-Worksite.pdf>.

MINNESOTA

Minnesota also has strong laws supporting breastfeeding. Minnesota has passed a parenting leave law that provides protections similar to the federal Family Medical Leave Act for working parents, allowing unpaid leave of up to 12 weeks in connection with a pregnancy, birth or adoption of a child.⁴⁰ Further, Minnesota has a worksite breastfeeding protection law.⁴¹ Under both Minnesota and federal law, employers are required to provide nursing mothers with reasonable time and appropriate space to express milk.⁴² The employer must follow whichever law offers nursing mothers the most protection. When read together, Minnesota law and federal law require employers to provide a space shielded from view, near the employee's work area (if reasonable), free from intrusion, and that includes access to an electrical outlet. The space cannot be a bathroom and should be made available at the same time as other break times if possible. The breaks do not have to be paid.

Minnesota law also allows a mother to breastfeed in any location, public or private, where the mother and child are allowed to be.⁴³ A mother may breastfeed her child anywhere even if the nipple or breast is uncovered while breastfeeding. This means nursing mothers are allowed to breastfeed in restaurants, stores, parks, malls, and other locations. Breastfeeding in public also is not a violation of Minnesota's indecent exposure laws.⁴⁴ The City of Minneapolis, where the Minneapolis American Indian Health Board is located, also has a Paid Sick and Safe Time law that establishes a minimum paid leave requirement for workers who otherwise do not have sick leave, which can be used to care for family members.⁴⁵ For more information about Minnesota's state and local laws relating to breastfeeding protections, see Appendix F.

WISCONSIN

Wisconsin has passed a family and medical leave law that is similar to the federal Family and

Medical Leave Act.⁴⁶ Wisconsin law also exempts breastfeeding women from the state's "lewd and lascivious behavior" law,⁴⁷ and has a right-to-breastfeed law that provides that a mother may breastfeed her child in any public or private area where the mother and child are allowed to be.⁴⁸ Milwaukee, where the Gerald L. Ignace Indian Health Center is located, does not have a general law protecting breastfeeding women, but does exempt breastfeeding women from criminal indecency laws.⁴⁹ Also, vendors bidding for city work can qualify as socially-responsible contractors

(which allows them to earn extra points in the bidding process) by, among other things, providing a breastfeeding space for employees.⁵⁰ Wisconsin has not adopted a law addressing breastfeeding or milk expression breaks for working mothers. Because Wisconsin does not have a state law that addresses these kinds of protections, the minimum standards set by federal law apply within the state's jurisdiction. For more information about Wisconsin's state and local laws relating to breastfeeding protections, see Appendix G.

Tribal Breastfeeding Policy Landscapes and Discussion

This section provides data on breastfeeding rates and Tribal breastfeeding laws and policies, primarily organized by state. However, to preserve their privacy as much as possible, the policies provided by the four urban American Indian health centers within the Bemidji Area are discussed together, at the end of this section, and not by state.

MICHIGAN

Background Data on Breastfeeding Rates in Michigan

Breastfeeding rates for American Indian/Alaska Native (AI/AN) babies in Michigan have increased

in recent years. Based on 2017 data—the most recent available—just over three-quarters (75.8%) of AI/AN babies in Michigan have ever breastfed and over a quarter (28.6%) were still breastfeeding at six months, which is a 8.5% and 12.4% increase, respectively, from 2012 rates.⁵¹ However, as Table 4 shows, compared to both national breastfeeding rates for AI/AN babies and breastfeeding rates for all babies in Michigan, breastfeeding rates for AI/AN babies in Michigan present opportunity for growth. Although initiation/ever breastfed rates are similar across these groups, by the age of six months, the rate of breastfeeding among AI/AN babies in Michigan (28.6%) is just under half of the rate both for all AI/AN babies nationally (55.0%) and for all Michigan babies (55.6%).

Tribal policies that support women in breastfeeding their babies—such as milk expression policies or infant-at-work policies for worksites—could help address this gap.

Table 4 provides a comparison of breastfeeding rates at different ages between AI/AN babies (both in Michigan and across the U.S.) and babies in the general population (again, both in Michigan and across the U.S.), using data collected from the state’s WIC program, the CDC’s National Immunization Survey, the CDC’s 2018 Breastfeeding Report Card, and the CDC’s Pregnancy Risk Assessment Monitoring System (PRAMS) data. AI/AN data are

in bold text. The Healthy People 2020 breastfeeding goals are included at the bottom of the table to provide additional points of comparison.

Discussion of Policies

In response to the invitation to Tribal contacts in Michigan to share laws and policies relating to breastfeeding, 16 policies, including 12 formal written policies and four informal policies, were shared by contacts based in 11 Tribes. The Inter-Tribal Council of Michigan, Inc. also shared its formal policy, bringing the total count to 17 policies. Of course, additional policies were likely missed or

Table 4. American Indian/Alaska Native Babies—Breastfeeding (BF) Rates for Michigan and United States⁵²

	Ever/ initiation	Exclusive BF at 3 months	6 months	Exclusive BF at 6 months	12 months
American Indian/Alaska Native Data					
Michigan AI/AN babies in the WIC program being breastfed, per 2017 data	75.8% (initiation)	Not reported	28.6%	Not reported	17.0%
National averages for AI/AN babies per 2015 data from the Nat’l Immunization Survey	76.4% (ever)	44.6%	55.0%	19.6%	31.03%
Michigan mothers of babies where any mention of AI/AN race for mother or father on birth certificate, from PRAMS	79.1% (initiation)	Not reported	Not reported	Not reported	Not reported
All U.S. Populations Data					
Breastfeeding averages for all Michigan babies, per CDC 2018 Breastfeeding Report Card	77.7% (ever)	44.1%	55.6%	23.9%	34.6%
Breastfeeding averages for all babies in all states, per CDC 2018 Breastfeeding Report Card	83.2% (ever)	46.9%	57.6%	24.9%	35.9%
All PRAMS participants, United States, 2015	87.1% (initiation)	Not reported	Not reported	Not reported	Not reported
Healthy People 2020 Goals	81.9% (ever)	46.2%	60.6%	25.5%	34.1%

not shared. The table below shows how many policies were received from the settings that are the focus of the First Food PALS Project.

These settings are:

- Tribal codes, resolutions, and Tribal government administrative policies;
- health or public health departments, health clinics, health and wellness centers, Indian Health Service Units;
- gaming facilities and resorts;
- early care and education settings (such as

Early Head Start, Head Start, and child care programs); and

- academic settings including Tribally-operated Bureau of Indian Education schools and Tribal colleges and universities.

Table 5 shows how many policies, both formal and informal, were received from contacts in Tribal Nations in Michigan (so excluding the Inter-Tribal Council of Michigan, Inc.) and provides information about what the policies focus on and some of their key features. Of the policies that were shared,

Table 5. Policy Counts by Setting and Selected Policy Features for Tribal Nations in Michigan

	Tribal code or administrative policies	Health centers or health services agencies	Gaming settings	Early care and education	Academic settings	Totals
Policies received	3	5	3	3	2	16
Formal policies	3	4	1	2	2	12
Informal policies	0	1	2	1	0	4
Policy focus						
Baby-on-site (BOS)	0	0	0	0	0	0
Milk expression (ME)	0	0	1	0	1	2
Both BOS and ME	1	3	1	2	1	8
Breast milk use	0	0	0	1	0	1
Right to breastfeed	1	0	0	0	0	1
Other	1	2	1	0	0	4
Selected policy components						
Culture-related provisions/languages	1	1	1	0	0	3
Paid breaks	0	0	1	0	0	1
Anti-discrimination language	2	2	0	0	0	4
Baby age limits over 12 months	0	1	1	0	1	3
Evaluation	0	0	0	0	0	0

eight policies address both milk expression and breastfeeding on-site (such as policies allowing mothers to bring their babies to work to breastfeed; to go to the childcare center to nurse their babies; or to breastfeed in public). Two policies focus on milk expression only. Another four policies focus on other issues related to breastfeeding, such as providing breast pump check-in and check-out protocols for a health center, and a general fair employment practices law. The coding analysis found that one policy mentions paid breaks, four policies include anti-discrimination language, and three policies go beyond federal law in supporting breastfeeding for babies over 12 months old. Three policies also refer to breastfeeding as a cultural norm or refer to supporting it at cultural events. For a full explanation of the methodology used for this project, see Appendix A.

Below are highlights from some of the policies received from Tribal Nations in Michigan, organized by sector or setting.

Tribal code or administrative policies



Three formal policy examples of Tribal laws or government administrative policies were shared. Codifying policies in statutes is a way to ensure that a policy has community-wide application, and so is one way that Tribes can support and protect breastfeeding for nursing mothers and their babies across their communities. In contrast, Tribal administrative policies typically apply to Tribal government property or operations but they still can have great impact, particularly when they apply across all Tribal enterprises as well as to Tribal government operations. Both types of government policies are ways that Tribal governments can lead by example and help establish social norms that encourage breastfeeding.

The Little Traverse Bay Bands of Odawa In-

dians Waganakising Odawak Odawak Statute #2012-013 establishes the right of mothers to breastfeed on both public and private Tribal property, prohibiting discrimination against breastfeeding mothers in both private and public places, and providing for enforcement of the law. It also exempts breastfeeding from the Tribe's public safety laws relating to indecent exposure offenses. The statute clearly and succinctly states: "A mother may breastfeed her child on any Tribal property." This language clearly establishes breastfeeding rights within the Tribe's jurisdiction. The statute also extends public accommodations protections for breastfeeding mothers to private places, stating: "Any direct or indirect act of exclusion, alienation, restriction, segregation, limitation, rejection, or any other act or practice of differentiation, including denying a person the total enjoyment of goods, services, facilities, privileges, advantages, and accommodations in any public or private place on Tribal Property which she attends, whether it is visited by the public or used for recreation, based on the fact that a mother is breastfeeding her child, shall constitute a discriminatory practice prohibited by this Statute and may result in a civil infraction."

Another Tribal Nation also shared an administrative breastfeeding policy that establishes a government and Tribal enterprise wide policy allowing flexible break times to support employees in breastfeeding or milk expression (pumping) while at work. The policy directs that a private space should be provided and that the breastfeeding policy should be incorporated into new employee orientation and in communications to current staff to support good implementation. This policy also includes language in its findings section that reflects a nuanced understanding of breastfeeding as both a traditional food and the first food. It refers to breastfeeding as the first traditional food, thereby reinforcing the community's understanding of breastfeeding's foundational role in traditional food ways.

Health centers or health services agencies



Tribal health departments shared four formal policies and one informal policy. One Tribal health services agency's formal policy covers all locations and another formal policy focuses on behavioral health services. Another Tribe's health department shared both formal and informal policies that combined together indicate widespread and practical support for breastfeeding across the community.

One of the health department policies opens by expressing support for breastfeeding and milk expression on-site, for both patients and employees. It refers to the basic breastfeeding protections provided by federal law through the Affordable Care Act. The policy goes beyond these basic protections to also address promotion and support for lactating mothers, calling for each clinic to designate a lactation room (that is not a bathroom) which has an electrical outlet, a comfortable place to sit, and access to a sink with hot water. Employees and patients are responsible for storage of properly labeled expressed breast milk in refrigerators provided by the health center. Break times for breastfeeding or expression of breast milk are encouraged to align with break times already provided, or can be set based on work schedule and supervisor approval.

The behavioral health department's breastfeeding policy applies to both patients and employees. It contains a list of findings about the health benefits of breastfeeding for infants, and expresses a commitment to provide services that educate, promote, and support breastfeeding women to support breastfeeding as the cultural norm. It incorporates the World Health Organization's "Ten Steps to Successful Breastfeeding" and "International Code of Marketing of Breastmilk Substitutes." It also includes concrete examples of support including: creating a positive and supportive environment by putting up breastfeeding posters

in public areas and discouraging advertising of breast milk substitutes, including through the use of free samples.

The policy also explains that breastfeeding mothers should have the freedom to choose where they breastfeed, and clarified that women could use spaces other than the lactation room if they wished.

The policy includes a section that applies to employees, which calls for "two 30-minute breaks during an eight-hour shift for expression of breast milk for at least one year after childbirth, and to adopt a flexible approach thereafter." Lastly, the policy encourages staff be supportive of breastfeeding colleagues "by adopting a positive and accepting attitude."

The Pokégnek Bodéwadmik (Pokagon Band of Potawatomi) Department of Health Services shared a combination of formal and informal policies. The Department has a lactation/pumping room that nursing mothers can use to either feed their babies or express milk. It also provides a breastfeeding station in its air-conditioned trailer at all powwows hosted on-site and takes opportunities to educate the public about the benefits of breastfeeding at community events and other opportunities. The Department has an official policy to support breastfeeding by providing breast pumps to mothers who participate in its community outreach program. It has developed a comprehensive set of formal procedures and guidance for staff to help them effectively implement the breast pump loan program.

Gaming settings



One formal and two informal policies were shared by gaming and resort facilities staff. These policies focus on employees, but one also addresses guests. For example, one gaming facility has an informal policy to provide designated break rooms for nursing employees to be used when needed,

including a large changing room with an area set aside for pumping, with an outlet and a bench for seating. The facility also recognizes that nursing break times may be compensated according to its normal break policy. Although the facility does not have a designated lactation room for guests, it has a lounge that may be used by guests who need to breastfeed or express breast milk. Another gaming facility's human resource director explained that the facility has systems in place to support breastfeeding employees and they follow the federal guidelines, as well as being flexible about timing and frequency of breaks. It has three lactation



rooms on-site for employees to use, with one of those locations being an on-site health clinic. The clinic location has a sink, seat, outlet and disinfectant wipes, while the other locations have disinfectant wipes. Employees also have access to a refrigerator to store expressed breast milk. Another lactation room is next door to the health clinic. It has a refrigerator, sink, counter space, chairs, and pictures, with access to the clinic's sinks if needed.

One formal policy offered an example of a simple but comprehensive policy for providing milk expression breaks for employees. It includes a recognition that breastfeeding is important for holistic health, including nourishing a baby's spirit and

mind, as well as the body. It provides for a private room that can be locked, with a refrigerator to store expressed milk. It also provides for reasonable break times for milk expression for mothers with babies up to one year old, with the possibility of longer with a supervisor's permission.

Early care and education settings



Two formal policies and one informal policy were shared. One formal ECE policy is aimed at parents and is concise and straightforward. It is called "Breast feeding moms" and simply states, "The infant room is set up for you. There is a refrigerator for breast milk, rocking chairs, and privacy." As a partner with the Inter-Tribal Council of Michigan, Inc. (ITCM) Head Start Programs, this ECE program also follows ITCM's Nursing Policy (see below).

Another policy illustrates an example of a classic child care program policy, addressing infant feeding practices, breast milk storage, use of formula, and food safety goals. The policy provides clear direction on feeding protocols, including that babies should be fed when

hungry unless the parent/guardian specifies differently, in writing; that staff should watch for cues from the baby to avoid overfeeding, and should hold infants while feeding and not prop up bottles for infants going to sleep. The policy also addresses labeling and thawing of breast milk, formula use, and provides specific temperature controls for the cleaning of feeding equipment and supplies stored at the center, including bottles and nipples.

For the informal policy, an early care and education program reported that it also followed the ITCM policy, and has a breastfeeding room and a refrigerator that can be used to store breast milk in each classroom.

Academic settings



Two formal breastfeeding policies were provided by academic institutions. These are worksite policies included in staff handbooks. Both policies included a component that goes beyond federal minimum standards.

One policy establishes the campus health office as a lactation room for employees. It provides breaks for employees to either breastfeed or express milk, which goes beyond federal minimum protections that only apply to milk expression. It provides general guidelines for breaks, calling on supervisors and employees to work together to set work and break schedules that are mutually agreeable.

The Saginaw Chippewa Tribal College Personnel Policy manual (dated May 11, 2016) includes a Nursing Mother's Policy that states that employees who are nursing mothers will receive "reasonable and necessary accommodations" to express milk "during the work day for up to 2 years after the child's birth," which goes beyond the federal minimum standard of up to one year.

Inter-Tribal Council of Michigan, Inc. policy



The Inter-Tribal Council of Michigan, Inc. (ITCM) is a consortium of Michigan's federally-recognized Tribes. It is a 501c3 nonprofit that was established in 1968 and has membership from all 12 Tribes in Michigan. It provides Early Head Start and Head Start services in partnership with seven Tribes. It has established a two-tiered nursing policy that includes paid milk expression breaks. Within this two-tiered structure, employees in some jobs (referred to as "eligible positions") may bring their babies into work until they are six months of age. The eligible positions include the following: administrative assistant, program coordinator/manager, secretary and clerk.

Ineligible positions are those which raise possible liability issues or involve considerations such as safe child-to-staff ratios. These jobs involve duties such as: home visits, transportation of clients, providing direct services in a classroom or group setting (i.e. Head Start/Early Head Start staff), extensive and/or frequent travel (bus drivers), or involve potential safety concerns (i.e. kitchen workers, bus monitors). Employees in ineligible positions may not bring their babies to work with them but are allowed paid breaks to pump breast milk while at work.

For eligible position employees with babies over six months of age and all ineligible position employees, the policy provides for three paid, 30-minute breaks for milk expression, twice a day and during lunch. The breaks must run concurrently with the organization's existing fifteen-minute breaks in the morning and afternoon and with the lunch break. These paid nursing breaks are available up to the child's first birthday.

This ITCM policy reaches beyond ITCM. As noted above, Tribes working with ITCM to provide Early Head Start and Head Start services also have chosen to implement this policy for relevant staff.

ITCM has done much to support breastfeeding across its partner Tribes. As noted earlier, in 2013, ITCM developed a breastfeeding toolkit to support the development of breastfeeding worksite policies.²

Conclusion

Tribes in Michigan are using a variety of policies to support breastfeeding by their employees and community members. Tribal staff generously shared policies, both formal and informal, from community sectors and settings covered by this project. Most Tribes shared one or two policies; one Tribe shared three policies. Three times as many

² INTER-TRIBAL COUNCIL OF MICHIGAN, BREASTFEEDING: FOLLOWING TRADITION WORKS FOR WORKING WOMEN (2013), <http://www.itcmi.org/wp-content/uploads/2013/05/Breastfeeding-Toolkit-for-the-American-Indian-Worksite.pdf>.

formal policies were received compared to informal policies (12 compared to four), which was different from Tribes in other parts of the Bemidji Area. There could be many reasons for this difference including that representatives from other Tribes simply chose not to share their formal policies. Another reason could be that the ITCM's breastfeeding worksite policies toolkit combined with sharing of its own nursing policy has helped to support formal policy development by partner Tribes.

The largest number of policies came from health center/services related settings (five), with Tribal government, gaming, and early care and education settings a close second (three policies from each type of setting). Tribal schools and colleges shared the fewest policies, but these settings also are few (especially compared to gaming or ECE settings, for example), making it difficult to draw any conclusions based on policy numbers.

The highest number of formal policies came from health settings (four), followed closely by the Tribal government sector (three). Gaming facilities shared the highest number of informal policies (two) relative to the total number of gaming related policies shared (three), indicating that the development of formal policies here could be an area to strengthen breastfeeding protections. Alternatively, this could be an indication that gaming facilities do not see a need for a policy because they are following another policy, such as Tribal government policy or the Affordable Care Act protections, or that gaming facilities chose not to share their formal policies, or they do not need a policy for other reasons.

Policy examples include both short and simple policies, and longer, more complex policies. All policies address issues relating to having a private space and break time in some way. Eight policies focus both on milk expression and on supporting employees, patients, parents, etc. in breastfeeding on-site. The ITCM policy and another Tribal policy also expressly provide for or mention paid breaks to express milk. Other organizations may also provide paid breaks, but their policies did not

expressly refer to them. Three policies expressly allow for nursing babies beyond the one-year minimum supported by federal law. Other policies may exist that support this but either do not expressly indicate it or were not shared. One health service agency shared a detailed policy to support its breast pump loan program for mothers participating in its community outreach program. No policies that were shared included a provision relating to evaluation, in contrast with policies from other parts of the Bemidji area.

The statute shared by the Pokégnek Bodéwadmik establishing a right to breastfeeding in both public and private places across the community as well as exempting breastfeeding women from the Tribe's criminal indecency laws is also notable. Laws that address breastfeeding, both within and outside of Indian Country, often take the approach of merely exempting breastfeeding women from criminal public indecency statutes and do not take the extra but important step of declaring a right to breastfeed, as modeled by this Tribal law. Additionally, four policies have anti-discrimination language.

