

Congress of the United States
Washington, D.C. 20515

November 5, 2020

The Honorable Cheryl Stanton
Administrator, Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, NW
Washington DC 20210

Dear Administrator Stanton:

As Co-Founders and Co-Chairs of the Black Maternal Health Caucus, we write to inquire about the Wage and Hour Division's (WHD) enforcement of nursing protections for employees under section 7(r) of the *Fair Labor Standards Act* (FLSA)¹ during the COVID-19 pandemic. As you know, section 7(r) of the FLSA requires employers to provide breaktime and private, non-bathroom space for nursing non-exempt employees to express breastmilk while at work.

We have received troubling reports from worker advocate groups that employers are telling their employees that workplace protections for breastfeeding do not apply during the pandemic. As leaders of the Black Maternal Health Caucus, we are particularly concerned about racial and ethnic disparities in the workplace during the pandemic: women of color disproportionately work in jobs deemed essential, exposing them to "higher risks of contracting COVID-19 because of their proximity to infected individuals, infected environments, or the virus itself."² At this challenging and confusing time, it is critical for employers to continue to meet their responsibilities to support the health of their employees.

Recent interim guidance from the Centers for Disease Control and Prevention (CDC) on breastfeeding and the COVID-19 pandemic reaffirms that "breast milk is the best source of nutrition for most infants, and it provides protection against many illnesses."³ As the guidance underscores, during the COVID-19 pandemic, a private, non-bathroom space for milk expression (which continues to be a protected right under the law for many workers) is critical for employees in higher risk settings, such as health care workers. When workers express milk in adherence with the CDC's guidance on breastfeeding during the COVID-19 pandemic, breastfeeding can provide benefits that enhance an infant's immune system and promote their

¹ 29 U.S.C. 207(r).

² Jocelyn Frye, *On the Frontlines at Work and at Home: The Disproportionate Economic Effects of the Coronavirus Pandemic on Women of Color* (2020), <https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home/>.

³ U.S. Centers for Disease Control and Prevention, *Coronavirus Disease (COVID-19) and Breastfeeding* (2020), <https://www.cdc.gov/breastfeeding/breastfeeding-special-circumstances/maternal-or-infant-illnesses/covid-19-and-breastfeeding.html>.

health and development in childhood.⁴ Barriers that limit safe options for breastfeeding in the workplace can also have a long-term impact on maternal and infant health.

We encourage additional action from the WHD to provide clarification and to promote awareness regarding the continued responsibility of employers and rights of employees related to nursing protections in the workplace during the COVID-19 pandemic. I am encouraged by your stated commitment to “providing ongoing guidance to help employers and workers better understand their rights and responsibilities.”⁵ In July, the WHD issued guidance for employers and workers on the application of key wage and hour laws, including the FLSA, during the COVID-19 pandemic.⁶ Unfortunately, such guidance did not include references to protections under section 7(r) of the FLSA. In August, the WHD in Minnesota held a webinar for employers on workplace nursing accommodations.⁷

We respectfully request a briefing for our staff on this issue. Please direct all follow up communication regarding this matter to Udochi Onwubiko at Udochi.Onwubiko@mail.house.gov and Alison Hard at Alison.Hard@mail.house.gov. Please direct all official correspondence to the Education and Labor Committee Clerk, Mariah Mowbray at Mariah.Mowbray@mail.house.gov.

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



Alma S. Adams, Ph.D.
Member of Congress



Lauren Underwood
Member of Congress

⁴ Williams J, Namazova-Baranova L, Weber M, et al. The Importance of Continuing Breastfeeding during Coronavirus Disease-2019: In Support of the World Health Organization Statement on Breastfeeding during the Pandemic. *J Pediatr.* 2020;223:234-236. doi:10.1016/j.jpeds.2020.05.009.

⁵ Press Release, Wage and Hour Division, U.S. Department of Labor Publishes Additional Guidance On Wage And Hour Rules, Family And Medical Leave As Workplaces Reopen (July 20, 2020), <https://www.dol.gov/newsroom/releases/whd/whd20200720-0>.

⁶ U.S. Department of Labor, COVID-19 and Fair Labor Standards Act Questions and Answers (2020), <https://www.dol.gov/agencies/whd/flsa/pandemic>.

⁷ Press Release, Wage and Hour Division, U.S. Department of Labor Partners With Minnesota Department Of Labor And Public Health In Webinars Addressing Breast Feeding Accommodations (August 5, 2020), <https://www.dol.gov/newsroom/releases/whd/whd20200720-0>.