



ISSUE ADVISORY- Violated: A Working Mother's Right to Breastfeed

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The Fight for Coverage Continues- Many mothers choose to breastfeed their children and return to work. However, some women are facing discrimination because they need adequate time to express milk during permitted breaks at work. Some women have seen hours reduced, coverage denied, and some have even been fired for exercising their legal right to breastfeed.

In May, the American Civil Liberties Union (ACLU) announced a settlement on behalf of a Colorado woman, Ashley Provino, who was fired for expressing breastmilk in the workplace. According to the Patient Protection and the Affordable Care Act (ACA) and a provision amending section 7 of the Fair Labor Standards Act (FLSA), employers must provide a reasonable break time for employees who are nursing mothers to express breastmilk that is safe from public intrusion. This reasonable break time is issued for one year after the mother has given birth despite the mother's intention to breastfeed her child after the one year mark is up.

Provino alleged that Big League Haircuts, a national barber chain, denied her request to take a short break every four hours so she could express breastmilk and then proceeded to reduced her hours dramatically. Provino then requested to be returned to her full-time position with breaks so she could pump milk to continue feeding her child but was promptly fired.

This obvious violation of federal and state law is not the first case of blatant discrimination against working mothers. However, there are more subtle and very serious violations of the law under the breastfeeding benefit in the (ACA).

Trending: Non-Compliance- A recent report on the state of breastfeeding coverage found three major trends in insurance company non-compliance:

1. Some plans impose restrictions and limitations on breastfeeding support and supplies that explicitly violate the ACA or undermine the intent of the law;
2. Some plans do not have a network of lactation providers and are not following clear federal rules that allow women to obtain preventive services, including breastfeeding benefits, out-of-network, at no cost-sharing; and
3. Some plans impose major administrative barriers or offer insufficient coverage that prevents women from obtaining timely breastfeeding support and adequate equipment, as the ACA intended.

According to the National Women's Law Center's report, the ACA requires health plans to cover breastfeeding support and supplies without co-payments, deductibles, or co-insurance (your share of the costs of a covered health care service, calculated as a percent of the allowed amount

for the service) *for the duration of breastfeeding*. Breastfeeding support covers lactation support and counseling by a trained provider, which applies in conjunction with each birth. By stipulating that coverage for breastfeeding support and supplies extends for the duration of breastfeeding, health plans may not impose time limits on when a woman can receive lactation counseling or breastfeeding equipment. However, many plans unlawfully impose time limits. For example, three health issuers in two states only allow women to obtain a breast pump within 6 months of delivery denying some women (who may have had trouble breastfeeding in the first several months) the option to obtain a pump when they are ready.

Experts, Not Support Groups- The ACA also requires companies to have an established network of providers, specifically lactation providers, so women can obtain out-of-network services at no cost-sharing. Some women report that their insurance company has one in-network lactation provider, which is usually located in the hospital. In the case of hospital-based lactation consultants, the hospital policy is confined to in-patient clients, meaning that women cannot contact or access these professionals once they are discharged from the hospital. Many companies do not have lactation experts in their in-network, which is a violation of the ACA. What they do have are breastfeeding support groups, which the insurance companies are trying to pass off as lactation experts. When women attempt to file an appeal, they are bogged down in a lengthy administrative process that eventually shifts the cost to them. This affects lower-income women more drastically as they may not have the funds to pay for services at all.

The last major trend is the huge administrative barriers keeping women from accessing their benefits. These barriers include prior authorization and restrictions on when women can access their services. For example, some companies require prescription or prior authorization for a breast pump and will not administer that breast pump until *after* the baby is born. If you have ever tried to get *any* medical device after prior authorization, you know that it takes weeks. Women in these plans have reported that it took several weeks after their baby was born for them to receive their pumps.

Federal Guidance Falls Short- Disturbingly, the Department of Health and Human Services (HHS) specifies that, under the ACA, insurance plans are *not* required to cover a certain type of breast pump. Most plans only provide coverage for manual pumps, seriously limiting access to the tools some women need to breastfeed successfully. Try to imagine that you are on break (roughly 10-15 minutes) and you have to manually pump, which may conflict with your need to express milk quickly and efficiently. Federal guidance needs to step in and step up their support for nursing mothers.

The ACA was a huge step forward for nursing mothers but there needs to be further steps taken to ensure that women do not have to pay out-of-pocket costs for services guaranteed by the law. There needs to be better enforcement of the law and larger consequences for those insurance companies who use questionable practices to increase profits at the expense of their members.

For More Information Visit:

National Women's Law Center- State of Breast Feeding Coverage: Health Plan Violations of the Affordable Care Act,

http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_breastfeedingreport2015_0.pdf

United States Department of Labor (DOL)- Break Time for Nursing Mothers,

<http://www.dol.gov/whd/nursingmothers/>