Notably, three policies that were shared include references to making breastfeeding the cultural norm, or to the cultural importance of breastfeeding, or to supporting breastfeeding at cultural events (such as during powwows). Again, there could be policies addressing this that were not shared; or this could be another area of interest for development with breastfeeding policies, as deemed appropriate by the Tribe.

MINNESOTA

Background Data on Breastfeeding Rates in Minnesota

Breastfeeding rates for American Indian/Alaska Native (AI/AN) babies in Minnesota have increased in recent years. Based on 2017 data—the most recent available—over two-thirds (70.1%) of AI/AN babies in Minnesota have ever breastfed and over one-fifth (21.6%) were still breastfeeding

at six months, which is a 6.2% and 4.1% increase, respectively, from 2012 rates.⁵³ However, as Table 6 shows, compared to both national breastfeeding rates for AI/AN babies and breastfeeding rates for all babies in Minnesota, AI/AN babies in Minnesota could be getting even more breastfeeding benefits. The national AI/AN initiation/ever breastfed rate is 76.4%, and the ever-breastfed rate for Minnesota babies across all populations is even higher at 89.2%—nearly 20% higher than the AI/AN Minnesota rate. By the age of six months, the disparities are even greater, with the national

AI/AN breastfeeding rate at 55.0% and the overall Minnesota rate at 65.3%, compared to 21.6% for AI/AN Minnesota babies. Tribal policies that support women in breastfeeding their babies—such as milk expression policies for worksites and similar policies—could help address this gap.

Table 6 provides a comparison of breastfeeding rates at different ages between AI/AN babies (both in Minnesota and across the U.S.) and babies in the general population (again, both in Minnesota and across the U.S.), using data collected from the state’s WIC program, the CDC’s National Immunization

Table 6. American Indian/Alaska Native Babies—Breastfeeding (BF) Rates for Minnesota and United States⁵⁴

	Ever/ initiation	Exclusive BF at 3 months	6 months	Exclusive BF at 6 months	12 months
American Indian/Alaska Native Data					
Minnesota AI/AN babies in the WIC program being breastfed, per 2017 data	70.1% (initiation)	Not reported	21.6%	Not reported	9.3%
National averages for AI/AN babies per 2015 data from the Nat’l Immunization Survey	76.4% (ever)	44.6%	55.0%	19.6%	31.03%
American Indian mothers, Minnesota PRAMS data 2015-2016	86.0% (initiation)	Not reported	Not reported	Not reported	Not reported
All U.S. Populations Data					
Breastfeeding averages for all Minnesota babies, per CDC 2018 Breastfeeding Report Card	89.2% (ever)	56.3%	65.3%	37.2%	38.9%
Breastfeeding averages for all babies in all states, per CDC 2018 Breastfeeding Report Card	83.2% (ever)	46.9%	57.6%	24.9%	35.9%
All PRAMS participants, United States, 2015	87.1% (initiation)	Not reported	Not reported	Not reported	Not reported
Healthy People 2020 Goals	81.9% (ever)	46.2%	60.6%	25.5%	34.1%

Survey, the CDC's 2018 Breastfeeding Report Card, and the CDC's Pregnancy Risk Assessment Monitoring System (PRAMS) data. AI/AN data are in bold text. The Healthy People 2020 breastfeeding goals are included at the bottom of the table to provide additional points of comparison.

Discussion of Policies

In response to the invitation to Tribal and organizational contacts in Minnesota to share policies relating to breastfeeding, a total of 21 policies, including eight formal, written policies, and 13 informal policies were shared by contacts based in nine Tribes. One contact shared that the Tribal government is working on a workplace policy that was still in draft form at the time this report was being written. Of course, additional policies were likely missed or not shared. The table below shows how many policies were received from the settings that are the focus of the First Food PALS Project. These settings are:

- Tribal codes, resolutions, and Tribal government administrative policies;
- health or public health departments, health clinics, health and wellness centers, Indian Health Service Units;
- gaming facilities and resorts;
- early care and education settings (such as Early Head Start, Head Start, and child care programs); and
- academic settings including Tribally-operated Bureau of Indian Education schools and Tribal colleges and universities.

Table 7 shows how many policies, both formal and informal, were received from contacts in Tribal Nations in Minnesota and provides information about what the policies focused on and some of the key features. Of the policies shared, nine address both milk expression and also breastfeeding on-site (such as policies allowing mothers to bring their babies to work to breastfeed; to go to the childcare center to nurse their babies; or to breastfeed in public). Ten policies focus on milk

expression. Three policies primarily address milk use and infant feeding practices, and one policy describe a Tribal health department's commitment to providing health education and services to adults within the community. Regarding specific policy features that were coded, two policies refer to or provide for paid breaks that could be used as nursing breaks and two policies contain anti-discrimination language. One policy exceeds federal law protections by addressing breastfeeding for children over the age of 12 months. One policy also included evaluation language. For a full explanation of the methodology used for this project, please see Appendix A.

Tribal code or administrative policies



Codifying policies in statutes is a way to ensure that a policy has community-wide application, and so is one way that Tribes can support and protect breastfeeding for nursing mothers and their babies across their communities. In contrast, Tribal administrative policies typically apply to Tribal government property or operations but they still can have great impact, particularly when they apply across all Tribal enterprises as well as to Tribal government operations. Both types of government policies are ways that Tribal governments can lead by example and help establish social norms that encourage breastfeeding.

One informal policy was shared from this sector. One Tribe's human resources department indicated that they follow the federal Affordable Care Act worksite breastfeeding protections for employees both within Tribal offices and at the gaming facility. Another Tribe shared that they are working on a policy with the goal of promoting a breastfeeding-friendly work environment at Tribal businesses. Because the policy was still in development at the time this report was being written, it was not included in the policy count.

Table 7. Policy Counts by Setting and Selected Policy Features for Tribal Nations in Minnesota

	Tribal code or administrative policies	Health centers or health services agencies	Gaming settings	Early care and education	Academic settings	Totals
Policies received	1	5	8	4	3	21
Formal policies	0	4	0	3	1	8
Informal policies	1	1	8	1	2	13
Policy focus						
Baby-on-site (BOS)	0	0	0	0	0	0
Milk expression (ME)	1	0	8	0	1	10
Both BOS and ME	0	4	0	3	2	9
Breast milk use	0	0	0	3	0	3
Right to breastfeed	0	0	0	0	0	0
Other	0	1	0	0	0	1
Selected policy components						
Culture-related provisions/languages	0	0	0	0	0	0
Paid breaks	0	1	1	0	0	2
Anti-discrimination language	0	2	0	0	0	2
Baby age limits over 12 months	0	1	0	0	0	1
Evaluation	0	1	0	0	0	1

Health centers or health services agencies



Four formal policies and one informal policy were shared by representatives from this sector. Three of the formal policies came from IHS direct service facilities serving Tribal members. These were included in this section.

Red Lake Indian Hospital, an IHS facility serv-

ing the Tribe, provided two policies, with one policy addressing support of breastfeeding employees and the other policy addressing breastfeeding support in the clinical setting. The policy supporting breastfeeding employees contains nine sections: milk expression breaks, a place to express milk, breastfeeding equipment, education, staff support, communication with supervisors, maintenance of milk expression, milk storage, and use of break times to express milk. The lactation breaks



Photo courtesy of the Oneida Nation Community Health Center.

established for expressing milk and breastfeeding include normal breaks and meal times, with the option to take personal leave or make up time as negotiated with a supervisor for additional break time. The lactation space that is provided is a private room with an electrical outlet located near a sink with running water to wash hands and clean equipment. Breastfeeding employees may also choose to utilize their own private offices, or other comfortable locations as agreed upon in consultation with the employee's supervisor. Within the education section of the policy, the hospital identifies opportunities to take prenatal and postpartum classes, and to receive lactation support and information. The policy notes that employees may have to pay for some opportunities, but others are provided by the institution free of charge. The staff support section states that "it is expected that all employees will assist in providing a positive atmosphere of support for breastfeeding employees." The policy also refers to worksite breastfeeding protections in Minnesota and federal law.

One unique feature of this policy is that it is one

of few that were shared that refer to the potential benefits of supporting breastfeeding for *employers*. In the "Background" section, the policy states: "Employers may also benefit from their employees choosing to breastfeed due to the savings on health care costs associated with time lost to employees who care for sick children."

The policy supporting breastfeeding for patients takes a holistic approach, starting with creating a "multidisciplinary, culturally appropriate team to identify and eliminate institutional barriers to breastfeeding;" and calls for tracking nursing mothers who wish to breastfeed and providing them with many opportunities for support and education. Employees also are required to attend educational sessions on lactation management and breastfeeding promotion to help them stay up-to-date with current practices. The policy also includes an evaluation provision calling for annual review and revision as needed.

A hospital that serves another Tribal Nation shared a workplace policy that sets forth responsibilities to support breastfeeding employees, including creating a lactation space for milk expression, providing personnel support, tasking supervisors with providing support to breastfeeding employees, and communicating the policy to relevant personnel. The policy requires the health facility to provide a breastfeeding/milk expression space that is not a bathroom, that is private and sanitary, in close proximity to an employee's work area, with a lockable door, an electrical outlet, nearby access to running water, disinfecting wipes, comfortable chair, proper ventilation, adequate temperature, flat surface for storage, and a trash can. Employees with private office space may use their offices if they prefer. Regarding break time guidelines, the policy encourages managers be flexible in work schedules and break times to allow employees time to breastfeed or express milk. The policy also exceeds Minnesota and federal law minimum protections because it applies beyond one year from the birth or adoption of a child.

The policy also sets forth responsibilities for

breastfeeding employees relating to communicating with supervisors, milk expression equipment, scheduling and maintenance of the lactation space, and safe storage of expressed milk. It also provides contacts for breastfeeding employees to reach out to for more information, such as the county health department, the WIC program, and educational websites.

A Tribal health services contact reported that the health center is working on developing a formal policy and currently has an informal policy. The center does not have a designated lactation room but there is a lactation room available in the WIC office. Also, if the employee's child is in the Tribe's child care program (which is connected to the center), the employee can walk there to nurse. The health center also provides a paid lunch break which can be used for nursing breaks.

Another Tribal public health department shared a policy relating to breastfeeding education and support, providing these services through their Family Spirit Home Visiting, Tribal Statewide Health Improvement Partnership grants, and WIC and Maternal Child Health programs.

Gaming settings



Eight informal worksite policies from Tribal gaming facilities were shared. Typically, these include either providing a formal lactation room or providing another secure space (such as a managers' lounge) for employees to express milk. For example, one casino shared its informal policy approach of making secure rooms within the casino available for employees to use for milk expression, explaining that managers are flexible in providing appropriate accommodations when needed and at an employee's request.

Another informal policy illustrates how a community can provide breastfeeding accommodations without a lot of investment. This casino allows employees to go to the nearby Tribal child

care center or to use an empty and private room to express milk. Another Tribe provides pumping stations for employees at on-site emergency medical facilities located in each of its casino sites that include: a gliding rocker seat, comfortable lighting, electrical outlets, and a refrigerator for storage. Another Tribe shared an informal worksite breastfeeding policy that includes providing a lactation room with a rocking chair, a refrigerator, and a sink. This policy allows nursing employees to use their paid breaks to express breast milk (one hour for full-time, thirty minutes for part-time employees) and allows any additional time for lactation breaks to be taken as unpaid breaks.

Early care and education settings



Tribes shared three formal policies and one informal policy relating to early care and education (ECE) programs. The formal policies address safe practices around use, handling and storage of expressed breast milk, including provisions relating to the proper temperature for storing frozen breast milk, how to safely thaw and warm up breast milk, and prohibitions on re-freezing or saving breast milk once it has been thawed. In addition to these types of provisions, one policy also states that the program supports and makes accommodations for mothers who wish to breastfeed their children while on-site. This policy also addresses infant feeding practices and prohibits the adding of medicines or other substances to breast milk.

Academic settings



Three breastfeeding policies were provided by academic institutions, including one formal and two informal policies. These policies provide protections and support not only for breastfeeding

employees, but also for students and community members. A formal policy from the Leech Lake Tribal College Personnel Handbook includes language recognizing the importance of breastfeeding for mothers and infants and expresses the institution's continued support of breastfeeding mothers once they return to work. The policy does not set out specific break time requirements and directs management and employees to work together to set the employee's work hours and breaks to support the employee in breastfeeding. Employees can express milk in their private offices if they have one, or use a designated area in the student wellness center or one of the faculty and staff lounges.

One informal policy was shared by a facility that serves as an academic setting and has on-site child care services. This academic setting has a space designated for breastfeeding along with supplies and resources to support breastfeeding mothers. Supplies include: pumping bags, spare breast pumps, nursing pads, and lanolin. The facility also posts signs stating that the space is breastfeeding friendly to promote inclusivity. It also provides a refrigerator in the breastfeeding area for storing expressed breast milk which has the CDC's breast milk storage guidelines posted on its door to provide guidance for people using the refrigerator.

Conclusion

Tribes and organizations serving Tribes in Minnesota are using a variety of policies to support breastfeeding by their employees and community members. Tribal staff generously shared policies, both formal and informal, from all community sectors and settings covered by this project. Most Tribes shared one or two policies; two Tribes shared four or more policies. Informal policies were more commonly shared than formal policies.

The largest number of policies came from the gaming sector (eight), followed by the health sector (five). Health settings shared the highest number of formal policies (four), followed closely by ECE settings (three). Similar to Tribes in other parts of the Bemidji Area, gaming facilities

shared the highest number of informal policies (eight), especially relative to the total number of gaming related policies shared (eight), indicating that the development of formal policies here could be an area to strengthen breastfeeding protections. Alternatively, this could be an indication that gaming facilities do not see a need for a policy because they are following another policy, such as Tribal government policy or the Affordable Care Act protections, or that gaming facilities chose not to share their formal policies.

No formal Tribal government codes or administrative policies were shared. There could be policies that were not shared or a formal policy could be deemed unnecessary; however, these numbers could indicate that the developing of a formal Tribal government policy could present a promising area for policy development. Indeed, one Tribe indicated it was working on a formal policy, but it had not yet been finalized at the time when policies were being collected.

The formal policies that were shared range in length and complexity, but nearly all of them are longer with detailed provisions. The ECE policies focus almost exclusively on breast milk use and storage. The other formal policies address the lactation space features (such as comfortable chair, milk storage space, access to a sink), scheduling of break times, or identify support services that could or should be available to employees and/or patients.

In terms of policy focus, the most common policy focus was on milk expression (10), closely followed by policies with a dual focus on both milk expression and breastfeeding on-site (nine). None of the policies shared has a focus on a right to breastfeed, although two policies include language prohibiting discrimination against breastfeeding women. None of the policies shared have language referring to culture or cultural events. Of course, policies may exist that do have this language or that are applied to cultural events but simply were not shared. Two of the policies shared expressly provide for or mention paid breaks to

express milk. Other organizations may also provide paid breaks, but their policies did not expressly refer to them. One of the policies that was shared expressly allows for nursing babies beyond the one-year minimum supported by federal law. Again, other policies or practices may exist that support this but either do not expressly indicate it or were not shared.

One informal policy from an academic setting notably addressed the provision of supplies for pumping. Another formal health setting policy was notable for including an evaluation provision.

Based on this limited sample, Tribes in Minnesota are implementing both formal and informal policies to promote breastfeeding. One potential area for growth could be the development of formal, written policies because well over half of policies that were shared were informal policies. Informal policies are useful and may be a better fit for the culture of a Tribe or an organization. However, informal policies can also lead to inconsistent or ineffective implementation because they are more vulnerable to changes in management, and it may be more difficult for employees and others to learn about policies if they are not available in writing. Another possible area for development could be expanding breastfeeding protections for women

with babies who are more than one year old, providing for paid breaks, and incorporating cultural concepts and language, as well as expanding coverage to cultural events as deemed appropriate.

WISCONSIN

Background Data on Breastfeeding Rates in Wisconsin

Breastfeeding rates for American Indian/Alaska Native (AI/AN) babies in Wisconsin have increased in recent years. Based on 2017 data—the most recent available—over three-quarters (76.3%) of AI/AN babies in Wisconsin have ever breastfed and over a third (37.8%) were still breastfeeding at six months, which is a 0.3% and 7.3% increase, respectively, from 2012 rates.⁵⁵ However, as Table 8 on the following page shows, compared to both national breastfeeding rates for AI/AN babies and breastfeeding rates for all babies in Wisconsin, AI/AN babies in Wisconsin could be getting even more breastfeeding benefits. The ever-breastfed rate for all Wisconsin babies is higher compared to AI/AN Wisconsin babies (82.2% compared to 76.3%) and by the age of six months, the rate of breastfeeding among AI/AN babies in Wisconsin (37.8%) is much lower than the rate both for all



Photo courtesy of Menominee Tribal Clinic

AI/AN babies nationwide (55.0%) and for all Wisconsin babies (59.0%). Tribal policies that support women in breastfeeding their babies—such as milk expression policies for worksites and similar policies—could help address this gap.

Table 8 below provides a comparison of breastfeeding rates at different ages between AI/AN ba-

bies (both in Wisconsin and across the U.S.) and babies in the general population (again, both in Wisconsin and across the U.S.), using data collected from the state's WIC program, the Wisconsin Department of Human Services, the CDC's National Immunization Survey, the CDC's 2018 Breastfeeding Report Card, and the CDC's Pregnancy Risk

Table 8. American Indian/Alaska Native Babies—Breastfeeding (BF) Rates for Wisconsin and the United States⁵⁶

	Ever/Initiation			Exclusive BF at 3 months	6 months	Exclusive BF at 6 months	12 months
American Indian/Alaska Native Data							
Wisconsin AI/AN babies in the WIC program being breastfed, per 2017 data	76.3% (initiation)			Not reported	37.8%	Not reported	18.4%
AI babies initiating breastfeeding at hospital discharge per 2014-2016 WI Dept. of Health data	All	Medicaid	Non-Medicaid	Not reported	Not reported	Not reported	Not reported
	65%	63%	71%				
National averages for AI/AN babies per 2015 data from the Nat'l Immunization Survey	76.4% (ever)			44.6%	55.0%	19.6%	31.03%
All U.S. Populations Data							
Breastfeeding averages for all Wisconsin babies, per CDC 2018 Breastfeeding Report Card	82.2% (ever)			48.8%	59.0%	21.4%	39.3%
Breastfeeding averages for all babies in all states, per CDC 2018 Breastfeeding Report Card	83.2% (ever)			46.9%	57.6%	24.9%	35.9%
All PRAMS participants, United States, 2015	87.1% (initiation)			Not reported	Not reported	Not reported	Not reported
Healthy People 2020 Goals	81.9% (ever)			46.2%	60.6%	25.5%	34.1%

Assessment Monitoring System (PRAMS) data. AI/AN data are in bold text. The Healthy People 2020 breastfeeding goals are included at the bottom of the table for comparison.

Discussion of Policies

Contacts at eleven Tribes in Wisconsin shared a total of 24 policies, including 12 formal policies, and 12 informal policies conveyed through an email or phone conversation. Table 9 shows how many policies were received from the settings focused on by the First Food PALS Project. These settings are:

- Tribal codes, resolutions, and Tribal government administrative policies;
- health or public health departments, health clinics, health and wellness centers, Indian Health Service Units;
- gaming facilities and resorts;
- early care and education settings (such as Early Head Start, Head Start, and child care programs); and
- academic settings including Tribally-operated Bureau of Indian Education schools and Tribal colleges and universities.

For a full explanation of the methodology used for this project, see Appendix A.

Table 9 on the following page shows how many policies, both formal and informal, were received from contacts in Tribal Nations in Wisconsin and provides information about what the policies focused on and some of the key features. Of the policies that were shared, four policies address both milk expression and also breastfeeding on-site (such as policies allowing mothers to bring their babies to work to breastfeed; to go to the childcare center to nurse their babies; or to breastfeed in public). Eleven policies focus on milk expression, and one policy is primarily related to bringing a child to work. Three policies focus on the right to breastfeed. Five policies focus on other topics such as providing a peer breastfeeding counselor for the Tribal health clinic and the responsibilities of that position, or exempting breastfeeding mothers from a criminal indecency law. Regarding specific policy features, one policy refers to or provides for paid breaks that could be used as nursing breaks, and six policies contain anti-discrimination language. One policy exceeds federal law protections by addressing breastfeeding for children over the



age of 12 months. Additionally, five policies refer to breastfeeding as a cultural norm or to supporting it at cultural events. One policy addresses evaluation.

