Breastfeeding + The Law

Breastfeeding in Public

Right to Breastfeed in Public

Refusal = Sex Discrimination

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No conflicts of interest to disclose.

Breastfeeding in Public

Right to Breastfeed in Public

• Federal: “Notwithstanding any other provision of law, a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.”

• California: “Notwithstanding any other provision of law, a mother may breastfeed her child in any location, public or private, except the private home or residence of another, where the mother and the child are otherwise authorized to be present.”

Refusal = Sex Discrimination

AB 2386 - Breastfeeding Included in Definition of Sex (2012)

(r) (1) “Sex” includes, but is not limited to, the following:
(A) Pregnancy or medical conditions related to pregnancy.
(B) Childbirth or medical conditions related to childbirth.
(C) Breastfeeding or medical conditions related to breastfeeding.
Right to Lactation Accommodations

- Fairness for Breastfeeding Mothers Act (H.R. 866/S. 528)
  - Passed the House!
  - Introduced in the Senate by Senators Steve Daines (R-MT), Tammy Duckworth (D-IL), Elizabeth Warren (D-MA), Chris Coons (D-CT), and Jeff Merkley (D-OR)
  - In Senate Committee on Environment and Public Works
- City of Alameda
- Use employee lactation room

Breastfeeding during Jury Duty

Option 1: Defer Jury Duty

- Defer for one year (California Rules of Court, Rule 2.1006)
- Can extend if still breastfeeding

Option 2: Pump in the Courthouse

- No specific law on lactation accoms in courthouses
- Can ask court clerk where employees go to express milk
- No specific law on pumping breaks during jury duty
- BUT: Unruh Civil Rights Act
- COMING (hopefully): Fairness for Breastfeeding Mothers Act (HR 1174)

Option 3: Breastfeeding in the Courthouse

- Can breastfeed in public (Cal. Civ. Code 43.3)

Breastfeeding at Airports

- The Places You’ll Feed!
Why?

- Provides comfort
- Keeps hydrated

Getting through TSA

- Expressed milk, formula, juice, and baby food are EXEMPT from liquid and gel regulations
  - Ice packs, freezer packs, frozen gel packs, and other accessories
- DO NOT need to be traveling with a baby to carry milk and supplies
- Process: at the beginning of the screening, tell the TSA agent that you have expressed milk and baby food

Lactation Accommodations in the Airport

- Friendly Airports for Mothers (FAM) Act
  - Clean, private lactation space
  - Not a bathroom
  - Accessible to people with disabilities
  - At least one/terminal
  - Place to sit
  - Flat surface or table
  - Electrical outlet
- Passed on October 5, 2018
- Medium and large hub airports = “more than 0.25% of the total number of passenger boardings for airports in the US”

Lactation Accommodations: REQUIRED

- Burbank
- Los Angeles
- Oakland
- Ontario
- Sacramento
- San Francisco
- San Jose
- San Diego
- Santa Ana

Lactation Accommodations: NOT REQUIRED

- Arcata
- Bakersfield
- Fresno
- Long Beach (1.3 million passengers/year)
- Mammoth Lakes
- Monterey
- Palm Springs
- Redding
- San Luis Obispo
- Santa Barbara
- Santa Maria
- Santa Rosa
- Stockton

San Diego International Airport

- 3 lactation rooms
- Handwashing station
- Electrical outlets
- Comfortable seating
- Artwork
- Soft lighting
Lactation Accommodations: K-12

- Lactation Room
  - Private, secure room
  - Not a restroom
  - Electrical outlet
  - Refrigerator or cooler bag for storage
- Reasonable breaks
- Allow student to make up all work missed

Discrimination

- Cannot exclude from education program, sports, honor societies, or extracurricular activities
- Can have special program or classes
  - Must be voluntary
  - Must be comparable

Violation of Rights

- File complaint with the local education agency
- File complaint with the Department of Education
- Contact Title IX coordinator

Lactation Accommodations: Community Colleges and CSUs

- Room
  - Private, secure room
  - Not a restroom
- Reasonable break time
- Opportunity to make up the work missed
Lactation Accommodations: Employees
California State University System
• "encourages" supervisors to accommodate employees

University of California System
• Private, locked space
• Appropriate temperature and ventilation
• Table
• Comfortable chair
• Electrical outlet

Breastfeeding in Jails

Reproductive Justice
• LGBTQ, Gender & Reproductive Justice Project

• Reproductive justice is achieved when every person can decide if, when, and how to have children, and to raise the children they have with dignity and respect.

