

Breastfeeding in Virginia: a legislative update



This institution is an equal opportunity provider.



Breastfeeding is the nutritional standard for infant and young child feeding

Human breast milk is not only the ideal food for infants, but it is the only food that infants need for the first six months of life.

Breastfeeding is endorsed by:

- The Virginia Department of Health
- The U.S. Department of Health and Human Services
- The U.S. Department of Agriculture
- The American Academy of Pediatrics
- The World Health Organization

Objectives

Following this presentation, participants will be able to:

- Recognize the Breastfeeding Laws in Virginia
- Explain Breastfeeding Law compliance
- Recognize Federal Breastfeeding Laws

Breastfeeding Laws in Virginia

18.2-387. Indecent exposure.

Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

Code 1950, § 18.1-236; 1960, c. 233; 1975, cc. 14, 15; 1994, c. [398](#).

8.01-341.1. Exemptions from jury service upon request.

Any of the following persons may serve on juries in civil and criminal cases but shall be exempt from jury service upon his request:

8. A person who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care by him during normal court hours, or any mother who is breast-feeding a child;

Code 1970, § 8-208.6:1; 1977, c. 458; 1987, c. 256; 1997, c. [693](#); 1999, c. [153](#); 2004, c. [106](#); 2005, c. [195](#); 2011, cc. [389](#), [708](#); 2012, c. [98](#).

2.2-1147.1. Right to breast-feed.

Notwithstanding any other provision of law, a woman may breast-feed her child at any location where that woman would otherwise be allowed on property that is owned, leased or controlled by the Commonwealth as defined in § [2.2-1147](#). 2002, c. [561](#).

Effective July 1, 2015

Code of Virginia

32.1-370. Right to breastfeed.

A mother may breastfeed in *any place* where the mother is lawfully present, including any location where she would otherwise be allowed on property that is owned, leased, or controlled by the Commonwealth in accordance with § [2.2-1147.1](#). 2015, cc. [45](#), [105](#).

Impact of this Law

- Families can breastfeed wherever they are permitted to be, including clothing stores, restaurants, childcare centers, doctors offices, i.e., any public place
- Our first approach as a public health agency is to educate and conduct outreach to our constituents.

Employers can ensure compliance by:



- Providing education to employees on the legal rights of breastfeeding mothers during routine employment on-boarding
- Posting Breastfeeding Welcome Here Signage

Complaints should be reported

With the passage of the Virginia Public Breastfeeding Law,
Mothers Have A Legal Right To Breastfeed In Public.

If you have a question or concern please email:

vabreastfeeds@vdh.virginia.gov



Employee lactation support policy

22.1-79.6. Employee lactation support policy

Each local school board shall adopt a policy to set aside, in each school in the school division, a non-restroom location that is shielded from the public view to be designated as an area in which any mother who is employed by the local school board or enrolled as a student may take breaks of reasonable length during the school day to express milk to feed her child until the child reaches the age of one. 2014, c. [380](#).

VIRGINIA HUMAN RIGHTS ACT

2.2-3903. Causes of action not created A. Nothing in this chapter or in Article 4 (§ 2.2-520 et seq.) of Chapter 5 creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C.

B. No employer employing more than five but less than 15 persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation. No employer employing more than five but less than 20 persons shall discharge any such employee on the basis of age if the employee is 40 years of age or older. For the purposes of this section, "lactation" means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

<http://law.lis.virginia.gov/vacodepopularnames/virginia-human-rights-act>

FEDERAL BREASTFEEDING LAWS

BREAK TIME FOR NURSING MOTHERS UNDER THE FAIR LABOR STANDARDS ACT

https://www.dol.gov/whd/nursingmothers/Sec7rFLSA_btnm.htm

The Patient Protection and Affordable Care Act (“Affordable Care Act”) amended section 7 of the FLSA requires employers to provide nursing employees with certain rights.

The new requirement became effective March 23, 2010, when President Obama signed the ACA into law.

The Affordable Care Act requires employers to provide:

- Reasonable break time
- Each time such employee has need to express milk
- For 1 year after the child's birth.
- A place, other than a bathroom
- Shielded from view
- Free from intrusion from coworkers and the public
- That may be used by an employee to express breast milk.

Wage and Hour (WHD)

Family and Medical Leave Act

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

- Twelve workweeks of leave in a 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;

<https://www.dol.gov/whd/fmla/>

Interaction with State Laws

The federal provision explicitly states that it does not preempt a state law that provides “greater protections” to employees than those provided by the federal law.

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

State Resource for Nursing Mothers

Virginia WIC Participants receive:

- Basic breastfeeding information
- Individual and Family Breastfeeding Counseling
- Group Education
- Pump Loan Program
- Peer Counselor Support & Referrals



To assist clients with making educated choices about infant feeding.





Thank you!

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