Tribal code or administrative policies



Codifying policies in statutes or adopting resolutions is a way to ensure that a policy has community-wide application, and so is one way that Tribes can support and protect breastfeeding for

nursing mothers and their babies across their communities. In contrast, Tribal administrative policies typically apply to Tribal government property or operations but they still can have great impact, particularly when they apply across all Tribal enterprises as well as to Tribal government operations. Both types of government policies are ways that Tribal governments can lead by example and help establish social norms that encourage breastfeeding. Both types of policies are being applied by Tribal Nations in Wisconsin.

Tribes in Wisconsin shared seven formal Trib-

Table 9. Policy Counts by Setting and Selected Policy Features for Tribal Nations in Wisconsin

	Tribal code or administrative policies	Health centers or health services agencies	Gaming settings	Early care and education	Academic settings	Totals
Total policies	9	6	5	3	1	24
Formal policies	7	4	0	1	0	12
Informal policies	2	2	5	2	1	12
Policy focus						
Baby-on-site (BOS)	0	0	0	1	0	1
Milk expression (ME)	4	3	3	0	1	11
Both BOS and ME	1	2	1	0	0	4
Breast milk use	0	0	0	0	0	0
Right to breastfeed	3	0	0	0	0	3
Other	1	1	1	2	0	5
Selected policy components						
Culture-related provisions/languages	4	1	0	0	0	5
Paid breaks	1	0	0	0	0	1
Anti-discrimination language	5	1	0	0	0	6
Baby age limits over 12 months	0	0	1	0	0	1
Evaluation	1	0	0	0	0	1

al government policies. Contacts from one Tribe shared three formal government policies that together reflect a strong and consistent support for breastfeeding across sectors in the Tribe. One policy is a Tribal law that addresses employment related topics, including breastfeeding. The law declares that the Tribe provides a “supportive environment to enable breastfeeding employees to express their milk during work hours,” mentions that there is lactation support programming through the Tribe’s maternal and child health program, and directs that this policy should be communicated to all current and incoming employees during employee orientation. The law also allows employees to breastfeed at work with supervisor approval. This Tribe also shared a Tribal criminal code provision that expressly exempts breastfeeding from its public indecency laws.

This Tribe also has an administrative workplace policy promulgated by its health department to support breastfeeding employees. The policy declares support for milk expression and lactation for all breastfeeding employees, and then describes employer and employee responsibilities. The employer has a responsibility to provide milk expression breaks, a place to express milk, breastfeeding equipment, education opportunities, and staff support. The milk expression breaks that are provided should coincide with normal break

and meal times. Additional breaks can be arranged with agreement from supervisors. Private offices or a private and sanitary room (that is not a bathroom) may be used to express milk. The private room is also required to have an electrical outlet and be located near a sink with running water for washing hands and breastfeeding equipment. There is a designated refrigerator in the employee

break room which can be used to store expressed milk (which must be labeled) or employees can use personal coolers. This policy also explains how employees can gain access to breastfeeding equipment, including through the employee’s healthcare plan, per the Affordable Care Act, WIC, or Badgercare. Employees also may acquire breast pumps from the Tribe’s maternal child health program. Prenatal and postpartum breastfeeding classes and informational materials are also offered to all parents through the maternal child health program.

Employees are responsible for communicating with their supervisors, maintaining cleanliness of milk expression areas, following proper milk storage and storage area protocols, and planning break times to express milk in conjunction with other nursing employees.



The policy describes that the health clinic facilities that the Tribal Nation operates have lactation services available. Staff support is also offered to employees through a process of notifying pregnant and breastfeeding employees about the organization’s worksite lactation support program, negotiating policies and procedures to accommodate employee’s infant feeding goals, and an expectation



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that all employees will help create a positive atmosphere to support breastfeeding employees.

Three Tribes shared Tribal resolutions expressing support for breastfeeding and declaring a right to breastfeed across their communities, in both public and private places where the mother and child are allowed to be, and prohibiting discrimination against breastfeeding mothers. The resolutions are part of a larger effort by the Native Breastfeeding Coalition of Wisconsin and show shared momentum to encourage policies supporting breastfeeding within Tribal communities in Wisconsin. All three resolutions express the principle that “breastfeeding is a normal and traditional part of daily life for mothers and infants.” The language used to address nondiscrimination is also similar across the three resolutions, stating: “...no person may prohibit a mother from breastfeeding her child, direct a mother to move to a different location to breastfeed her child, direct a mother to cover her child or breast while breastfeeding, or otherwise restrict a mother from breastfeeding her child...”

Another Tribal health contact shared a lactation support program policy and procedure that covers female employees who wish to express milk for infants under 12 months of age. The policy explic-

itly states that babies are not allowed to be brought on-site; however, if their babies are enrolled in an on-site child care, employees can consult with health center or child care staff about making arrangements to nurse instead of pumping. It includes a requirement is that “all employees must maintain acceptable work performance and avoid creating any office disruptions.”

For milk expression, the policy allows nursing mothers to use (with a supervisor’s approval) any open room for

convenience purposes and requires that the room have access to an electrical outlet, a chair, and running water. The room is also required to have a lock and signage to indicate when the room is in use. Employees must seek prior approval from supervisors for using a room for milk expression. The policy also states that employees and employers should not feel obligated to use or mention the use of a bathroom as a location to express milk. For break times, employees are expected to use the already existing daily two 15-minute and one 30-minute paid breaks to express milk. Nursing mothers with special needs may be accommodated with additional break times once they consult with their supervisors. To store expressed breast milk, staff may provide their own personal coolers, use the staff refrigerator in the breakroom, or use refrigerators located in their departments. Employees are required to provide their own containers that are properly labeled with their name and date of expression and to maintain cleanliness of their milk expression areas. For those staff who desire more information and education on successful milk expression, they may seek out an employee health nurse or a staff member in the community health department.

The policy also includes a unique evaluation

provision that asks for optional participation by nursing employees, supervisors, and immediate co-workers in completing an evaluation form. These forms are to be compiled, analyzed and submitted in an annual report to the department supervisor.

Two informal Tribal government policy examples were also shared. One Tribal contact explained that the Tribe understands the importance of breastfeeding and supports it both for employees and across the community through informal policy. Break times are provided for milk expression; the health center has a dedicated room for women to use to breastfeed or pump; a tent is provided at the Tribe's powwow as a private place to rest or breastfeed; and the Tribe's health center runs a breastfeeding awareness campaign in August. A contact from another Tribe shared that the Tribe provides employees with break time to pump, and that the casino has a designated room for milk expression. At other sites, staff can pump in their offices or another private place, and the health center is currently working to provide a lactation room for nursing mothers. There are also refrigerators in various sites that can be used to store milk.

Health centers or health services agencies



Four formal and two informal policies applying to health services agencies or clinics were shared.

One Tribal health clinic shared that they follow the Affordable Care Act worksite protections, and that they use a poster provided by the U.S. Department of Labor entitled "Break Time for Nursing Mothers Under the FLSA" to disseminate the policy. (For more about this federal law, please see Appendix B.)

Another Tribal health clinic has a comprehensive and detailed policy that supports both milk expression and employees breastfeeding their babies on-site. It addresses both employer and

employee responsibilities. The employer has a responsibility to provide milk expression breaks, a place to express milk, educational materials, and staff support. The milk expression breaks should coincide with normal break and meal times. For additional breaks, employees can utilize personal leave or make up the lost work time with their supervisor's approval. Private offices or a private and sanitary room (that is not a restroom) can be used for milk expression areas. The private room is also required to have an electrical outlet and be located near a sink with running water for washing hands and breastfeeding equipment. There is also a designated refrigerator in the employee break room that can be used to store breast milk (that is properly dated and labeled), or the employee can use a personal cooler. The policy designates an employee (the Maternal and Child Health Nurse, or designee) to monitor the shared refrigerator. Maternal and child health program staff are also designated as a resource for informational materials related to breastfeeding for all employees.

The employee is responsible for communicating with supervisors, maintaining the cleanliness of milk expression areas, following proper milk storage and storage area protocols, and planning break times to express milk in conjunction with other breastfeeding employees. The communication with supervisors is required to provide appropriate accommodations that satisfy the needs of both employees and the employer. This policy also includes definitions for "lactation" and "express."

Another Tribe provided two examples of formal health center policies. One was a set of handouts and communications materials explaining that a lactation suite was being established in the Tribe's WIC/Nutrition department. The materials identify the suite as being a best practice and link it to the Tribe's culture and language by naming it Tsi>thuwaitinu> kehl@=tu, which translates to "where they breast feed them." The materials explain that by creating this lactation suite, the Tribe is supporting "the traditional philosophy to continue support and nurturing for future generations." The

lactation suite has the following amenities: a glider chair, privacy curtain, foot stool, nursing pillows, clock, mirror, Native American artwork, a small refrigerator and access to an infant scale, bathroom and diaper changing station.

A companion policy is the health center's Lactation Suite Use policy, which provides guidance on who is responsible for coordinating use of and maintaining the lactation suite. The policy provides that WIC/Nutrition staff are responsible for



helping breastfeeding employees to use the room, including providing orientation, scheduling times, and cleaning equipment. The policy explains that a hospital grade electric breast pump is available for employees to use (with their own tubing and personal adaptor kits), or they may bring their own equipment. This policy also has a definitions section, with definitions for “lactation suite” and “Medela Symphony Breast Pump.” The policy also includes a usage agreement form to be filled out by employees, and a weekly schedule form.

Another Tribal health clinic provided a policy that establishes a breastfeeding peer counseling program under WIC and includes procedures for implementing the program. This policy creates

a breastfeeding peer counselor position that is available to nursing mothers during regular clinic hours, designed to promote breastfeeding among pregnant participants and encourage continued breastfeeding for those who have already initiated nursing with their infants. An important aspect of the policy is to maintain contact with breastfeeding participants by phone or in-person meetings at the clinic. Communication may be conducted by text messaging or e-mail but only if the participant initiates use of those methods. Home or hospital visits may be conducted if warranted. Breastfeeding peer counselors are also required to attempt to contact pregnant women at least once to explain their role in supporting and promoting breastfeeding “as the optimal and traditional infant feeding choice.” The peer counselor position provides encouragement and support for the continuation of breastfeeding as well as, but not limited to, assistance with latching, increasing milk production, preventing sore nipples, breast pump issuance,

breast pump follow-up, and tips for returning to work and school while successfully breastfeeding. The policy also explains when the peer breastfeeding counselor may not be equipped to handle a given situation, they are required to refer patients to the breastfeeding coordinator or nutritionist on staff.

This Tribal health center also shared an informal policy of providing a pumping room in the clinic. Employees can access the room by obtaining a key from the receptionist, and can either use their own pump or borrow a multi-user pump from the clinic's WIC program. The room is set up to provide a comfortable space for pumping, including a chair, table, outlet, mirror, artwork on the walls, hook to

hang a coat or bag, and a sink nearby. This is part of a series of pumping rooms available across the community, including in the casino, education facilities, and ECE program.

Out of the Tribal breastfeeding policies that were shared, two from Tribal health services agencies in Wisconsin notably included definitions. Including definitions of key terms is a recommended practice for good policy drafting. Sometimes, it was unclear whether a policy was using the term “lactation” or “breastfeeding” to include breastfeeding on-site or only milk expression unless there was a definition.

Gaming settings



Five informal policies were shared by gaming facilities. One Tribe responded that although its casino does not have a formal policy or designated lactation rooms on-site, when an employee requests lactation accommodations, supervisors can offer a vacant hotel room or another secure room for nursing mothers to express milk.

Another Tribal casino manager relayed that the casino uses the federal Affordable Care Act’s breastfeeding protections as guidance for employee lactation accommodations. They have converted a changing room into a secure lactation room for nursing employees that can be accessed by checking out a key from the Human Resources Department. In summer of 2019, they were upgrading the lactation room, including adding decorations, a comfortable seat or couch, and a place to store expressed milk. The manager emphasized that an important part of the policy is that lactation breaks are not tied to or associated with employee lunch breaks.

Another Tribal contact responded that the gaming facility has a designated lactation room for nursing mothers to express milk inside the employee break room. The room includes access to a multi-user pump provided by the Tribal clinic and

WIC program, and features a chair, table, outlet, small refrigerator, educational pamphlets, poster, lamp, and a sink is nearby. This is part of a series of pumping rooms available across the community, including in the health clinic, education facilities, and ECE program.

A gaming facility manager from another Tribe indicated that they have an informal nursing policy that applies to employees with infants up to one year of age, but that they also provide great flexibility for nursing mothers to continue expressing breast milk beyond this time, exceeding federal minimum protections. The facility has two locations designated as lactation areas. One location is a secured room with a refrigerator and a medical chair that requires a key for access. The room also has a phone with direct lines to the nurse line, clinic, and well-baby line. The other lactation area is an on-site medical facility that has electrical outlets for breast pumps, a sink, a calibrated medical fridge, and upgraded medical grade equipment. Employees have options when it comes to break times for expressing breast milk, including taking pumping breaks without having to use family-medical leave.

Early care and education settings



One formal and two informal policies were shared. The Lac du Flambeau Tribe’s Zaasijiwan Head Start program shared that it follows official program regulations and an informal policy. The informal policy provides a private space for breastfeeding parents if they want to feed their child at the center, along with a refrigerator for storage of expressed breast milk. The agency follows Head Start Program Performance Standards, as well as regulations relating to providing prenatal and postpartum information, education, services, and programming about the benefits of breastfeeding. These regulations also provide for family support services for health, nutrition, and mental health. These services

and programs are required to be provided through direct collaboration with parents.

Another Tribal contact shared an informal policy of providing an area where nursing mothers can find privacy to pump. The space includes a chair, table, a music player, essential oils, and other amenities to aid relaxation. This is part of a series of pumping rooms available across the community, including in the health clinic, education facilities, and casino.

Academic settings



One informal policy was shared. This policy took the form of a private lactation room that is available to staff and students. It includes a chair, table, outlet, lamp, breastfeeding pamphlets, poster, and a sink is nearby. This is part of a series of pumping rooms available across the community, including in the health clinic, casino, and ECE program.

Conclusion

Tribes in Wisconsin are using a variety of policies to support breastfeeding by their employees and community members. Tribal staff in all the community settings addressed by this Project generously shared policies, both formal and informal. Most Tribes shared at least one or two policies; two Tribes shared four or more policies. The policies shared were evenly split between formal and informal policies, with 12 informal and 12 formal policies shared.

In contrast to Tribes located in other states in the Bemidji Area, the greatest number of policies shared came from the Tribal government sector (nine), with seven of those being formal policies. The number of right-to-breastfeed resolutions is also notable and reflects the impact of the Native Breastfeeding Coalition of Wisconsin. One Tribe also stood out based on the three formal government policies it shared, including two Tribal code

provisions and one administrative policy promulgated by the Department of Health, which was the highest number of formal government policies shared by one Tribe across the Bemidji Area.

The health services sector and gaming sectors each shared six and five policies, respectively. Similar to Tribes in other parts of the Bemidji Area, most of the health services sector policies shared are formal policies (four). All the policies received from gaming facilities (five) are informal, which also was typical of gaming sector policies shared by Tribes in other states. Most of the ECE and education sector policies shared are informal policies; one of the ECE settings provided formal Head Start policies that it also follows. The relatively few numbers of formal policies shared by these sectors could indicate that there are opportunities for formal policy development in these sectors, if that is a goal of the Tribe. Alternatively, this could indicate that these settings do not see a need for a formal policy because they are covered by another policy, such as Tribal government policy or Head Start regulations or some other formal policy; or because they apply the Affordable Care Act protections; or that they simply chose not to share their formal policies; or some other reason. Regarding the academic sector, it also should be noted that there are fewer of these types of settings within Tribal Nations relative to other types of settings.

The formal policies that were shared range in length and complexity, but most of them tend to be longer with multiple sections and detailed provisions, particularly the administrative policies. The administrative policies tend to address many practical aspects of implementation, including lactation space features (such as requiring a secure, private, pleasantly-furnished room conducive to comfort while pumping or breastfeeding, milk storage capacity, access to a sink); scheduling of break times; mutual responsibilities of employees and managers; and identifying support services available to employees and/or patients.

In terms of policy focus, the most common

policy focus is on milk expression (11); the next most common focus is a dual focus on both milk expression and breastfeeding on-site (four). Three of the policies shared have a focus on a right to breastfeed.

In terms of policy components of note, six policies include language prohibiting discrimination against breastfeeding women. Five policies shared have language referring to culture or cultural events, which was the highest number for the three-state Bemidji Area. Notably, these included a Tribal health center lactation suite policy that gives the suite a name from the Tribe's language and links it with the Tribe's culture and traditions. One of the policies shared expressly mentions paid breaks to express milk. Other organizations may also provide paid breaks, but the policies did not expressly refer to them. Also, one of the policies that was shared expressly allow for nursing babies beyond the one-year minimum supported by federal law. Again, other policies or practices may exist that support this but either do not expressly indicate it or were not shared.

Two formal policies include definitions, which were not seen in other policies shared with this

Project. One formal government policy also includes an evaluation provision.

One set of informal policies from a Tribe reflected a system of supporting breastfeeding across the community through providing lactation rooms in the Tribal clinic, casino, ECE program, and school and college settings. As part of these policies, the Tribe also provides access to a multi-user breast pump in some of these settings.

These examples show that Tribes in Wisconsin are implementing many types of formal and informal policies to promote breastfeeding. Tribes shared a robust set of formal and informal policies. However, one potential area for focus could be the development of formal, written policies because just over half of policies that were shared were informal policies. Informal policies are useful and may be a better fit for the culture of a Tribe or an organization. However, informal policies can also lead to inconsistent or ineffective implementation because they are more vulnerable to changes in management, and it may be more difficult for employees and others to learn about policies if they are not available in writing. Similar to the Tribes in other parts of the Bemidji area, other



possible areas for development could be expanding breastfeeding protections for women with babies who are more than one year old, expressly providing for paid breaks, and expressly incorporating cultural concepts and language, as well as expanding coverage to cultural events, as deemed appropriate.

URBAN AMERICAN INDIAN/ ALASKA NATIVE HEALTH CENTERS

Three urban American Indian/Alaska Native health centers within the Bemidji Area shared four policies, including three formal policies and one informal policy. Two policies focus on milk expression, one policy addresses bringing a baby to work, and one policy addresses both milk expression and breastfeeding on-site. The informal policy is that the health center follows state law for worksite breastfeeding (milk expression) protections.

Another center shared a formal policy that establishes a lactation room, provides a refrigerator for storage and sink for cleaning, and requires employees to notify their supervisors each time the need for expressing milk arises.

American Indian Health and Family Services of Southeastern Michigan, based in Detroit, provides flexibility in the use of break times by allowing employees to use compensatory time off. This center also has comprehensive guidelines for its baby at work policy addressing what to do if the employee needed help caring for the baby for short periods while at work, infant illness, office environment, and other issues. Important components include: allowing the baby on-site for 180 days with the possibility of a 30-day extension based on the baby's mobility and the employee's successful adherence to the program, requiring the identification of at least two on-site alternate care providers, and monthly evaluation of employee's satisfactory work performance and adherence to the policy.

Themes and Closing Observations

This Project found that Tribal Nations and urban American Indian/Alaska Native health centers in the Bemidji Area are applying policy, both formal and informal, to promote and support breastfeeding by their staff and citizens, across all the settings that were the focus of this scan. As noted previously, it is likely that there are additional policies that were not shared or that were missed for other reasons. Some settings also reported that policies were in development. Moreover, raw counts of policy numbers are of limited utility because the number of Tribal agencies or entities in each setting can vary greatly. For example, some Tribes operate only one gaming facility or only one ECE program, and some operate several. There are few Bureau of Indian Education schools and Tribal colleges

relative to the number of Tribal departments and agencies. Further, some schools that serve Tribes are operated by a state government and not the Tribe. Finally, it bears noting that one comprehensive breastfeeding law adopted by Tribal government that covers all worksites, whether private or government, and all community spaces (e.g., powwow grounds, recreational centers, parks, etc.) can be quite powerful, despite being only one policy.

With those limitations in mind, the scan shows that of the policies that were shared, policies focusing on milk expression were the most common, although almost as many policies also explicitly encouraged or allowed women to breastfeed their babies on-site.