• Reproductive health, rights, and justice operate cooperatively.

Reproductive Justice in Jails + Prisons
• 62% of women in state prisons have minor children
• 64% of those mothers lived with their children prior to incarceration
• 1.3 million children have mothers who are incarcerated in the US
• 5% of people in jails nationwide are pregnant at admission
• 85-90% of women report having survived sexual or domestic abuse prior to incarceration

GOALS

• Communicate the need for lactation support for incarcerated folks

• Explain genesis and passage of AB 2507

• Unpack how a statewide coalition coalesced to influence a bill, and now to implement it

• Plug in to help with implementation

For more on RJ, visit: http://www.colorlatina.org/content/reproductive-justice
Reproductive Justice in Jails + Prisons

- CA jails and prisons must provide:
  - Necessary reproductive health care
  - Information and education on repro health topics
  - Protection from sexual assault
  - Pregnancy-related accommodations
- Currently, law is clearer on stronger about prisons than jails. (But -> current bill AB 732 proposed.)
- We know what is required is not often provided, per people’s lived experiences.

A Note on Language

- Our work and this presentation focus particularly on the needs of women (both cisgender and transgender), of transgender men, and of nonbinary folks.
- Cisgender refers to people whose gender identity – one’s inner sense of being male, female, or another gender – is the same as their sex assigned at birth.
- Transgender refers to people whose gender identity differs from their assigned or presumed sex at birth.
- “Pregnant people,” “people who lactate”

Lactation in Jails

- Focus on reproductive justice in jails throughout the state
  - Reproductive Health Behind Bars
  - Tool to Assess and Reform Policies + Practices
- We had dozens of conversations with people at the LA County women’s facility. We listened.
- Primary concerns:
  - Pregnant/postpartum diet
  - Pre-natal care
  - Giving birth alone
- Lactation accommodations:
  - Including pump + pick-up

Pair Share

Instruction

\(\text{Turn to your neighbor}\)

\(\text{Take 3 minutes to answer the question: What are some issues incarcerated people may face regarding lactation?}\)

Before AB 2507

- Patchwork of laws
  - Required jails to allow expression of breastmilk, but not for delivery to the child.
- Common sense to connect the dots.
- Centering the voices of those most impacted -> strong desire to deliver milk.
More policies at local level

- LA County
- SF County
- Santa Clara County
- Kern County
  - Pump + pick up
  - No time limit
  - To relieve discomfort, maintain milk supply, and/or prevent infection
  - Arrangements for delivery to child
- Pregnant people notified of this possibility and educated as to benefits of breastfeeding

AB 2507

- Sponsored by Assemblyman Reggie Jones-Sawyer in 2018
- Passed + signed into law!
- This law lives in California Penal Code § 4002.5
- Bill requires that by January 2020, jails:
  - “...develop and implement an infant and toddler breast milk feeding policy for lactating inmates detained in or sentenced to a county jail. The policy shall be based on currently accepted best practices.”

- The policy must include:
  1. Procedures for providing medically appropriate support and care related to the cessation of lactation or weaning.
  2. Procedures providing for human milk expression, disposal, and same-day storage for later retrieval and delivery to an infant or toddler by an approved person, at the option of the lactating inmate and with the approval of the facility administrator.
  3. Procedures for conditioning an inmate’s participation in the program upon the inmate undergoing drug screening.

Implementation process today

- The CA Breastfeeding Coalition has coalesced a group of advocates:
  - Breastfeeding/lactation advocates
  - Legal and policy advocates
  - Medical professionals
  - Lactation professionals
  - Drafting a model policy, with a focus on mitigating any harm due to the drug screening provision.
  - Every county in CA (all 58!) will have to have a policy in place by 2020.
  - If you’re interested in helping make sure your local jails are implementing, this law, and well, contact us!

Questions + Resources

- Reproductive Health Behind Bars in California, ACLU of California (2016)
  - Report
  - Tool to Assess and Reform Policies and Practices
  - Know Your Rights document for incarcerated people
- Bias Behind Bars, The Women’s Foundation of California (2014)
- American College of Obstetricians and Gynecologists (ACOG)
  - Multiple policy statements
- Standards for Health Services in Jails, National Commission on Correctional Health Care (2014)
Contact us!

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