The policies shared were closely split between formal and informal policies, with a few more formal policies shared than informal policies. The



highest number of policies came from gaming facilities, health centers and health services agencies, followed closely by Tribal government and administrative policies.

Formal policies were found a little more commonly among the policies addressing health centers or health services. These policies also tended to be detailed, addressing milk expression facilities and breaks, and addressing needs of both employees and patients. Health service agencies policies also included policies addressing other types of breastfeeding-related needs, such as implementation of a breast pump loan program, or creation of a breastfeeding peer counselor position.

Of the gaming facility policies that were shared, these were much more likely to be informal policies focused on providing a space for milk expression. This could be because gaming facilities may be following another policy (such as a Tribal policy or federal Affordable Care Act protections) and are using informal policies to implement those protections. Gaming facility policies also were more likely to focus on employees and not on guests. One reason could be an assumption that guests are more likely to have a hotel room that could be used for breastfeeding or milk expression.

Unsurprisingly, Tribal codes or administrative policies tended to be formal policies. Codified laws or resolutions tended to express a right to breastfeed or exempt breastfeeding women from public indecency laws. A few also addressed Tribal government worksites, but these types of worksite policies appeared more often in the form of administrative policies, sometimes promulgated by the Tribe's health department. The use of right-to-breastfeed resolutions was notable for Tribes in Wisconsin, reflecting a coordinated movement to support the development of these types of resolutions.

For the early care and education sector and academic sectors, a mixture of both types of policies were shared, with the majority being formal policies. Early care and education setting policies also included policies relating to infant feeding practices and milk use.

The policies range in length and complexity. Some policies are very short and to the point. Some are much longer and detailed, including purpose language, definitions, detailed implementation directions to managers, statements about employee responsibility, describing the required features for the lactation space, providing for infants to be brought to work under certain circumstances, etc. Out of all the policies shared, two policies included definitions. For example, one policy defined both "Lactation" and "Express." Including definitions of key terms is a recommended practice for good policy drafting.

Two policies also included an evaluation component. Where feasible, including a mechanism for periodically evaluating a policy to determine whether it is working the way it was intended is a recommended practice. This can help ensure that policies are working effectively and provides a systematic way to improve policies over time.

Of the policies that addressed breastfeeding on-site that were received, one of the urban American Indian/Alaska Native health centers has the most comprehensive set of guidelines for an infant-at-work program. Inter-Tribal Council of Michigan's policy also addresses both bringing an infant to work and milk expression by establishing two main job categories (one allowing employees to have the option to bring an infant to work until the baby is six months old, and one allowing only milk expression breaks). Both policies illustrate innovative approaches that strive to balance workplace and parental needs.

Out of the policies shared, five policies expressly refer to paid break times for breastfeeding or milk expression (in addition to the urban American Indian/Alaska Native health center policy allowing for compensatory time to be taken for milk expression breaks). Similarly, five policies expressly provided support for breastfeeding employees beyond the first 12 months of a baby's life, exceeding federal minimum protections. These could be other promising areas for exploration.

An additional observation is that several of the gaming facility policies (formal and informal) that were shared appeared to have been developed in cooperation with their respective Tribal health departments, maternal and child health nurses, or other Tribal health staff. In addition, it was observed that in some cases, Tribal health departments promulgated administrative policies

supporting breastfeeding for all employees. These examples indicate the important role of Tribal health departments in supporting breastfeeding, and show that cross-agency collaborations can be fruitful for developing stronger breastfeeding protections across a community.

Another observation is that relatively few of the policies feature provisions addressing breastfeeding at cultural events such as powwows, or include language linking breastfeeding or breast milk to the Tribe's history or culture. Additionally, few policies addressed the benefits of supporting breastfeeding for *employers*. This could indicate that including these kinds of provisions could be another area worthy of exploration.

This report highlights the variety of approaches that the Tribal Nations and American Indian organizations in the Bemidji Area are taking to support breastfeeding across their communities, and provides additional ideas for Tribal Nations and organizations that are interested in opportunities to expand their work in this area. This report also aims to inspire reflection and new insights. For example, for those Tribes with right to breastfeed laws or other types of breastfeeding laws, understanding how these are implemented across the sectors and how these laws interact with sector-specific policies could be useful. This could be one of several areas highlighted by this report for Tribal leaders and breastfeeding supporters to explore as they seek to amplify their efforts.

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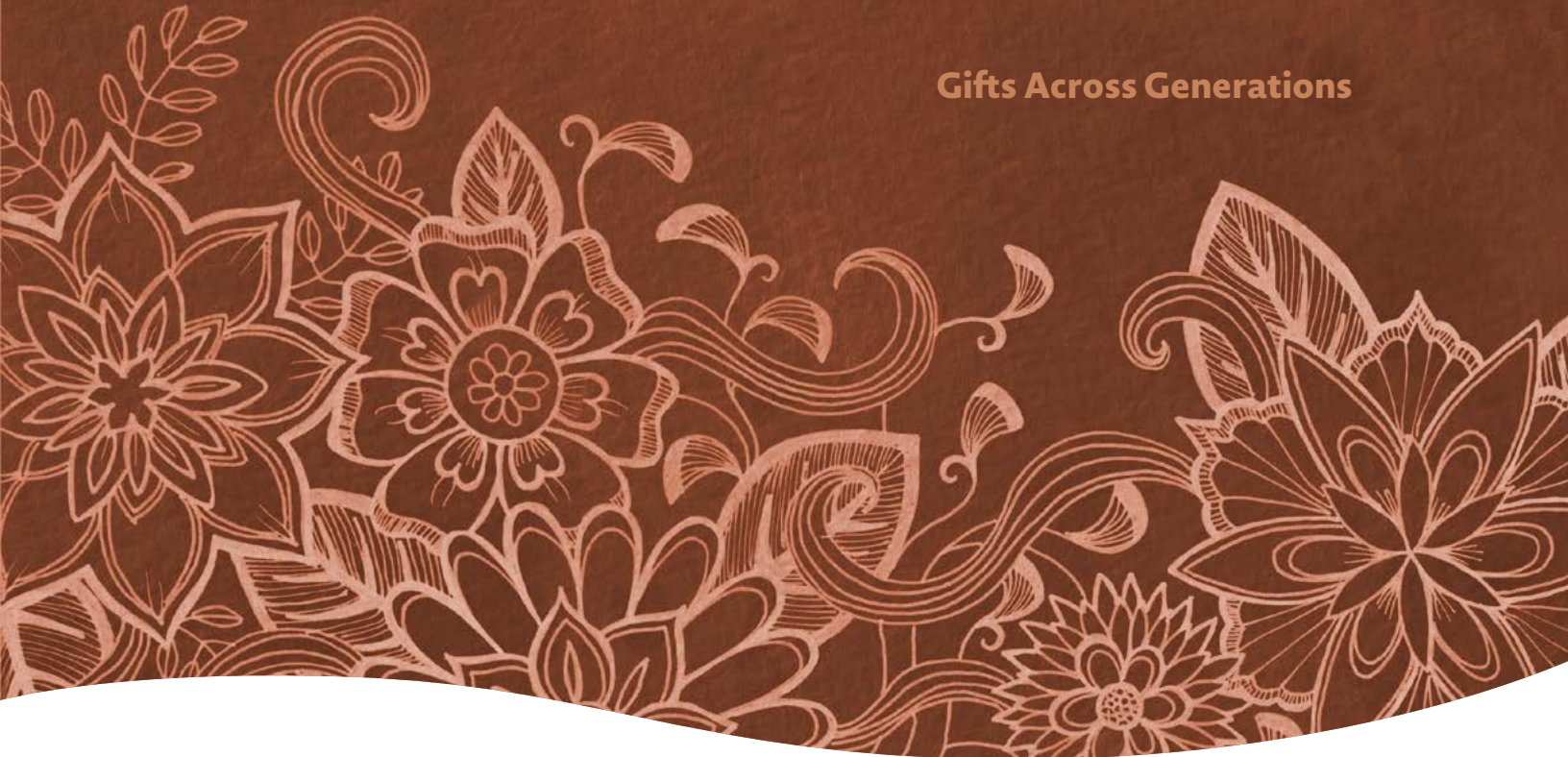
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Appendix A

Methodology for Policy Collection and Coding

The First Food Policy and Law Scan (PALS) Project (“Project” or “First Food PALS Project”) was conducted by the Great Lakes Inter-Tribal Epidemiology Center (GLITEC) in partnership with the Public Health Law Center (PHLC). To launch the First Food PALS Project, the legal counsel and Health Directors of the 34 federally-recognized Tribes, and directors of the four urban American Indian health centers within the Bemidji Area, were contacted through email and mail sent through the U.S. Postal Service. Each contact was sent a formal invitation to participate in the Project, a handout providing an overview of the Project, and a letter requesting access to Tribal code, statutes, ordinances, resolutions, and organizational policies related to breastfeeding. The letter and overview explained that the Project team would collect and analyze the policies, and would create an aggregate report that would provide highlights from these policies in a de-identified way unless written permission was received to identify the source of the policy, out of respect for privacy and Tribal sovereignty. The letters also explained that participation in the Project was completely optional.

In asking for organizational policies, the Project team identified six settings within Tribal jurisdictions where breastfeeding policies would be particularly relevant and important:

- gaming facilities and resorts;
 - early care and education settings (such as Early Head Start, Head Start, and child care programs); and
 - academic settings including Tribally-operated Bureau of Indian Education schools and Tribal colleges and universities
- For Tribal Nations, the letters requesting participation were modified depending on whether the Tribe’s code is published online. Legal databases were scanned for the existence of publicly available Tribal codes related to breastfeeding. For Tribes where the code is publicly available, the Project team sent a letter offering the option to opt-out of the Project. For Tribes with codes that are not publicly available or are only partially available, the letter requested that Tribal codes be provided to the Project team if the Tribe wished to participate.
- Following the initial outreach to legal counsel and Health Directors, Project team staff followed up with emails and telephone calls to additional contacts within the Tribes, the four urban American Indian health centers, and intertribal organizations within the area. Organizational contacts who could be potential sources for breastfeeding policies were identified through GLITEC staff, online searches, and word-of-mouth referrals. Breastfeeding policies were gathered on a rolling basis, through email and phone conversations. Unless the Tribal contacts opted out of the Project or indicated they had no policies they wished to share, Project team staff conducted continuous follow up to encourage responses. Responses received were documented and tracked to facilitate follow up.
- By August 30, 2019, 31 Tribes had shared 61 policies, three urban American Indian health centers

shared four policies, and the Inter-Tribal Council of Michigan policy was shared. Informal policies and practices were collected, as well as formal policies. Policies were deemed “formal” if they were formally adopted by a decision-making body (e.g., Tribal Council; human resources department of a casino or college; child care program director) *and* in writing (e.g., incorporated into Tribal code; or into a human resources or staff handbook). Policies were deemed informal if no written policy existed, but the contact for the setting described a policy or practice that was applied by the setting (e.g., availability of a lactation room; a practice of allowing employees to take breaks as needed for milk expression, etc.).

Policies were sorted by state location, Tribe, sector (e.g., Tribal government; health department or services; early care and education program, etc.) and whether they are formal or informal policies. Three Project team staff, including a senior attorney and a policy analyst, then worked together to develop and refine a coding protocol, and coded each policy using a color-coding scheme that identified 16 distinct features, plus a catch-all “other” category. These provisions included the following:

1. Policy main focus (6 options):
 - supporting milk expression (i.e., pumping)
 - allowing nursing babies on-site
 - both supporting milk expression and breastfeeding babies on-site
 - acknowledging a right to breastfeed
 - using/storing of breast milk
 - other/unclear
2. Purpose and intent language;
3. Type of space or location provided for breastfeeding/pumping;
4. Break time guidelines and/or standards (e.g. amount of time, paid or unpaid breaks, number or breaks provided, etc.);
5. Infant age limits for policy coverage;
6. Expressed milk storage provisions;

7. Access to a sink or other cleaning facilities;
8. Implementation standards (who is required to implement the policy and how);
9. Obligations of covered persons (e.g. notice to supervisor, etc.);
10. Enforcement (remedies or consequences for non-compliance, who enforces violations, how violations are enforced);
11. Exemptions (who does not have to follow the policy);
12. Anti-discrimination language;
13. Feeding practices;
14. Support (through educational programs, availability of lactation counselor services, etc.);
15. Culture-related language or provisions (e.g., provisions related to powwows and other cultural events, or referring to role of breastfeeding in the Tribe’s history or culture);
16. Evaluation language.

Each policy was coded by at least two people. The coders then met to discuss differences in coding and come to a consensus regarding coding. Agreement was reached in all cases.

Prior to this report being made public, the Tribal contacts who agreed to participate in this Project were provided with the sections of this report which discussed the policies that they had provided, and were given the opportunity to review and approve (and provide additional feedback on) how those policies are discussed. Tribal contracts also were also given the opportunity to choose to provide or withhold permission to specifically identify the policies they had provided.

Using legal databases, Project team staff also collected and then summarized relevant local, state, and federal breastfeeding laws to provide Tribes and urban American Indian health centers with information about the legal landscapes around them.

Appendix B

Federal Law Summary

Federal law provides basic support for nursing mothers through health insurance requirements and worker protections.

The Patient Protection and Affordable Care Act of 2010 – Health Insurance Coverage Requirements

The Patient Protection and Affordable Care Act of 2010 requires most health insurance plans to cover all the costs for breastfeeding support and counseling services from a trained provider, and also for equipment rental or purchase.¹ These costs must be covered for as long as a woman is breastfeeding, and for each birth.² Plans that existed before March 23, 2010 and have not been significantly changed (for job-based plans) or offered to new people (individual plans) do not have to provide this coverage.³ State laws may require health insurance companies to provide these breastfeeding related benefits or additional benefits.

Family Medical Leave Act – Unpaid Leave for Birth/Placement and Breastfeeding Initiation

For nursing mothers who also work outside the home and need time off or work breaks to breastfeed, federal law provides employment protections through the Family Medical Leave Act and the Fair Labor Standards Act. The Family Medical Leave Act (FMLA) requires covered employers to provide job-protected, unpaid leave to workers in certain situations so that they can care for themselves or family members.⁴ The birth or adoption of a baby, including time to work on initiating breastfeeding, qualifies for this protection. FMLA allows workers to take up to 12 weeks of unpaid leave during a 12 month period, within the first

year after a baby's birth. To be eligible for this protection, a person must have worked for the employer for at least 12 months, and for at least 1,250 hours in the 12 month period right before the leave, and at a location where the employer has at least 50 employees within 75 miles of the person's worksite. State laws may provide additional leave protections for workers.

Fair Labor Standards Act – Reasonable Break Times for Milk Expression

Federal law also provides protections for many nursing mothers who need to pump or express milk while at work through the Fair Labor Standards Act (FLSA).⁵ These federal protections apply to workers who are covered by the FLSA's paid overtime requirements (in other words, to "non-exempt" (or hourly employees), in contrast to "exempt" (or salaried employees)). The federal protections also apply regardless of the mother's citizenship status and whether she is legally permitted to work in the United States.⁶

The FLSA law requires a covered employer to allow a non-exempt employee to take "reasonable break time ... 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."⁷ The employer must 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."⁸ This law sets minimum requirements; state and local governments may pass laws that provide additional protections for nursing mothers, such as requiring breaks for exempt employees, requiring paid breaks, or requiring breaks for nursing moms with babies over one year old.

The federal law does not limit the number of breaks, or dictate how long or short a break can be. As explained above, the law states that a break time must be provided “each time” the worker needs to express milk and that it must be a “reasonable break time.” The number and length of breaks will vary from woman to woman. Although the employer is not required to compensate a worker who takes a pumping break, if the employer provides paid breaks to its workers and the nursing mother is using that paid break time to express milk, then she must be paid, too. In addition, the worker must be completely relieved of any work duties during the milk expression break; otherwise, the FLSA requires that she be paid for that time.⁹

In terms of space and location requirements, the space cannot be a bathroom. To meet the law’s requirements, it also must be available when the worker needs it.¹⁰ It can be a temporary space as long as it provides privacy (it is shielded from view

and free from intrusion by others).

These federal requirements apply to employers of all sizes, but employers with less than 50 workers (counted across all of the employer’s worksites) may be exempt if they can show that “such requirements 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.”¹¹

Workers also have whistleblower protection under the FLSA. If a worker files a complaint about a FLSA violation, including about a violation of the reasonable break time requirements, the employer may not retaliate or discriminate against the worker. This applies whether the complaint is made verbally or in writing.¹²

Table 10 on the following page summarizes the key FLSA protections for nursing mothers.

Endnotes

1 Coverage for breastfeeding support and supplies is part of preventative services coverage, which is implemented through regulations at 45 C.F.R § 147.130 and federal guidance from the relevant federal agencies. These regulations apply to most employer plans and to women who become eligible for Medicaid through Medicaid expansion. *See, e.g.,* U.S. Ctrs. For Medicare and Medicaid Servs., *Preventative Care Benefits for Women*, <https://www.healthcare.gov/preventive-care-women/>.

2 U.S. Dep’t of Labor, *FAQs About Affordable Care Act Implementation (Part XII)* at 8 (Feb. 20, 2013), <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-xii.pdf>.

3 U.S. Ctrs. For Medicare and Medicaid Servs., *Health Insurance Rights and Protections, Grandfathered Health Insurance Plans*, <https://www.healthcare.gov/health-care-law-protections/grandfathered-plans/>.

4 The Family Medical Leave Act is codified at 29 U.S.C.A. § 2611 et seq. (West 2019).

5 The Fair Labor Standards Act (FLSA) is codified at 29 U.S.C.A § 201 et seq. (West 2019). The FLSA is the federal law that sets minimum wage and overtime protections for hourly workers.

6 The Federal Department of Labor enforces the FLSA

“without regard to whether an employee is documented or undocumented.” U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #48: APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION (2008), <http://www.dol.gov/whd/regs/compliance/whdfs48.pdf>; U.S. Dep’t of Labor Josendis Amicus Letter to U.S. Court of Appeals for the Eleventh Circuit (Aug. 26, 2010) (reiterating the DOL’s position and citing cases in support).

7 29 U.S.C.A. § 207 (r) (1) (A) (West 2019).

8 29 U.S.C. A. § 207 (r) (1) (B) (West 2019).

9 *See* U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #22: HOURS WORKED UNDER THE FAIR LABOR STANDARDS ACT (FLSA) (revised July 2008), <https://www.dol.gov/whd/regs/compliance/whdfs22.pdf>.

10 U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #73: BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA (revised April 2018), <https://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.

11 29 U.S.C.A. § 207 (r) (3) (West 2019).

12 *See* 29 U.S.C.A. § 218c (West 2019).

Table 10: Fair Labor Standards Act Protections for Nursing Mothers at Work

<p>Which workers are protected</p>	<p>Workers who are also covered by the Fair Labor Standards Act’s overtime pay requirements (“non-exempt” employees). Workers who work for employers with less than 50 employees may not be covered if the employer can prove undue hardship (as defined by the law). Protections apply regardless of mother’s citizenship status.</p>
<p>Break time requirements</p>	<p>Reasonable break times must be provided for milk expression (breastfeeding a baby at a work site is not addressed). No limits are specified as to number of or length of breaks. Breaks do not have to be paid unless the employer provides paid break time to other workers, and the nursing mother is using paid break time to pump.</p>
<p>Space requirements</p>	<p>The space must be private, shielded from view and free from intrusion by the public and other workers. It must be available when the worker needs it. It must not be a bathroom.</p>
<p>Age limits for babies</p>	<p>Break times must be provided for nursing mothers up to one year after the baby’s birth.</p>
<p>Whistleblower protections</p>	<p>Discrimination or retaliation against workers who file verbal or written complaints related to or under the FLSA is prohibited.</p>



Appendix C

Legal Protections for Nursing Mothers in Illinois

This Appendix summarizes federal, Illinois, and Chicago laws that protect breastfeeding

Federal Protections

Federal law provides basic support for nursing mothers through health insurance requirements and worker protections. The Patient Protection and Affordable Care Act of 2010 (ACA) requires most health insurance plans to cover all the costs for breastfeeding support and counseling services from a trained provider, and also for equipment rental or purchase.¹ For nursing mothers who also work outside the home and need time off or work breaks to breastfeed, federal law provides employment protections through the Family Medical Leave Act² and amendments to the Fair Labor Standards Act³ also made through the ACA.⁴

The federal Family and Medical Leave Act provides some job protection and a right to up to 12 weeks of unpaid leave for parents after the birth or placement of a child, which can include time for breastfeeding initiation. Employers covered by the federal Fair Labor Standards Act are required to provide a suitable space and reasonable break times for non-exempt (hourly) workers to express, or pump, breast milk while at work for mothers of babies up to one year old. For more detailed information about these federal protections, please see Appendix B to this Report.

Illinois and Chicago Law Protections

Federal laws set minimum protections. Many states and other jurisdictions have passed laws that provide additional protections, including Illinois. Illinois has a strong set of laws. It has a law

declaring that breastfeeding is not an act of indecency,⁵ and a right-to-breastfeed law that states that a mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be (although in places of worship, the mother must follow the appropriate norms within that place).⁶

Illinois also has adopted breastfeeding protection laws that apply in specific settings, including worksites. The state's "Nursing Mothers in the Workplace Act" requires that employers provide reasonable *paid* breaks each day to employees who need to express breast milk or nurse a baby, up to one year after the baby's birth. The law also requires employers to make reasonable efforts to provide a room or other location, other than a bathroom, where employees can express milk in privacy.⁷ Illinois law requires public schools to provide reasonable accommodations for breastfeeding students on a school campus to express breast milk, breastfeed an infant child, or address other needs related to breastfeeding,⁸ and allows nursing mothers to be excused from jury duty.⁹

Additionally, Illinois has a law requiring every facility that houses a circuit court to designate at least one lactation room or area for the public to use. The lactation room or area cannot be in a restroom, and must include a chair, a table, an electrical outlet, and, where possible, a sink with running water. Notice must be posted within the building regarding location and access, and the Illinois Supreme Court is requested to issue

minimum standards for training court personnel about location and access requirements.¹⁰

Illinois has also adopted a law requiring airport managers in airports operated by local governments and that have more than one million enplanements per year to provide a room or other location space at each airport terminal behind the airport security screening area for members of the public to express breast milk in private in a place that is not a public restroom.¹¹

Another Illinois law requires that every hospital that provides birthing services adopt an infant feeding policy that promotes breastfeeding. The hospital must routinely communicate this policy to staff and post the policy in a conspicuous place in the obstetric or neonatal area, or on the hospital's website.¹² Illinois also has authorized the

state's Department of Public Health to engage in educational campaigns to support breastfeeding.¹³ Further, Illinois legislators have adopted resolutions recognizing the health, economic, and societal benefits of breastfeeding to babies, mothers, families, and communities, and calling for barriers to breastfeeding to be removed.¹⁴

The American Indian Health Service of Chicago is located in Chicago. Although Chicago's city code does not have any generally applicable breastfeeding support laws, the city does have a Lactation Accommodation ordinance that states that there must be a place for nursing mothers to express breast milk at an airport terminal and this space must include a lockable door, a chair, a table, an electrical outlet and a sink with running water. Additionally, this place cannot be a public restroom.¹⁵

Endnotes

1 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 2713 (2010). Coverage for breastfeeding support and supplies is part of preventative services coverage, which is implemented through regulations at 45 C.F.R § 147.130 and federal guidance from the relevant federal agencies. These regulations apply to most employer plans and to women who become eligible for Medicaid through Medicaid expansion. See, e.g., U.S. Ctrs. For Medicare and Medicaid Servs., *Preventative Care Benefits for Women*, <https://www.healthcare.gov/preventive-care-women/>.

2 The Family Medical Leave Act is codified at 29 U.S.C.A. § 2611 et seq. (West 2019).

3 The Fair Labor Standards Act (FLSA) is codified at 29 U.S.C.A § 201 et seq. (West 2019). The FLSA is the federal law that sets minimum wage and overtime protections for workers.

4 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 4207 (2010), codified at 29 U.S.C.A. § 207 (r) (West 2019).

5 720 ILL. COMP. STAT. ANN. 5/11-30 (a) (2) (West 2019).

6 740 ILL. COMP. STAT. ANN. 137/1 et seq. (West 2019).

7 820 ILL. COMP. STAT. ANN. 260/1 et seq. (West 2019).

8 105 ILL. COMP. STAT. ANN. 5/10-20.60 (West 2019).

9 705 ILL. COMP. STAT. 305/10.3 (West 2019).

10 55 ILL. COMP. STAT. ANN. 5/5-1106 (West 2019).

11 410 ILL. COMP. STAT. ANN. 140/5 (West 2019).

12 210 ILL. COMP. STAT. ANN. 81/1 et seq. (West 2019).

13 20 ILL. COMP. STAT. ANN. 2310-442 (West 2019).

14 S.R. 170, Ill. Gen. Assemb., Reg. Sess. (Ill. 2011). See also H.R. 778, Ill. Gen. Assemb., Reg. Sess. (Ill. 2012) (urging departments that assist families and children to offer and promote educational materials about breastfeeding).

15 CITY OF CHICAGO, ILL., CODE OF ORDINANCES § 10-36-345 (current through March 13, 2019).

Frequently Asked Questions about Breastfeeding Laws in Illinois

Q: Does Illinois have a law that protects nursing mothers in the workplace?

A: Yes. Illinois has a right-to-breastfeed law that states that a mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be and a law that provides specific workplace protections for breastfeeding workers who need to express milk or nurse a baby while at work.¹

Q: What sort of time and space must employers provide workers to express milk?

A: When read together, Illinois law and the federal Patient Protection and Affordable Care Act require employers to provide nursing mothers with reasonable break times and appropriate, private space to express milk or nurse a baby every day for up to one year after the child's birth.² Milk expression breaks may run concurrently with any break time already provided. The space provided should be a private location close to the work area, that is not a bathroom, where an employee can express milk privately.³ To the extent that state and federal law differs, the employer must follow whichever law offers nursing mothers the most protection.

Chicago also has a Lactation Accommodation ordinance that requires airport terminals to provide a place for nursing mothers to express breast milk, and this space must include a lockable door, a chair, a table, an electrical outlet and a sink with running water. Additionally, it cannot be a public restroom.⁴

Q: Which employees are covered?

A: The Illinois Nursing Mothers in the Workplace Act applies to an individual partnership, labor organization or unincorporated association; the State; an agency or political subdivision of the State; or any other legal, business, or commercial entity that has more than five workers, excluding the employer's immediate family.⁵ In contrast, federal law applies to employees who are covered by the overtime pay requirements of the Fair Labor Standards Act.⁶ Both federal and Illi-

nois law allow exceptions to the reasonable break time requirements in limited circumstances.⁷ To the extent the laws differ, the employer must follow whichever law offers nursing mothers the most protection. The requirements under the federal law apply regardless of the mother's citizenship status and whether she is legally permitted to work in the United States.⁸ Undocumented workers should consult an attorney for information on their specific situations.

Q: Are workers required to inform their employers in advance that they will need to take breaks during work to express milk?

A: Yes, in certain circumstances. An employer may request documentation from a worker's health care provider if the same documentation would be requested for conditions related to disability and there is a business need. In those cases, an employer can request the medical justification and approximate dates through which the accommodation is needed.⁹ Even if an employer does not require documentation, it is still a good idea to give an employer advance notice of intent to take breaks at work to express milk. This way, the employer can take the necessary steps to plan for the worker's absence during break times.¹⁰

Q: How many breaks can a worker take, and can workers get paid break time to express milk?

A: Under the Illinois Human Rights Act, reasonable accommodations may include, but are not limited to, longer or more frequent bathroom breaks, more breaks for water intake, and breaks for periodic rest.¹¹ Neither Illinois nor federal law specifies a limit or number of breaks a nursing mother can take. Both Illinois and federal law requires breaks "each time" the worker needs to express milk. Illinois law essentially requires that these breaks be paid because it does not allow employers to reduce the worker's compensation for time spent to express milk or nurse a baby.¹²

Q: What if a person encounters difficulty in obtaining break time or space to express milk in the workplace?

A: Understanding the law can be complicated for both workers and employers. Therefore, it may be helpful to contact someone for ideas on how to talk to an employer about arranging a time and space to express milk in the workplace. Nursing mothers can contact a local office of [La Leche League of Illinois](#).¹³ The [Illinois Breastfeeding Task Force](#)¹⁴ may also be able to help.

The Chicago Area Breastfeeding Coalition (<http://chicagoareabfc.org/about-us/>) and Breastfeed Chicago (<https://breastfeedchicago.org/>) are also good resources to understand what rights workers have as nursing mothers.

Q: What if a worker is unable to resolve the problem with an employer?

A: Under the Illinois Right to Breastfeed Act, women have a private right of action to enjoin future denials of the right to breastfeed. Attorney fees and litigation expenses may be recovered if a plaintiff prevails.¹⁵

Complaints or reports of violation under federal law can be filed through the U.S. Department of Labor's Wage and Hour Division. Information about how to file a complaint is available at <https://www.dol.gov/whd/howtofilecomplaint.htm> or by contacting a local District Office in Illinois.¹⁶ The ACLU (Americans for Civil Liberties Union) of Illinois also may be able to help, and has a webpage devoted to information about breastfeeding protections at <https://www.aclu-il.org/en/know-your-rights/breastfeeding-illinois>.

Q: What additional resources are available to help someone understand the break time requirements and other work-related legal protections for nursing mothers in Illinois?

A: The [Illinois Breastfeeding Taskforce](#) provides information about Illinois breastfeeding protection laws.¹⁷ The federal government has a [fact sheet](#)¹⁸ explaining the federal break time protections and a [list of other resources](#)¹⁹ relating to federal protections (including educational materials in Spanish) to assist nursing mothers in understanding the federal law. The Public

Health Law Center and the Centers for Disease Control and Prevention also have useful resources.²⁰

Q: In addition to workplace protections, does Illinois have a right-to-breastfeed law?

A: Yes. Illinois has a right-to-breastfeed law that states that a mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be (although in places of worship, the mother must follow the appropriate norms within that place).²¹ Illinois law also requires public schools to provide reasonable accommodations for breastfeeding students on a school campus to express breast milk, breastfeed an infant child, or address other needs related to breastfeeding.²² Additionally, Illinois has a law requiring every facility that houses a circuit court to designate at least one lactation room or area for the public to use. The lactation room or area cannot be in a restroom, and must include a chair, a table, an electrical outlet, and, where possible, a sink with running water. Notice must be posted within the building regarding location and access.²³ Illinois and Chicago have also adopted laws requiring airports to provide private spaces (that are not public restrooms) for members of the public to express breast milk.²⁴

Q: Are there any public benefits programs that assist nursing mothers in Illinois?

A: Yes. The Women, Infants, and Children (WIC) program provides food, help finding health care services, and breastfeeding help and information to women who are pregnant, breastfeeding or just had a baby, and children who are under the age of five in low income families.²⁵ Further, the Family and Community Services Division within the Illinois Department of Human Services has a breastfeeding counselor program.²⁶

Q: Are there any tax benefits relating to breastfeeding?

A: Yes. The cost of breast pumps and supplies that assist lactation are medical expenses that may be eligible for tax deduction in certain circumstances or may be reimbursable under flexible spending accounts and other health savings accounts.²⁷

Endnotes

- 1 See 740 ILL. COMP. STAT. ANN. 137/1 et seq. (West 2019) and 820 ILL. COMP. STAT. ANN. 260/1 et seq. (West 2019).
- 2 See 29 U.S.C.A. § 207 (r) (West 2019); 820 ILL. COMP. STAT. ANN. 260/1 et seq. (West. 2019).
- 3 820 ILL. COMP. STAT. ANN. 260/15 (West. 2019).
- 4 CITY OF CHICAGO, ILL., CODE OF ORDINANCES § 10-36-345 (current through March 13, 2019).
- 5 820 ILL. COMP. STAT. ANN. 260/5 (West. 2019).
- 6 U.S. Dep’t of Labor, Wage and Hour Division, *Frequently Asked Questions—Break Time for Nursing Mothers*, <https://www.dol.gov/whd/nursingmothers/faqBTNM.htm>.
- 7 Compare 820 ILL. COMP. STAT. ANN. 260/10 (West 2019) (allowing exceptions where employer can show “undue hardship,” citing to 775 Ill. Comp. Stat. Ann. 5/2-102 (J) for the definition of “undue hardship”) and 29 U.S.C.A. § 207 (r) (3) (West 2019) (describing how “undue hardship” is assessed under federal law).
- 8 The Federal Department of Labor enforces the FLSA “without regard to whether an employee is documented or undocumented.” U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #48: APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION (2008), <http://www.dol.gov/whd/regs/compliance/whdfs48.pdf>; U.S. Dep’t of Labor Josendis Amicus Letter to U.S. Court of Appeals for the Eleventh Circuit (Aug. 26, 2010) (reiterating the DOL’s position and citing cases in support).
- 9 775 ILL. COMP. STAT. ANN. 5/2-102 (J)(1) (West 2019).
- 10 See Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80077 (Dec. 21, 2010), <https://www.gpo.gov/fdsys/pkg/FR-2010-12-21/pdf/2010-31959.pdf>.
- 11 775 ILL. COMP. STAT. ANN. 5/2-102 (J) (West 2019).
- 12 820 ILL. COMP. STAT. ANN. 260/10 (West 2019).
- 13 <https://sites.google.com/view/llofil>
- 14 <http://www.illinoisbreastfeeding.org/>
- 15 740 ILL. COMP. STAT. ANN. 137/15 (West 2019).
- 16 A list and contact information for all local district offices is available at https://www.dol.gov/whd/WHD_district_offices.pdf.
- 17 <http://www.illinoisbreastfeeding.org/21901.html>
- 18 U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #73: BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA (revised April 2018), <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.
- 19 U.S. Dep’t of Labor, Wage and Hour Division, *Frequently Asked Questions — Break Time for Nursing Mothers*, <http://www.dol.gov/whd/nursingmothers/faqBTNM.htm>.
- 20 See <http://www.publichealthlawcenter.org/topics/healthy-eating/breastfeeding>; and <https://www.cdc.gov/breastfeeding/index.htm>
- 21 740 ILL. COMP. STAT. ANN. 137/1 et seq. (West 2019).
- 22 105 ILL. COMP. STAT. ANN. 5/10-20.60 (West 2019).
- 23 55 ILL. COMP. STAT. ANN. 5/5-1106 (West 2019).
- 24 See 410 ILL. COMP. STAT. ANN. 140/5 (West 2019) and CITY OF CHICAGO, ILL., CODE OF ORDINANCES § 10-36-345 (current through March 13, 2019), respectively.
- 25 See Ill. Dep’t of Human Servs., *Women, Infants, and Children (WIC)*, <http://www.dhs.state.il.us/page.aspx?item=30513>.
- 26 Ill. Dep’t of Human Servs., Division of Family & Community Servs., *Breastfeeding Peer Counselor Program Fact Sheet*, <http://www.dhs.state.il.us/page.aspx?item=32827>.
- 27 See IRS, Publication 502, Medical and Dental Expenses (Including the Health Coverage Tax Credits), <https://www.irs.gov/forms-pubs/about-publication-502> and IRS, Pub. 969 Health Savings Accounts and Other Tax-Favored Health Plans, <https://www.irs.gov/forms-pubs/about-publication-969>.



Appendix D

Legal Protections for Nursing Mothers in Indiana

This Appendix summarizes the federal and state laws that protect breastfeeding in Indiana

Tribal policies that support women in breastfeeding their babies—such as milk expression policies for worksites and similar policies—also help promote breastfeeding by Tribal members in Indiana. Federal and state laws also can be sources of protection and ideas.

Federal Protections

Federal law provides basic support for nursing mothers through health insurance requirements and worker protections. The Patient Protection and Affordable Care Act of 2010 (ACA) requires most health insurance plans to cover all the costs for breastfeeding support and counseling services from a trained provider, and also for equipment rental or purchase.¹ For nursing mothers who also work outside the home and need time off or work breaks to breastfeed, federal law provides employment protections through the Family Medical Leave Act² and amendments to the Fair Labor Standards Act³ also made through the ACA.⁴ The federal Family and Medical Leave Act provides some job protection and a right to up to 12 weeks of unpaid leave for parents after the birth or placement of a child, which can include time for breastfeeding initiation. Employers covered by the federal Fair Labor Standards Act are required to provide a suitable space and reasonable break

times for non-exempt (hourly) workers to express, or pump, breastmilk while at work for mothers of babies up to one year old. For more detailed information about these federal protections, please see Appendix B to this Report.

Indiana Law Protections

Federal laws set minimum protections, and many states and other jurisdictions have passed laws that provide additional protections. Indiana has some strong workplace protection laws at the state level. Indiana law requires state and political subdivisions (such as city and county governments) to provide for reasonable *paid* breaks for employees to express milk, to provide a private space near the employee's workspace that is not a bathroom for milk expression, and to make reasonable efforts to provide a refrigerator for storing expressed breast milk.⁵ State law also provides that employers with 25 or more employees must provide a private location, other than a bathroom, where an employee can express the employee's breast milk in private and if possible to provide a refrigerator for storing breast milk that has been expressed.⁶ Indiana also has a right to breastfeed law which states that a woman may breastfeed her child anywhere the woman has a right to be.⁷

Frequently Asked Questions about Breastfeeding Laws in Indiana

Q: Does Indiana have a law that protects nursing mothers in the workplace?

A: Yes. Indiana has a law that applies specifically to workers who work for state and local governments, and a law that applies to employers with 25 or more employees.⁸ Indiana also has a right to breastfeed law which states that a woman may breastfeed her child anywhere the woman has a right to be.⁹

Q: What sort of time and space must employers provide workers to express milk?

A: When read together, Indiana law and the federal Patient Protection and Affordable Care Act require employers to provide nursing mothers with reasonable break times and appropriate, private space to express milk. The space cannot be a bathroom.¹⁰ Indiana law also states that employers should provide a refrigerator or other cold storage space, or allow the worker to bring in a portable cold storage device, to store expressed milk, as much as reasonably possible.¹¹ For state and local government workers, the break time should run concurrently with other breaks if possible.¹² To the extent that state and federal law differ, the employer must follow whichever law offers nursing mothers the most protection.

Q: Which employees are covered?

A: Under Indiana law, workers who work for state and political subdivisions or for an employer with 25 or more employees are covered.¹³ This is in contrast to federal law, which applies only to workers who are covered by the overtime pay requirements of the Fair Labor Standards Act.¹⁴ The requirements under the federal law apply regardless of the mother's citizenship status and whether she

is legally permitted to work in the United States.¹⁵ Undocumented workers should consult an attorney for information on their specific situations.

Q: Are workers required to inform their employers in advance that they will need to take breaks during work to express milk?

A: No. Even though there is no requirement under either state or federal law to provide advance notice, it may be a good idea so the employer has time to prepare an appropriate space for a worker to express milk and to take the necessary steps to plan for the worker's absence during break times.¹⁶

Q: How many breaks can a worker take, and can workers get paid break time to express milk?

A Neither Indiana law nor federal law specifies or limits the number of breaks a nursing mother can take to express milk. Federal law states that the employer must provide a "reasonable break time," and for "each time" the employee has a need to express milk. Indiana's law for non-governmental employers refers to providing a private space for the worker to express milk when "away from the employee's assigned duties."¹⁷ Indiana's law relating to employees of state and political subdivisions states that they must be provided paid break time "each day" for milk expression, to run concurrently as much as possible with regular breaks provided by the employer.¹⁸ The number of breaks will vary from woman to woman. Except for state and political subdivision employers, under both sets of laws, an employer is not required to compensate an employee who is receiving reasonable break time for the purposes of expressing milk unless that break time occurs during a paid break.

Q: What if a person encounters difficulties in obtaining break time or space to express milk in the workplace?

A: Understanding the law can be complicated for both workers and employers. Therefore, it may be helpful to contact someone for ideas on how to talk to an employer about arranging a time and space to express milk in the workplace. Nursing mothers can contact the [Indiana Breastfeeding Coalition](#)¹⁹ or the [La Leche League of Indiana](#)²⁰ for help and support.

Q: What if a worker is unable to resolve the problem with an employer?

A: The Indiana Civil Rights Commission takes complaints relating to employment discrimination; directions on how to file a complaint can be found at <https://www.in.gov/icrc/3131.htm>. Complaints or reports of violation under federal law can be filed through the U.S. Department of Labor’s Wage and Hour Division. Information about how to file a complaint is available at <https://www.dol.gov/whd/howtofilecomplaint.htm> or by contacting the local District Office in Indianapolis or the South Bend area.²¹

Q: What additional resources are available to help someone understand the break time requirements and other work-related legal protections for nursing mothers in Indiana?

The Indiana State Department of Health provides information about breastfeeding support and protections in the [Maternal and Child Health section of its website](#)²² and its Women, Infants and Children (WIC) program also has [breastfeeding sup-](#)

[port information](#).²³ The federal government has a [fact sheet](#)²⁴ explaining the federal break time protections and a [list of other resources](#)²⁵ relating to federal protections (including educational materials in Spanish) to assist nursing mothers in understanding the federal law. The Public Health Law Center and the Centers for Disease Control and Prevention also have useful resources.²⁶

Q: In addition to workplace protections, does Indiana have a right-to-breastfeed law?

A: Yes. Indiana has a right-to-breastfeed law which states that a woman may breastfeed her child anywhere the woman has a right to be.²⁷

Q: Are there any public benefits programs that assist nursing mothers in Indiana?

A: Yes. The Women, Infants, and Children (WIC) program provides food, help finding health care services, and breastfeeding help and information to women who are pregnant, breastfeeding or just had a baby, and children who are under the age of five, in low income families. WIC also provides breastfeeding peer counselors. Information about Indiana WIC’s breastfeeding peer counselor program can be found at <https://www.in.gov/isdh/24775.htm>.

Q: Are there any tax benefits relating to breastfeeding?

A: Yes. The cost of breast pumps and supplies that assist lactation are medical expenses that may be eligible for tax deduction in certain circumstances or may be reimbursable under flexible spending accounts and other health savings accounts.²⁸

Endnotes

- 1 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 2713 (2010). Coverage for breastfeeding support and supplies is part of preventative services coverage, which is implemented through regulations at 45 C.F.R. § 147.130 and federal guidance from the relevant federal agencies. These regulations apply to most employer plans and to women who become eligible for Medicaid through Medicaid expansion. *See, e.g.*, U.S. Ctrs. For Medicare and Medicaid Servs., *Preventative Care Benefits for Women*, <https://www.healthcare.gov/preventive-care-women/>.
- 2 The Family Medical Leave Act is codified at 29 U.S.C.A. § 2611 et seq. (West 2019).
- 3 The Fair Labor Standards Act (FLSA) is codified at 29 U.S.C.A. § 201 et seq. (West 2019). The FLSA is the federal law that sets minimum wage and overtime protections for workers.
- 4 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 4207 (2010), codified at 29 U.S.C.A. § 207 (r) (West 2019).
- 5 IND. CODE § 5-10-6-2 (West 2019). State or political subdivisions can seek an exemption from the requirements if they can show that providing the break time “would unduly disrupt ... operations.” IND. CODE § 5-10-6-2 (a).
- 6 IND. CODE §§ 22-2-14-1 – 14-2 (West 2019).
- 7 IND. CODE §16-35-6-1(West 2019).
- 8 *See* IND. CODE § 5-10-6-2 (West 2019) and IND. CODE §§ 22-2-14-1 – 14-2 (West 2019), respectively.
- 9 IND. CODE §16-35-6-1(West 2019).
- 10 *See* 29 U.S.C.A. § 207 (r) (West 2019); IND. CODE §§ 5-10-6-2 and 22-2-14-1 – 14-2 (West 2019).
- 11 IND. CODE §§ 5-10-6-2(b) and 22-2-14-2(b) (West 2019).
- 12 IND. CODE § 5-10-6-2 (a) (West 2019).
- 13 IND. CODE §§ 5-10-6-2 and 22-2-14-1 (West 2019), respectively.
- 14 U.S. Dep’t of Labor, Wage and Hour Division, *Frequently Asked Questions—Break Time for Nursing Mothers*, <https://www.dol.gov/whd/nursingmothers/faqBTNM.htm>. The milk expression break protections are codified at 29 U.S.C.A. § 207 (r) (West 2019).
- 15 The Federal Department of Labor enforces the FLSA “without regard to whether an employee is documented or undocumented.” U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #48: APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION (2008), <http://www.dol.gov/whd/regs/compliance/whdfs48.pdf>; U.S. Dep’t of Labor Josendis Amicus Letter to U.S. Court of Appeals for the Eleventh Circuit (Aug. 26, 2010) (reiterating the DOL’s position and citing cases in support).
- 16 *See* Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80077 (Dec. 21, 2010), <https://www.gpo.gov/fdsys/pkg/FR-2010-12-21/pdf/2010-31959.pdf>.
- 17 IND. CODE § 22-2-14-2 (a) (West 2019).
- 18 IND. CODE §5-10-6-2(a) (West 2019).
- 19 <http://www.indianabreastfeeding.org/>
- 20 <http://llofindiana.org/find-a-group/>
- 21 A list and contact information for all local district offices is available at https://www.dol.gov/whd/WHD_district_offices.pdf.
- 22 <https://www.in.gov/isdh/25939.htm>
- 23 <https://www.in.gov/isdh/24775.htm>
- 24 U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #73: BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA (revised April 2018), <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.
- 25 U.S. Dep’t of Labor, Wage and Hour Division, *Frequently Asked Questions — Break Time for Nursing Mothers*, <http://www.dol.gov/whd/nursingmothers/faqBTNM.htm>.
- 26 *See* <http://www.publichealthlawcenter.org/topics/healthy-eating/breastfeeding>; and <https://www.cdc.gov/breastfeeding/index.htm>.
- 27 IND. CODE §16-35-6-1(West 2019).
- 28 *See* IRS, Publication 502, Medical and Dental Expenses (Including the Health Coverage Tax Credits), <https://www.irs.gov/forms-pubs/about-publication-502> and IRS, Pub. 969 Health Savings Accounts and Other Tax-Favored Health Plans, <https://www.irs.gov/forms-pubs/about-publication-969>.



Appendix E

Legal Protections for Nursing Mothers in Michigan

This Appendix summarizes the federal and state laws that protect breastfeeding in Michigan

Tribal policies that support women in breastfeeding their babies—such as milk expression policies for worksites and similar policies—also help promote breastfeeding by Tribal members in Michigan. Federal and state laws also can be sources of protection and ideas.

Federal Protections

Federal law provides basic support for nursing mothers through health insurance requirements and worker protections. The Patient Protection and Affordable Care Act of 2010 (ACA) requires most health insurance plans to cover all the costs for breastfeeding support and counseling services from a trained provider, and also for equipment rental or purchase.¹ For nursing mothers who also work outside the home and need time off or work breaks to breastfeed, federal law provides employment protections through the Family Medical Leave Act² and amendments to the Fair Labor Standards Act³ also made through the ACA.⁴ The federal Family and Medical Leave Act provides some job protection and a right to up to 12 weeks of unpaid leave for parents after the birth or placement of a child, which can include time for breastfeeding initiation. Employers covered by the federal Fair Labor Standards Act are required to provide a suitable space and reasonable break

times for non-exempt (hourly) workers to express, or pump, breastmilk while at work for mothers of babies up to one year old. For more detailed information about these federal protections, please see Appendix B to this Report.

Michigan and Local Law Protections

Federal laws set minimum protections, and many states and other jurisdictions have passed laws that provide additional protections. Although neither Michigan state law nor local laws apply within Tribal jurisdictions due to Tribal sovereignty, these laws may provide useful ideas for informing breastfeeding policy development by Tribal governments and organizations. The Inter-Tribal Council of Michigan also has developed a comprehensive [toolkit](#)⁵ on Tribal worksite policies to support breastfeeding, which includes an assessment tool, outline of policy components, sample Tribal policies, evaluation tools, and other resources.

Michigan has adopted a law that protects the right of women to breastfeed in any place of public accommodation or public service.⁶ Neither Michigan nor the City of Detroit, where the American Indian Health and Family Services of Southeastern Michigan is located, have a worksite protection law for nursing mothers.

Frequently Asked Questions about Breastfeeding Laws in Michigan

Q: Does Michigan have a law that protects nursing mothers in the workplace?

A: No. Michigan does not have a state law that specifically addresses workplace protections for nursing mothers. Thus, the minimum standards set by federal law are the only standards that apply across the state. For more about the federal law protections, please see Appendix B to this report.

Q: What sort of time and space must employers provide workers to express milk?

A: Because Michigan does not have a law providing workplace protections for nursing mothers, only federal law applies. Federal law requires employers to provide a private space, other than a bathroom, that is shielded from view and free from intrusion by other workers and the public. The break times must be provided “each time” the employee needs to express milk, and must be a reasonable length of time.⁷ For more about the federal protections, please see Appendix B to this report.

Q: Which employees are covered?

A: The federal protections for milk expression in the work place apply to workers who are covered by the Fair Labor Standards Act and who are not exempt from overtime pay requirements (in other words, to hourly workers).⁸ Employers with fewer than 50 workers (across all sites) may be exempt from this requirement if complying with it would cause undue hardship.⁹ The requirements under the federal law apply regardless of the mother’s citizenship status and whether she is legally permitted to work in the United States.¹⁰ Undocumented workers should consult an attorney for information on their specific situations. For more about the federal protections, please see Appendix B to this report.

Q: Are workers required to inform their employers in advance that they will need to take breaks during work to express milk?

A: No. Even though there is no requirement under federal law to provide advance notice, it may be a good idea so the employer has time to prepare an appropriate space for a worker to express milk and to take the necessary steps to plan for the worker’s absence during break times.¹¹

Q: How many breaks can a worker take, and can workers get paid break time to express milk?

A: Federal law does not specify or limit the number of breaks a nursing mother is allowed to take to express breast milk. The law requires “reasonable break time” which must be provided “each time” an employee has to express milk.¹² Federal law does not require an employer to provide paid breaks; however, if the employer provides paid breaks to its workers and the worker takes a milk expression break during a paid break time, she must be paid. For more about the federal protections, please see Appendix B to this report.

Q: What if a person encounters difficulties in obtaining break time or space to express milk in the workplace?

A: Understanding the law can be complicated for both workers and employers. Therefore, it may be helpful to contact someone for ideas on how to talk to an employer about arranging a time and space to express milk in the workplace. Groups like [La Leche League of Michigan](#)¹³ and the [Michigan Breastfeeding Network](#)¹⁴ can provide information and support for mothers to assert their right to breastfeed.

Q: What if a worker is unable to resolve the problem with an employer?

A: Complaints or reports of violation under federal law can be filed through the U.S. Department of Labor’s Wage and Hour Division. Information about how to file a complaint is available at <https://www.dol.gov/whd/howtofilecomplaint.htm> or by contacting the local District Office in Detroit or Grand Rapids.¹⁵

Q: What additional resources are available to help someone understand the break time requirement and other work-related protections for nursing mothers in Michigan?

The federal government has a [fact sheet](#)¹⁶ explaining the federal break time protections and a [list of other resources](#)¹⁷ relating to federal protections (including educational materials in Spanish) to assist nursing mothers in understanding the federal law. The Public Health Law Center and the Centers for Disease Control and Prevention also have useful resources.¹⁸

The Inter-Tribal Council of Michigan also has developed a comprehensive [toolkit](#) on Tribal worksite policies to support breastfeeding.¹⁹

Q: Does Michigan have a right-to-breastfeed law?

A: Yes, the Michigan Breastfeeding Anti-discrimination Act provides that a mother may breastfeed her child in any place of public accommodation or

public service and cannot be denied services, or be told that she is unwelcome, because she is breastfeeding a child.²⁰ This means nursing mothers are allowed to breastfeed in restaurants, stores, parks, malls, and other locations. This law allows someone who has been injured by a violation of this law to bring a lawsuit for actual or presumed damages, injunctive relief, and attorney’s fees.²¹ Breastfeeding in public also is not a violation of Michigan’s indecent exposure laws, even if a woman’s nipple or aureole is exposed.²²

Q: Are there any public benefits programs that assist nursing mothers?

A: Yes. The Women, Infants, and Children (WIC) program provides food, help finding health care services, and breastfeeding help and information to women who are pregnant, breastfeeding or just had a baby, and children who are under the age of five in low income families.²³ WIC and the Michigan Department of Health and Human Services also can connect nursing mothers with breastfeeding peer counselors.²⁴

Q: Are there any tax benefits relating to breastfeeding?

A: Yes. The cost of breast pumps and supplies that assist lactation are medical expenses that may be eligible for tax deduction in certain circumstances or may be reimbursable under flexible spending accounts and other health savings accounts.²⁵

Endnotes

- 1 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 2713 (2010). Coverage for breastfeeding support and supplies is part of preventative services coverage, which is implemented through regulations at 45 C.F.R. § 147.130 and federal guidance from the relevant federal agencies. These regulations apply to most employer plans and to women who become eligible for Medicaid through Medicaid expansion. *See, e.g.,* U.S. Ctrs. For Medicare and Medicaid Servs., *Preventative Care Benefits for Women*, <https://www.healthcare.gov/preventive-care-women/>.
- 2 The Family Medical Leave Act is codified at 29 U.S.C.A. § 2611 et seq. (West 2019).
- 3 The Fair Labor Standards Act (FLSA) is codified at 29 U.S.C.A. § 201 et seq. (West 2019). The FLSA is the federal law that sets minimum wage and overtime protections for workers.
- 4 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 4207 (2010), codified at 29 U.S.C.A. § 207 (r) (West 2019).
- 5 INTER-TRIBAL COUNCIL OF MICHIGAN, BREASTFEEDING, FOLLOWING TRADITION WORKS FOR WORKING WOMEN (2013), <http://www.itcmi.org/wp-content/uploads/2013/05/Breastfeeding-Toolkit-for-the-American-Indian-Worksite.pdf>.
- 6 MICH. COMP. LAWS ANN. § 37.231 et seq. (West 2019) (“Breastfeeding Anti-discrimination Act”).
- 7 29 U.S.C.A. § 207 (r) (West 2019).
- 8 U.S. Dep’t of Labor, Wage and Hour Division, *Frequently Asked Questions—Break Time for Nursing Mothers*, <https://www.dol.gov/whd/nursingmothers/faqBTNM.htm>. The milk expression break protections are codified at 29 U.S.C.A. § 207 (r) (West 2019).
- 9 29 U.S.C.A. § 207 (r) (3) (West 2019).
- 10 The Federal Department of Labor enforces the FLSA “without regard to whether an employee is documented or undocumented.” U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #48: APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION (2008), <http://www.dol.gov/whd/regs/compliance/whdfs48.pdf>; U.S. Dep’t of Labor Josendis Amicus Letter to U.S. Court of Appeals for the Eleventh Circuit (Aug. 26, 2010) (reiterating the DOL’s position and citing cases in support).
- 11 *See* Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80077 (Dec. 21, 2010), <https://www.gpo.gov/fdsys/pkg/FR-2010-12-21/pdf/2010-31959.pdf>.
- 12 29 U.S.C.A. § 207 (r) (1) (A) (West 2019).
- 13 <http://www.lalecheleagueofmichigan.org/>
- 14 <http://mibreastfeeding.org/>
- 15 A list and contact information for all local district offices is available at https://www.dol.gov/whd/WHD_district_offices.pdf.
- 16 U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #73: BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA (revised April 2018), <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.
- 17 U.S. Dep’t of Labor, Wage and Hour Division, *Frequently Asked Questions — Break Time for Nursing Mothers*, <http://www.dol.gov/whd/nursingmothers/faqBTNM.htm>.
- 18 *See* <http://www.publichealthlawcenter.org/topics/healthy-eating/breastfeeding>; and <https://www.cdc.gov/breastfeeding/index.htm>.
- 19 INTER-TRIBAL COUNCIL OF MICHIGAN, BREASTFEEDING, FOLLOWING TRADITION WORKS FOR WORKING WOMEN (2013), <http://www.itcmi.org/wp-content/uploads/2013/05/Breastfeeding-Toolkit-for-the-American-Indian-Worksite.pdf>.
- 20 MICH. COMP. LAWS ANN. §37.232 (West 2019).
- 21 MICH. COMP. LAWS ANN. § 37.233 (West 2019).
- 22 MICH. COMP. LAWS ANN. §§ 750.167 (3) and 750.335a (3) (West 2019).
- 23 Mich. Dep’t of Health and Human Servs., *The WIC Program*, https://www.michigan.gov/mdhhs/0,5885,7-339-71547_4910_6329---,00.html.
- 24 Mich. Dep’t of Health and Human Servs., WIC Support Breastfeeding, *WHO Works for WIC that Helps Support Breastfeeding?* https://www.michigan.gov/mdhhs/0,5885,7-339-71547_4910_4919-493814--,00.html (featuring link to peer counselor list and contact information).
- 25 *See* IRS, Publication 502, Medical and Dental Expenses (Including the Health Coverage Tax Credits), <https://www.irs.gov/forms-pubs/about-publication-502> and IRS, Pub. 969 Health Savings Accounts and Other Tax-Favored Health Plans, <https://www.irs.gov/forms-pubs/about-publication-969>.



Appendix F

Legal Protections for Nursing Mothers in Minnesota

This Appendix summarizes the federal, Minnesota, and Minneapolis laws that protect breastfeeding

Tribal policies that support women in breastfeeding their babies—such as milk expression policies for worksites and similar policies—also help promote breastfeeding by Tribal members in Minnesota. Federal and state laws also can be sources of protection and ideas.

Federal Protections

Federal law provides basic support for nursing mothers through health insurance requirements and worker protections. The Patient Protection and Affordable Care Act of 2010 (ACA) requires most health insurance plans to cover all the costs for breastfeeding support and counseling services from a trained provider, and also for equipment rental or purchase.¹ For nursing mothers who also work outside the home and need time off or work breaks to breastfeed, federal law provides employment protections through the Family Medical Leave Act² and amendments to the Fair Labor Standards Act³ also made through the ACA.⁴ The federal Family and Medical Leave Act provides some job protection and a right to up to 12 weeks of unpaid leave for parents after the birth or placement of a child, which can include time for breastfeeding initiation. Employers covered by the federal Fair Labor Standards Act are required to provide a suitable space and reasonable break times for non-exempt (hourly) workers to express, or pump, breastmilk while at work for mothers of babies up to one year old. For more detailed information about these federal protections, please see Appendix B to this Report.

Minnesota and Local Law Protections

Federal laws set minimum protections, and many states and other jurisdictions have passed laws that provide additional protections. Although neither Minnesota state law nor local laws apply within Tribal jurisdictions due to Tribal sovereignty, these laws may provide useful ideas for informing breastfeeding policy development by Tribal governments and organizations.

Minnesota has a strong set of laws to support breastfeeding. Minnesota has a right-to-breastfeed law that protects women's right to breastfeed in "any location, public or private, where the mother and child are otherwise authorized to be."⁵ Minnesota also has a law that protects a worker's right to express milk while on the job, requiring employers to provide reasonable break time every day, and a private space, near the worker's workspace, that is free from intrusion and has access to an electrical outlet, to express milk. The space can not be a bathroom.⁶ State law also charges the Minnesota Department of Health with developing public education programs promoting breastfeeding.⁷ Minnesota also has a parenting leave law that provides protections similar to the federal Family Medical Leave Act, allowing unpaid leave of up to 12 weeks in connection with a pregnancy, birth or adoption of a child.⁸

Minneapolis, where the Minneapolis Indian Health Board is located, does not have a general law protecting breastfeeding women but it has a Paid Sick and Safe Time law that establishes a minimum paid leave requirement for workers who otherwise do not have sick leave, which can be used to care for family members.⁹

Frequently Asked Questions about Breastfeeding Laws in Minnesota

Q: Does Minnesota have a law that protects nursing mothers in the workplace?

A: Yes. Minnesota has a law that provides specific workplace protections for breastfeeding workers who need to express milk while at work.¹⁰ Minnesota also has a right-to-breastfeed law that states that a mother may breastfeed her baby in any location, public or private, where the mother and child is otherwise authorized to be.¹¹ Minnesota also has a parenting leave law that provides protections similar to the federal Family Medical Leave Act, allowing unpaid leave of up to 12 weeks in connection with a pregnancy, birth or adoption of a child.¹²

Minneapolis has a Paid Sick and Safe Time law that establishes a minimum paid leave requirement for workers who otherwise do not have sick leave, which can be used to care for family members.¹³

Q: What sort of time and space must employers provide workers to express milk?

A: When read together, Minnesota law and federal law require employers to provide a space shielded from view, near the employee's work area (if reasonable), free from intrusion, and that includes access to an electrical outlet. The space cannot be a bathroom and should be made available at the same time as other break times if possible.¹⁴ To the extent that state and federal requirements differ, the employer must follow whichever law offers nursing mothers the most protection.

Q: Which employees are covered?

A: Under Minnesota law, workers who work for an employer with one or more employees are covered.¹⁵ Federal law only applies to workers who are covered by the Fair Labor Standards Act and who are not exempt from overtime pay requirements (in other words, to hourly workers).¹⁶ Both laws allow

limited exemptions for some employers.¹⁷ The requirements under the federal law apply regardless of the mother's citizenship status and whether she is legally permitted to work in the United States.¹⁸ Undocumented workers should consult an attorney for information on their specific situations.

Q: Are workers required to inform their employers in advance that they will need to take breaks during work to express milk?

A: No. Even though a worker is not required to provide such notice by law, it may be a good idea so the employer has time to prepare an appropriate space for a worker to express milk, and to take the necessary steps to plan for the worker's absence during break times.¹⁹

Q: How many breaks can a worker take, and can workers get paid break time to express milk?

A: Neither Minnesota law nor federal law specifies or limits the number of breaks a nursing mother can take to express milk. Both laws only state that the employer must provide "reasonable" break times.²⁰ Under federal law, the break time must be provided "each time" the worker has a need to express milk.²¹ The number of breaks will vary from woman to woman. Minnesota law specifies that the breaks should run concurrently with any breaks that the employer already provides.²² Under both Minnesota and federal law, an employer is not required to provide paid milk expression breaks unless that break time occurs during a paid break.²³

Q: What if a person encounters difficulties in obtaining break time or space to express milk in the workplace?

A: Understanding the law can be complicated for both workers and employers. Therefore, it may be helpful to contact someone for ideas on how to talk

to an employer about arranging a time and space to express milk in the workplace. Nursing mothers can contact [La Leche League of the Minnesota and the Dakotas](#)²⁴ with specific questions. The [Minnesota Breastfeeding Coalition](#)²⁵ also has information and resources to help both families and local coalitions, including a [Breastfeeding Friendly Workplace Toolkit](#)²⁶ and a [list of local coalitions](#)²⁷ with contact information. These coalitions include the Indigenous Breastfeeding Coalition of Minnesota and Fond du Lac Reservation Breastfeeding Task Force.

Q: What if a worker is unable to resolve the problem with an employer?

A: If a worker is not being provided with time or space to express milk, she can call the Minnesota Department of Labor and Industry at 651-284-5070 or 800-342-5354 to seek help or file a complaint.²⁸

Complaints or reports of violation under federal law can be filed through the U.S. Department of Labor’s Wage and Hour Division. Information about how to file a complaint is available at <https://www.dol.gov/whd/howtofilecomplaint.htm> or by contacting the local District Office in Minneapolis.²⁹

Depending on the situation, a legal remedy may also be available. Minnesota law allows someone who is injured by a violation of the law to bring a civil action to recover any and all damages, costs and disbursements (including reasonable attorney’s fees), and to obtain injunctive and other equitable relief.³⁰

Q: What additional resources are available to help someone understand the break time requirements and other work-related protections for nursing mothers in Minnesota?

The Minnesota Department of Labor and Industry has list of “[Women’s Economic Security Act FAQs](#)”³¹ that includes information about Minnesota’s worksite protections for breastfeeding workers. The Minnesota Department of Health also has a “[Breastfeeding Information for Workplaces](#)” webpage³² with information about the benefits of

worksite policies that support breastfeeding, Minnesota’s legal requirements, and a sample policy.

The federal government has a [fact sheet](#)³³ explaining the federal break time protections and a [list of other resources](#)³⁴ relating to federal protections (including educational materials in Spanish) to assist nursing mothers in understanding the federal law. The Public Health Law Center and the Centers for Disease Control and Prevention also have useful resources.³⁵

Q: In addition to workplace protections, does Minnesota have right-to-breastfeed laws?

A: Yes. Minnesota law allows a mother to breastfeed in any location, public or private, where the mother and child are allowed to be.³⁶ A mother may breastfeed her child anywhere even if the nipple or breast is uncovered while breastfeeding. This means nursing mothers are allowed to breastfeed in restaurants, stores, parks, malls, and other locations. Breastfeeding in public also is not a violation of Minnesota’s indecent exposure laws.³⁷

Q: Are there any public benefits programs that assist nursing mothers?

A: Yes. The Women, Infants, and Children (WIC) program provides food, help finding health care services, and breastfeeding help and information to women who are pregnant, breastfeeding or just had a baby, and children who are under the age of five, in low income families.³⁸ Minnesota’s WIC program also can connect nursing mothers with breastfeeding peer counselors. The Minnesota Department of Health maintains a [map](#) showing where peer counselors are within the state and contact information.³⁹

Q: Are there any tax benefits relating to breastfeeding?

A: Yes. The cost of breast pumps and supplies that assist lactation are medical expenses that may be eligible for tax deduction in certain circumstances or may be reimbursable under flexible spending accounts and other health savings accounts.⁴⁰

Endnotes

- 1 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 2713 (2010). Coverage for breastfeeding support and supplies is part of preventative services coverage, which is implemented through regulations at 45 C.F.R § 147.130 and federal guidance from the relevant federal agencies. These regulations apply to most employer plans and to women who become eligible for Medicaid through Medicaid expansion. *See, e.g.,* U.S. Ctrs. for Medicare and Medicaid Servs., *Preventative Care Benefits for Women*, <https://www.healthcare.gov/preventive-care-women/>.
- 2 The Family Medical Leave Act is codified at 29 U.S.C.A. § 2611 et seq. (West 2019).
- 3 The Fair Labor Standards Act (FLSA) is codified at 29 U.S.C.A § 201 et seq. (West 2019). The FLSA is the federal law that sets minimum wage and overtime protections for workers.
- 4 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 4207 (2010), codified at 29 U.S.C.A. § 207 (r) (West 2019).
- 5 MINN. STAT. § 145.905 (West 2019).
- 6 MINN. STAT. § 181.939 (West 2019).
- 7 MINN. STAT. § 145.894 (3) (West 2019).
- 8 MINN. STAT. § 181.940 et seq. (West 2019). Minnesota's family leave law applies to employers with 21 or more workers at at least one site.
- 9 CITY OF MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 2 § 40.200 et seq. (current through Sept. 5, 2019).
- 10 MINN. STAT. § 181.939 (West 2019).
- 11 MINN. STAT. § 145.905 (West 2019).
- 12 MINN. STAT. § 181.940 et seq. (West 2019). This law applies to employers with 21 or more workers at at least one site.
- 13 CITY OF MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 2 § 40.200 et seq. (current through Sept. 5, 2019).
- 14 *See* 29 U.S.C.A. § 207 (r) (West 2019); MINN. STAT. § 181.939 (West 2019).
- 15 MINN. STAT. § 181.939 (c) (West 2019).
- 16 U.S. Dep't of Labor, Wage and Hour Division, *Frequently Asked Questions—Break Time for Nursing Mothers*, <https://www.dol.gov/whd/nursingmothers/faqBTNM.htm>. The milk expression break protections are codified at 29 U.S.C.A. § 207 (r) (West 2019).
- 17 Under Minnesota law, employers can be exempted if they show that complying with the requirements would “unduly disrupt” their operations. MINN. STAT. § 181.939 (a) (West 2019). Under the FLSA, employers with less than 50 employees can request an exemption from these requirements if they can show undue hardship. *See* 29 U.S.C.A. § 207 (r)(3) (West 2019).
- 18 The Federal Department of Labor enforces the FLSA “without regard to whether an employee is documented or undocumented.” U.S. DEP'T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #48: APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION (2008), <http://www.dol.gov/whd/regs/compliance/whdfs48.pdf>; U.S. Dep't of Labor Josendis Amicus Letter to U.S. Court of Appeals for the Eleventh Circuit (Aug. 26, 2010) (reiterating the DOL's position and citing cases in support).
- 19 *See* Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80077 (Dec. 21, 2010), <https://www.gpo.gov/fdsys/pkg/FR-2010-12-21/pdf/2010-31959.pdf>.
- 20 *See* MINN. STAT. § 181.939 (a) (West 2019) and 29 U.S.C.A. § 207 (r) (1) (A) (West 2019).
- 21 29 U.S.C.A. § 207 (r) (1) (A) (West 2019).
- 22 MINN. STAT. § 181.939 (a) (West 2019).
- 23 *See* MINN. STAT. § 181.939 (a) (West 2019) and 29 U.S.C.A. § 207 (r) (2) (West 2019).
- 24 <http://www.llofmndas.org/>
- 25 <https://mnbreastfeedingcoalition.org/>
- 26 <https://mnbreastfeedingcoalition.org/breastfeeding-friendly-workplace-toolkit/>
- 27 <https://mnbreastfeedingcoalition.org/bfa-in-mn/>
- 28 Minn. Dep't of Labor and Industry, *Women's Economic Security Act FAQs*, <https://www.dli.mn.gov/business/employment-practices/womens-economic-security-act-faqs>. *See also*, Minn. Dep't of Labor and Industry, *Labor Standards*, <http://www.dli.mn.gov/laborlaw>.
- 29 A list and contact information for all local district offices is available at https://www.dol.gov/whd/WHD_district_offices.pdf.
- 30 MINN. STAT. § 181.944 (West 2019).
- 31 <https://www.dli.mn.gov/business/employment-practices/womens-economic-security-act-faqs>
- 32 <https://www.health.state.mn.us/people/breastfeeding/workplaces.html>
- 33 U.S. DEP'T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #73: BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA (revised April 2018), <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.

34 U.S. Dep't of Labor, Wage and Hour Division, *Frequently Asked Questions — Break Time for Nursing Mothers*, <http://www.dol.gov/whd/nursingmothers/faqBTNM.htm>.

35 See <http://www.publichealthlawcenter.org/topics/healthy-eating/breastfeeding>; and <https://www.cdc.gov/breastfeeding/index.htm>.

36 MINN. STAT. § 145.905 (West 2019).

37 MINN. STAT. § 617.23, subd. 4 (West 2019).

38 Minn. Dep't of Health, *How Does WIC Support Breastfeeding*,

<https://www.health.state.mn.us/people/wic/bf/support.html>.

39 <https://www.health.state.mn.us/people/wic/bf/peermap.html>

40 See IRS, Publication 502, Medical and Dental Expenses (Including the Health Coverage Tax Credits), <https://www.irs.gov/forms-pubs/about-publication-502> and IRS, Pub. 969 Health Savings Accounts and Other Tax-Favored Health Plans, <https://www.irs.gov/forms-pubs/about-publication-969>.



Appendix G

Legal Protections for Nursing Mothers in Wisconsin

This Appendix summarizes the federal and state laws that protect breastfeeding in Wisconsin

Tribal policies that support women in breastfeeding their babies—such as milk expression policies for worksites and similar policies—also help promote breastfeeding by Tribal members in Wisconsin. Federal and state laws also can be sources of protection and ideas.

Federal Protections

Federal law provides basic support for nursing mothers through health insurance requirements and worker protections. The Patient Protection and Affordable Care Act of 2010 (ACA) requires most health insurance plans to cover all the costs for breastfeeding support and counseling services from a trained provider, and also for equipment rental or purchase.¹ For nursing mothers who also work outside the home and need time off or work breaks to breastfeed, federal law provides employment protections through the Family Medical Leave Act² and amendments to the Fair Labor Standards Act³ also made through the ACA.⁴ The federal Family and Medical Leave Act provides some job protection and a right to up to 12 weeks of unpaid leave for parents after the birth or placement of a child, which can include time for breastfeeding initiation.

Employers covered by the federal Fair Labor Standards Act are required to provide a suitable space and reasonable break times for non-exempt (hourly) workers to express, or pump, breastmilk while at work for mothers of babies up to one year old. For more detailed information about these

federal protections, please see Appendix B to this Report.

Wisconsin and Local Law Protections

Federal laws set minimum protections, and many states and other jurisdictions have passed laws that provide additional protections. Although neither Wisconsin state law nor local laws apply within Tribal jurisdictions due to Tribal sovereignty, these laws may provide useful ideas for informing breastfeeding policy development by Tribal governments and organizations. The [Native Breastfeeding Coalition of Wisconsin](#)⁵ is also a valuable source of information and support for breastfeeding in Tribal Nations.

Wisconsin has passed a family and medical leave law that is similar to federal law,⁶ but has not adopted additional worksite protections for nursing mothers. Wisconsin also has a right-to-breastfeed law that protects the right of mothers to breastfeed in any public or private area that the mother or child are allowed to be.⁷ Milwaukee, where the Gerald L. Ignace Indian Health Center is located, does not have a general law protecting breastfeeding women, but does exempt breastfeeding women from criminal indecency laws.⁸ Also, vendors bidding for city work can qualify as socially-responsible contractors (which allows them to earn extra points in the bidding process) by, among other things, providing a breastfeeding space for employees.⁹

Frequently Asked Questions about Breastfeeding Laws in Wisconsin

Q: Does Wisconsin have a law that protects nursing mothers in the workplace?

A: No. Wisconsin does not have a state law that specifically addresses workplace protections for nursing mothers. Thus, the minimum standards set by federal law are the only standards that apply across the state. For more about the federal law protections, please see Appendix B to this report.

Q: What sort of time and space must employers provide workers to express milk under federal law?

A: Because Wisconsin does not have a law providing workplace protections for nursing mothers, only federal law applies. Federal law requires employers to provide a private space, other than a bathroom, that is shielded from view and free from intrusion by other workers and the public. The break times must be provided “each time” the employee needs to express milk, and must be a reasonable length of time.¹⁰ For more about the federal protections, please see Appendix B to this report.

Q: Which employees are covered?

A: The federal protections for milk expression in the work place apply to workers who are covered by the Fair Labor Standards Act and who are not exempt from overtime pay requirements (in other words, to hourly workers).¹¹ Employers with fewer than 50 workers (across all sites) may be exempt from this requirement if complying with it would cause undue hardship.¹² The requirements under the federal law apply regardless of the mother’s citizenship status and whether she is legally permitted to work in the United States.¹³ Undocumented workers should consult an attorney for information on their specific situations. For more about the federal protections, please see Appendix B to this report.

Q: Are workers required to inform their employers in advance that they will need to take breaks during work to express milk?

A: No. Even though there is no requirement under federal law to provide advance notice, it may be a good idea so the employer has time to prepare an appropriate space for a worker to express milk and to take the necessary steps to plan for the worker’s absence during break times.¹⁴

Q: How many breaks can a worker take, and can workers get paid break time taken to express milk?

A: Federal law does not specify or limit the number of breaks a nursing mother is allowed to take to express breast milk. The law requires “reasonable break time” which must be provided “each time” an employee has to express milk.¹⁵ Federal law does not require an employer to provide paid breaks; however, if the employer provides paid breaks to its workers and the worker takes a milk expression break during a paid break time, she must be paid. For more about the federal protections, please see Appendix B to this report.

Q: What if a person encounters difficulties in obtaining break time or space to express milk in the workplace?

A: Understanding the law can be complicated for both workers and employers. Therefore, it may be helpful to contact someone for ideas on how to talk to an employer about arranging a time and space to express milk in the workplace. Groups like [La Leche of Wisconsin](#)¹⁶ and the [Wisconsin Breastfeeding Coalition](#)¹⁷ provide information and support for nursing mothers to breastfeed their children and assert their right to breastfeed.

Q: What if a worker is unable to resolve the problem with an employer?

A: Complaints or reports of violation under federal law can be filed through the U.S. Department of Labor’s Wage and Hour Division. Information about how to file a complaint is available at <https://www.dol.gov/whd/howtofilecomplaint.htm> or by contacting the local District Office in Minneapolis, Minnesota.¹⁸

Q: What additional resources are available to help someone understand the break time requirement and other work-related protections for nursing mothers available under Wisconsin state or local law?

A: The Madison and Dane County Health Department has a helpful [fact sheet](#)¹⁹ summarizing federal and state legal protections for nursing mothers in Wisconsin, including the state’s family and medical leave law and a Madison ordinance protecting both breastfeeding and milk expression in public.²⁰ It also has a [webpage](#)²¹ listing several other resources and organizations that provide breastfeeding support in Wisconsin. The federal government has a [fact sheet](#)²² explaining the federal break time protections and a [list of other resources](#)²³ relating to federal protections (including educational materials in Spanish) to assist nursing mothers in understanding the federal law. The Public Health Law Center and the Centers for Disease Control and Prevention also have useful resources.²⁴

Q: Does Wisconsin have a right-to-breastfeed law?

A: Yes. Wisconsin law exempts breastfeeding women from the state’s “lewd and lascivious behavior” law,²⁵ and provides that a mother may breastfeed her child in any public or private area where the mother and child are allowed to be.²⁶ Milwaukee’s city code also exempts breastfeeding women from criminal indecency laws.²⁷

Q: Are there any public benefits programs that assist nursing mothers in Wisconsin?

A: Yes. The Women, Infants, and Children (WIC) program provides food, help finding health care services, and breastfeeding help and information to women who are pregnant, breastfeeding or just had a baby, and children who are under the age of five in low income families.²⁸ WIC and the Department of Health Services also facilitates Breastfeeding Peer Counselors for nursing mothers.²⁹

Q: Are there any tax benefits relating to breastfeeding?

A: Yes. The cost of breast pumps and supplies that assist lactation are medical expenses that may be eligible for tax deduction in certain circumstances or may be reimbursable under flexible spending accounts and other health savings accounts.³⁰

Endnotes

1 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 2713 (2010). Coverage for breastfeeding support and supplies is part of preventative services coverage, which is implemented through regulations at 45 C.F.R § 147.130 and federal guidance from the relevant federal agencies. These regulations apply to most employer plans and to women who become eligible for Medicaid through Medicaid

expansion. See, e.g., U.S. Ctrs. For Medicare and Medicaid Servs., *Preventative Care Benefits for Women*, <https://www.healthcare.gov/preventive-care-women/>.

2 The Family Medical Leave Act is codified at 29 U.S.C.A. § 2611 et seq. (West 2019).

3 The Fair Labor Standards Act (FLSA) is codified at 29

U.S.C.A § 201 et seq. (West 2019). The FLSA is the federal law that sets minimum wage and overtime protections for workers.

4 PATIENT PROTECTION AND AFFORDABLE CARE ACT, H.R. 3590, 111th Cong. § 4207 (2010), codified at 29 U.S.C.A. § 207 (r) (West 2019).

5 <https://www.nativebreastfeedingwi.com/about>

6 WIS. STAT. ANN. § 103.10 (2017-2018) (updated through Aug. 19, 2019) (allowing up to six weeks of unpaid leave for the birth or adoption of a child if the leave begins within 16 weeks of the birth or placement).

7 WIS. STAT. ANN. § 253.165 (2017-2018) (updated through Aug. 19, 2019).

8 CITY OF MILWAUKEE, WIS. CODE § 106-5.3.a (Mar. 4, 2014).

9 CITY OF MILWAUKEE, WIS. CODE § 310-10.1.i (Sept. 25, 2018).

10 29 U.S.C.A. § 207 (r) (West 2019).

11 U.S. Dep’t of Labor, Wage and Hour Division, *Frequently Asked Questions—Break Time for Nursing Mothers*, <https://www.dol.gov/whd/nursingmothers/faqBTNM.htm>. The milk expression break protections are codified at 29 U.S.C.A. § 207 (r) (West 2019).

12 29 U.S.C.A. § 207 (r) (3) (West 2019).

13 The Federal Department of Labor enforces the FLSA “without regard to whether an employee is documented or undocumented.” U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #48: APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION (2008), <http://www.dol.gov/whd/regs/compliance/whdfs48.pdf>; U.S. Dep’t of Labor Josendis Amicus Letter to U.S. Court of Appeals for the Eleventh Circuit (Aug. 26, 2010) (reiterating the DOL’s position and citing cases in support).

14 See Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80077 (Dec. 21, 2010), <https://www.gpo.gov/fdsys/pkg/FR-2010-12-21/pdf/2010-31959.pdf>.

15 29 U.S.C.A. § 207 (r) (1) (A) (West 2019).

16 <https://www.llofwi.org/>

17 <http://www.wibreastfeeding.com/>

18 A list and contact information for all local district offices is available at https://www.dol.gov/whd/WHD_district_offices.pdf.

19 <https://www.publichealthmdc.com/documents/2018%20Legal%20Protections%20for%20Lactating%20Parents.pdf>

20 Madison & Dane County Pub. Health, *Legal Protections for Lactating Parents in Wisconsin* (May 2018), <https://www.publichealthmdc.com/documents/2018%20Legal%20Protections%20for%20Lactating%20Parents.pdf>.

21 <https://www.publichealthmdc.com/health-services/breastfeeding>

22 U.S. DEP’T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #73: BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA (revised April 2018), <http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>.

23 U.S. Dep’t of Labor, Wage and Hour Division, *Frequently Asked Questions — Break Time for Nursing Mothers*, <http://www.dol.gov/whd/nursingmothers/faqBTNM.htm>.

24 See <http://www.publichealthlawcenter.org/topics/healthy-eating/breastfeeding>; and <https://www.cdc.gov/breastfeeding/index.htm>.

25 WIS. STAT. ANN. § 944.20 subsec. 2 (2017-2018) (updated through Aug. 19, 2019).

26 WIS. STAT. ANN. § 253.165 (2017-2018) (updated through Aug. 19, 2019).

27 CITY OF MILWAUKEE, WIS. CODE § 106-5.3.a (Mar. 4, 2014).

28 Wis. Dep’t of Health Services, *Benefits Received by WIC Participants*, <https://www.dhs.wisconsin.gov/wic/benefits.htm>.

29 WIS. DEP’T OF HEALTH SERVICES, BREASTFEEDING PEER COUNSELORS, SUPPORTING YOU AND YOUR BABY (2014) <https://www.dhs.wisconsin.gov/publications/p4/p40141.pdf>.

30 See IRS, Publication 502, Medical and Dental Expenses (Including the Health Coverage Tax Credits), <https://www.irs.gov/forms-pubs/about-publication-502> and IRS, Pub. 969 Health Savings Accounts and Other Tax-Favored Health Plans, <https://www.irs.gov/forms-pubs/about-publication-969>.

Appendix H

American Indian/Alaska Native Babies—Breastfeeding Rates

BREASTFEEDING RATE DATA—ILLINOIS

According to the 2017 American Community Survey, people who identify their race as American Indian/Alaska Native alone or in combination with another race comprise 0.8% of Illinois' population.¹ The project team was not able to obtain breastfeeding data specific to American Indian/Alaska Native people living in Illinois but was able to find national data.

Table 11 below provides a comparison of breastfeeding rates at different ages between American

Indian/Alaska Native babies across the U.S., and babies in the general population born in Illinois and across the U.S., using data collected from the CDC's National Immunization Survey and the CDC's 2018 Breastfeeding Report Card. American Indian/Alaska Native data are in bold text. The Healthy People 2020 breastfeeding goals are included at the bottom of the table to provide additional points of comparison.

Table 11. American Indian/Alaska Native Babies—Illinois Breastfeeding (BF) Rate Comparisons²

	Ever/ Initiation	Exclusive BF at 3 months	6 months	Exclusive BF at 6 months	12 months
American Indian/Alaska Native Data					
Illinois AI/AN babies breastfeeding rates	Not found	Not found	Not found	Not found	Not found
National averages for AI/AN babies per 2015 data from the National Immunization Survey	76.4%	44.6%	55.0%	19.6%	31.03%
All U.S. Races Data					
Breastfeeding averages for all Illinois babies, per CDC 2018 Breastfeeding Report Card	80.3%	39.6%	53.0%	19.5%	33.8%
Breastfeeding averages for all babies in all states, per CDC 2018 Breastfeeding Report Card	83.2%	46.9%	57.6%	24.9%	35.9%
Healthy People 2020 Goals	81.9%	46.2%	60.6%	25.5%	34.1%

BREASTFEEDING RATE DATA—INDIANA

According to the 2017 American Community Survey, people who identify their race as American Indian/Alaska Native alone or in combination with another race comprise 0.7% of Indiana’s population.³ The project team was not able to obtain breastfeeding data specific to American Indian/Alaska Native people living in Indiana, but was able to find national data.

Table 12 below provides a comparison of breastfeeding rates at different ages between American

Indian/Alaska Native babies across the U.S., and babies in the general population born in Indiana and across the U.S., using data collected from the CDC’s National Immunization Survey and the CDC’s 2018 Breastfeeding Report Card. American Indian/Alaska Native data is in bold text. The Healthy People 2020 breastfeeding goals are included at the bottom of the table to provide additional points of comparison.

Table 12. American Indian/Alaska Native Babies—Indiana Breastfeeding (BF) Rate Comparisons⁴

	Ever/ Initiation	Exclusive BF at 3 months	6 months	Exclusive BF at 6 months	12 months
American Indian/Alaska Native Data					
Indiana AI/AN babies breastfeeding rates	Not found	Not found	Not found	Not found	Not found
National averages for AI/AN babies per 2015 data from the National Immunization Survey	76.4%	44.6%	55.0%	19.6%	31.03%
All U.S. Races Data					
Breastfeeding averages for all Indiana babies, per CDC 2018 Breastfeeding Report Card	78.8%	47.5%	53.5%	31.7%	33.0%
Breastfeeding averages for all babies in all states, per CDC 2018 Breastfeeding Report Card	83.2%	46.9%	57.6%	24.9%	35.9%
Healthy People 2020 Goals	81.9%	46.2%	60.6%	25.5%	34.1%

BREASTFEEDING RATE DATA—MICHIGAN

According to the 2017 American Community Survey, people who identify their race as American Indian/Alaska Native alone or in combination with another race comprise 1.5% of Michigan's popu-

lation.⁵ Table 13 provides a comparison of breastfeeding rates at different ages between American Indian/Alaska Native babies (both in Michigan and across the U.S.) and babies in the general pop-

Table 13. American Indian/Alaska Native Babies—Michigan Breastfeeding (BF) Rate Comparisons⁶

	Ever/ Initiation	Exclusive BF at 3 mos.	6 months	Exclusive BF at 6 mos.	12 months
American Indian/Alaska Native Data					
Michigan AI/AN babies in the WIC program being breastfed, per 2017 data	75.8% (initiation)	Not reported	28.6%	Not reported	17.0%
National averages for AI/AN babies per 2015 data from the National Immunization Survey	76.4% (ever)	44.6%	55.0%	19.6%	31.03%
Michigan mothers of babies where any mention of AI/AN race for mother or father on birth certificate, from PRAMS	79.1% (initiation)	Not reported	Not reported	Not reported	Not reported
All U.S. Races Data					
Breastfeeding averages for all Michigan babies, per CDC 2018 Breastfeeding Report Card	77.7% (ever)	44.1%	55.6%	23.9%	34.6%
Breastfeeding averages for all babies in all states, per CDC 2018 Breastfeeding Report Card	83.2% (ever)	46.9%	57.6%	24.9%	35.9%
All PRAMS participants, United States, 2015	87.1% (initiation)	Not reported	Not reported	Not reported	Not reported
Healthy People 2020 Goals	81.9% (ever)	46.2%	60.6%	25.5%	34.1%

ulation (again, both in Michigan and across the U.S.), using data collected from the state’s WIC program, the CDC’s National Immunization Survey, the CDC’s 2018 Breastfeeding Report Card, and the CDC’s Pregnancy Risk Assessment Monitoring System (PRAMS) data. American Indian/Alaska Native data are in bold text. The Healthy People 2020 breastfeeding goals are included at the bottom of the table to provide additional points of comparison.

Breastfeeding rates for American Indian/Alaska Native babies in Michigan have increased in recent years. Based on 2017 data—the most recent available—just over three-quarters (75.8%) of American Indian/Alaska Native babies in Michigan have ever breastfed and over a quarter (28.6%) were still breastfeeding at six months, which is an 8.5% and

12.4% increase, respectively, from 2012 rates (not shown).⁷ However, as Table 13 shows, compared to both national breastfeeding rates for American Indian/Alaska Native babies and breastfeeding rates for all babies in Michigan, breastfeeding rates for American Indian/Alaska Native babies in Michigan present opportunity for growth. Although initiation/ever breastfed rates are similar across these groups, by the age of six months, the rate of breastfeeding among American Indian/Alaska Native babies in Michigan (28.6%) is just under half of the rate both for all American Indian/Alaska Native babies nationwide (55.0%) and for all Michigan babies (55.6%). Tribal policies that support women in breastfeeding their babies—such as milk expression policies or infant-at-work policies for worksites—could help address this gap.

BREASTFEEDING RATE DATA—MINNESOTA

According to the 2017 American Community Survey, people who identify their race as American Indian/Alaska Native alone or in combination with another race comprise 2.0% of Minnesota’s population.⁸ Table 14 provides a comparison of breastfeeding rates at different ages between American Indian/Alaska Native babies (both in Minnesota and across the U.S.) and babies in the general population (again, both in Minnesota and across the U.S.), using data collected from the state’s WIC program, the CDC’s National Immunization Survey, the CDC’s 2018 Breastfeeding Report Card, and the CDC’s Pregnancy Risk Assessment Monitoring System (PRAMS) data. American Indian/Alaska Native data are in bold text. The Healthy People 2020 breastfeeding goals are included at the bottom of the table to provide additional points of comparison.

Breastfeeding rates for American Indian/Alaska Native (AI/AN) babies in Minnesota have increased in recent years. Based on 2017 data—the most recent available—over two-thirds (70.1%) of American Indian/Alaska Native babies in Minne-

sota have ever breastfed and over one-fifth (21.6%) were still breastfeeding at six months, which is a 6.2% and 4.1% increase, respectively, from 2012 rates (not shown).⁹ However, as Table 14 shows, compared to both national breastfeeding rates for American Indian/Alaska Native babies and breastfeeding rates for all babies in Minnesota, American Indian/Alaska Native babies in Minnesota could be getting even more breastfeeding benefits. The national American Indian/Alaska Native initiation/ever breastfed rate is 76.4%, and the ever-breastfed rate for Minnesota babies across all populations is even higher at 89.2%—nearly 20% higher than the American Indian/Alaska Native Minnesota rate. By the age of six months, the disparities are even greater, with the national American Indian/Alaska Native breastfeeding rate at 55% and the overall Minnesota rate at 65.3%, compared to 21.6% for American Indian/Alaska Native Minnesota babies. Tribal policies that support women in breastfeeding their babies—such as milk expression policies for worksites and similar policies—could help address this gap.

Table 14. American Indian/Alaska Native Babies—Minnesota Breastfeeding (BF) Rate Comparisons¹⁰

	Ever/ Initiation	Exclusive BF at 3 months	6 months	Exclusive BF at 6 months	12 months
American Indian/Alaska Native Data					
Minnesota AI/AN babies in the WIC program being breastfed, per 2017 data	70.1% (initiation)	Not reported	21.6%	Not reported	9.3%
National averages for AI/AN babies per 2015 data from the National Immunization Survey	76.4% (ever)	44.6%	55.0%	19.6%	31.03%
American Indian mothers, Minnesota PRAMS data 2015-2016	86% (initiation)	Not reported	Not reported	Not reported	Not reported
All U.S. Races Data					
Breastfeeding averages for all Minnesota babies per CDC 2018 Breastfeeding Report Card	89.2% (ever)	56.3%	65.3%	37.2%	38.9%
Breastfeeding averages for all babies in all states, per CDC 2018 Breastfeeding Report Card	83.2% (ever)	46.9%	57.6%	24.9%	35.9%
All PRAMS participants, United States, 2015	87.1% (initiation)	Not reported	Not reported	Not reported	Not reported
Healthy People 2020 Goals	81.9% (ever)	46.2%	60.6%	25.5%	34.1%

BREASTFEEDING RATE DATA—WISCONSIN

According to the 2017 American Community Survey, people who identify their race as American Indian/Alaska Native alone or in combination with another race comprise 1.6% of Wisconsin’s population.¹¹ Table 15 below provides a comparison of breastfeeding rates at different ages between American Indian/Alaska Native babies (both in Wisconsin and across the U.S.) and babies in the general population (again, both in Wisconsin and

across the U.S.), using data collected from the state’s WIC program, the Wisconsin Department of Human Services, the CDC’s National Immunization Survey, the CDC’s 2018 Breastfeeding Report Card, and the CDC’s Pregnancy Risk Assessment Monitoring System (PRAMS) data. American Indian/Alaska Native data are in bold text. The Healthy People 2020 breastfeeding goals are included at the bottom of the table for comparison.

Table 15. American Indian/Alaska Native Babies—Wisconsin Breastfeeding (BF) Rate Comparisons¹²

	Ever/ Initiation			Exclusive BF at 3 months	6 months	Exclusive BF at 6 months	12 months
American Indian/Alaska Native Data							
Wisconsin AI/AN babies in the WIC program being breastfed, per 2017 data	76.3% (initiation)			Not reported	37.8%	Not reported	18.4%
AI babies initiating breastfeeding at hospital discharge per 2014-2016 Wisconsin Dept. of Health data	All	Medi- caid	Non- Medi- caid	Not reported	Not reported	Not reported	Not reported
	65%	63%	71%				
National averages for AI/AN babies per 2015 data from the National Immunization Survey	76.4% (ever)			44.6%	55.0%	19.6%	31.03%
All U.S. Races Data							
Breastfeeding averages for all Wisconsin babies, per CDC 2018 Breastfeeding Report Card	82.2% (ever)			48.8%	59.0%	21.4%	39.3%
Breastfeeding averages for all babies in all states, per CDC 2018 Breastfeeding Report Card	83.2% (ever)			46.9%	57.6%	24.9%	35.9%
All PRAMS participants, United States, 2015	87.1% (initiation)			Not reported	Not reported	Not reported	Not reported
Healthy People 2020 Goals	81.9% (ever)			46.2%	60.6%	25.5%	34.1%

Breastfeeding rates for American Indian/Alaska Native (AI/AN) babies in Wisconsin have increased in recent years. Based on 2017 data—the most recent available—over three-quarters (76.3%) of American Indian/Alaska Native babies in Wisconsin have ever breastfed and over a third (37.8%) were still breastfeeding at six months, which is a 0.3% and 7.3% increase, respectively, from 2012 rates¹³ (not shown). However, as Table 15 shows, compared to both national breastfeeding rates for American Indian/Alaska Native babies and breastfeeding rates for all babies in Wisconsin, American Indian/Alaska Native babies in

Wisconsin could be getting even more breastfeeding benefits. The ever-breastfed rate for all Wisconsin babies is noticeably higher compared to American Indian/Alaska Native Wisconsin babies (82.2% compared to 76.3%) and by the age of six months, the rate of breastfeeding among American Indian/Alaska Native babies in Wisconsin (37.8%) is around half of the rate both for all American Indian/Alaska Native babies (55.0%) and for all Wisconsin babies (59.0%). Tribal policies that support women in breastfeeding their babies—such as milk expression policies for worksites and similar policies—could help address this gap.

Endnotes

1 U.S. Census Bureau, American Fact Finder, *Community Facts for Illinois* (2017), https://data.census.gov/cedsci/table?q=American%20Indian%20Alaska%20native%20population%20in%20Illinois&g=0400000US17&tid=ACSDP1Y2018.DP05&t=American%20Indian%20and%20Alaska%20Native&vintage=2018&cid=DP05_0001E.

2 Sources: Ctrs. for Disease Control & Prevention, *Rates of Any and Exclusive Breastfeeding by Socio-demographics among Children Born in 2015 (Percentage +/- half 95% Confidence Interval)*, https://www.cdc.gov/breastfeeding/data/nis_data/rates-any-exclusive-bf-socio-dem-2015.htm; CTRS. FOR DISEASE CONTROL & PREVENTION, BREASTFEEDING REPORT CARD — UNITED STATES 2018 at 3, <https://www.cdc.gov/breastfeeding/data/reportcard.htm>; Office of Disease Prevention and Health Promotion, U.S. Dep't of Health & Human Servs., *Healthy People 2020 Maternal, Infant & Child Health (MICH) Objectives, MICH-21*, <https://www.healthypeople.gov/2020/topics-objectives/topic/maternal-infant-and-child-health/objectives> (last updated April 25, 2019).

3 U.S. Census Bureau, American Fact Finder, *Community Facts for Indiana* (2017), <https://data.census.gov/cedsci/table?q=American%20Indian%20Alaska%20native%20population%20in%20Indiana&g=0400000US18&tid=ACSDP1Y2018.DP05&t=American%20Indian%20and%20Alaska%20Native>. See also Rachel Strange, *Exploring Hoosier Minority Groups: Indiana's Native American Population*, IN-CONTEXT (Nov.-Dec. 2013), <http://www.incontext.indiana.edu/2013/nov-dec/article4.asp>.

4 Sources: Ctrs. for Disease Control & Prevention, *Rates of Any and Exclusive Breastfeeding by Socio-demographics among Children Born in 2015 (Percentage +/- half 95% Confidence Interval)*, https://www.cdc.gov/breastfeeding/data/nis_data/rates-any-exclusive-bf-socio-dem-2015.htm; CTRS. FOR DIS-

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Appendix I

Total Policy Counts by State and Setting, for Tribal Nations in the Three States, Separately and Combined

Table 16. Breastfeeding/Milk Expression Policy Counts by Setting and Selected Policy Features for Tribal Nations in Michigan

Sector/Setting		Tribal code or administrative policy	Health clinic or health services agency	Gaming setting	Early care and education	Academic setting	Totals
Number of Policies	No. of formal policies received	3	4	1	2	2	12
	No. of informal policies received	0	1	2	1	0	4
	Totals	3	5	3	3	2	16
Policy Focus	Baby-on-site (BOS)	0	0	0	0	0	0
	Milk expression (ME)	0	0	1	0	1	2
	Both (BOS & ME)	1	3	1	2	1	8
	Breast milk use	0	0	0	1	0	1
	Right to breastfeed	1	0	0	0	0	1
	Other	1	2	1	0	0	4
Selected Policy Components	Culture-related provisions/ language	1	1	1	0	0	3
	Paid breaks	0	0	1	0	0	1
	Anti-discrimination language	2	2	0	0	0	4
	Baby age limits over 12 months	0	1	1	0	1	3
	Evaluation	0	0	0	0	0	0

Table 17. Breastfeeding/Milk Expression Policy Counts by Setting and Selected Policy Features for Tribal Nations in Minnesota

Sector/Setting		Tribal code or administrative policy	Health clinic or health services agency	Gaming setting	Early care and education	Academic setting	Totals
Number of Policies	No. of formal policies received	0	4	0	3	1	8
	No. of informal policies received	1	1	8	1	2	13
	Totals	1	5	8	4	3	21
Policy Focus	Baby-on-site (BOS)	0	0	0	0	0	0
	Milk expression (ME)	1	0	8	0	1	10
	Both (BOS & ME)	0	4	0	3	2	9
	Breast milk use	0	0	0	3	0	3
	Right to breastfeed	0	0	0	0	0	0
	Other	0	1	0	0	0	1
Selected Policy Components	Culture-related provisions/ language	0	0	0	0	0	0
	Paid breaks	0	1	1	0	0	2
	Anti-discrimination language	0	1	0	0	0	1
	Baby age limits over 12 months	0	1	0	0	0	1
	Evaluation	0	1	0	0	0	1

Table 18. Breastfeeding/Milk Expression Policy Counts by Setting and Selected Policy Features for Tribal Nations in Wisconsin

Sector/Setting		Tribal code or administrative policy	Health clinic or health services agency	Gaming setting	Early care and education	Academic setting	Totals
Number of policies	No. of formal policies received	7	4	0	1	0	12
	No. of informal policies received	2	2	5	2	1	12
	Totals	9	6	5	3	1	24
Policy focus	Baby-on-site (BOS)	2	0	0	1	0	1
	Milk expression (ME)	4	3	3	0	1	11
	Both (BOS & ME)	1	2	1	0	0	4
	Breast milk use	0	0	0	0	0	0
	Right to breastfeed	3	0	0	0	0	3
	Other	1	1	1	2	0	5
Selected policy components	Culture-related provisions/ language	4	1	0	0	0	5
	Paid breaks	1	0	0	0	0	1
	Anti-discrimination language	5	1	0	0	0	6
	Baby age limits over 12 months	0	0	1	0	0	1
	Evaluation	1	0	0	0	0	1

Table 19. Count of Breastfeeding/Milk Expression Policies by Setting for Tribal Nations in Michigan, Minnesota and Wisconsin, Combined

Sector/Setting	Formal Policy	Informal Policy	Totals
Tribal code or administrative policy	10	3	13
Health center or health services agency	12	4	16
Gaming setting	1	15	16
Early care and education	5	5	10
Academic setting	3	3	6
Totals	31	30	61



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