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Strategies for Lactating Parents: A Removal Defense Advocate's Guide

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Quick Reference for Federal Protections

❖ Americans with Disabilities Act (“ADA”)

The ADA prohibits discrimination based on disability in hiring, firing, and other terms and conditions of employment.¹ Generally, breastfeeding without more, does not qualify as a disability under the ADA.²

❖ Fair Labor Standards Act (“FLSA”)

Congress promulgated the FLSA in 1938, and evolved over time, most recently amended by the Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”). This required the PUMP Act provisions extend the FLSA to include exempt employees with respect to the same reasonable break time provisions.”³

❖ Fairness for Breastfeeding Mothers Act (“FBM Act”)

The amendment to the Fairness for Breastfeeding Mothers Act required lactation rooms in public buildings, with certain exceptions.⁴

❖ Pregnancy Discrimination Act (“PDA”)

The PDA amended Title VII to add that discrimination “because of sex” or “on the basis of sex,” includes discrimination “on the basis of pregnancy, childbirth, or related medical conditions.”⁵

❖ The Pregnant Workers Fairness Act (“PWFA”)

The PWFA required covered employers to provide reasonable accommodation to qualified employees affected by pregnancy, childbirth, or related medical conditions, unless it would cause undue hardship on the employer.⁶

❖ Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”)

The PUMP Act expanded the original Break Time for Nursing Mothers Act, which requires employers to provide reasonable break time and a private, non-bathroom space for lactating employees to pump during the workday.⁷ All employees are now covered by the PUMP Act’s protections except airline flight crew members.⁸

❖ Title VII

Lactation is a medical condition related to pregnancy and therefore covered under the Civil Rights Act.⁹

I. Introduction: Impetus for Practice Advisory

Breastfeeding and pumping accommodations have not always been at the forefront of discussions regarding immigration court practice. However, advances in the law for lactating parents have recently gone into effect and may provide opportunities for legal service providers to advocate for lactation spaces at detention facilities and immigration courts. [Acacia Center for Justice](#) (Acacia) along with co-author Aditi Fruitwala, of the [American Civil Liberties Union \(ACLU\)](#), created this practice advisory to detail the experiences of advocates, the legal range of potential accommodations, and stakeholder strategies when the law is not decisive.

A. A Focus on Legal Advocates

Immigration detention centers and immigration courts do not always have dedicated lactation spaces that are readily accessible by the public. Immigration legal advocates, however, need such spaces as they are often required to spend hours at these facilities to fulfill their work-related duties. Immigration legal advocates often go above and beyond for their clients and causes, but they may have a harder time advocating for themselves. Without adequate lactation space, their personal lactation needs may be ignored/disregarded, making it more difficult or even impossible for them to do their job. Therefore, this guide takes a “put your mask on yourself before you put the mask on you seat mate” approach to advocacy, focusing on providing immigration practitioners with the tools to better advocate for themselves while continuing to advocate for their clients.

Although this practice advisory is not a medical guide for pumping parents,¹⁰ advocates should understand the medical context surrounding breastfeeding and pumping first to understand why pumping advocacy is critical. Additionally, it could be useful for advocates to have research and data on hand if they need to advocate for

¹ 42 U.S.C. § 12112(a); See Also *Patterson v. Legacy Health*, No. 3:23-CV-1298-AR, 2024 WL 5379013, at *6 (D. Or. Dec. 27, 2024), *report and recommendation adopted*, No. 3:23-CV-01298-AR, 2025 WL 392590 (D. Or. Feb. 4, 2025).

² [L]actation is not a protected activity or disability under the ADA.” *aff’d*, Case No. 23-1190, 2024 WL 3271816 (10th Cir. July 2, 2024); *Weaver v. GAT Airline Ground Support, Inc.*, Case No. CV 23-869, 2024 WL 757030, at *8 (W.D. Pa. Feb. 20, 2024) (holding that neither a “nursing mother’s need to express milk” nor “a clogged duct” constitutes a “disability” within the scope of the ADA); *Mayer v. Pro. Ambulance, LLC*, 211 F. Supp. 3d 408, 420 (D.R.I. 2016) (“Courts have generally held that normal pregnancy and post-pregnancy do not qualify as a disability.”) *Patterson v. Legacy Health*, No. 3:23-CV-1298-AR, 2024 WL 5379013, at *7 (D. Or. Dec. 27, 2024), *report and recommendation adopted*, No. 3:23-CV-01298-AR, 2025 WL 392590 (D. Or. Feb. 4, 2025).

³ The Fair Labor Standards Act of 1938, 29 U.S.C. Ch. 8: June 25, 1938, ch. 676, §1, 52 Stat. 1060. (“FLSA”) See Also 29 U.S.C. § 216(b).

⁴ 40 U.S.C. § 3318 (2019); See Also Fairness for Breastfeeding Mothers Act of 2019, Pub. L. No. 116-30, 133 Stat. 1024 (2019). (“FBM Act”).

⁵ Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) (1978).

⁶ Pregnant Workers Fairness Act, 42 U.S.C. § 2000 gg to 2000gg-6 eff. June 18, 2024 (Pub. L. 117-328 Div. II, 136 Stat. 4459, 6084) (2022). (“PWFA”).

⁷ Providing Urgent Maternal Protections for Nursing Mothers Act, 29 U.S.C. § 218d (2022); Pub. L. No. 117-328, 136 Stat. 6093 (2022). (“PUMP Act”).

⁸ PUMP Act.

⁹ Title VII Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e; See for example *Mayer v. Pro. Ambulance, LLC*, 211 F. Supp. 3d 408 (D.R.I. 2016).

¹⁰ This advisory intentionally uses “parents” to include all lactating people, including those who are transgender and nonbinary. For a deeper analysis please read Naomi Schoenbaum, *Unsexing Breastfeeding*, 107 Minn. L. Rev. 139, 185 (2022).

themselves.¹¹ Nothing in this guide should be interpreted as medical advice nor a particular stance on breastfeeding or formula feeding, or any other variation thereof.

Pumping is a medical need. The American Academy of Pediatrics (AAP) recommends breastfeeding for two years.¹² According to the CDC, about 83% of infants in the US start out by breastfeeding.¹³ By six months, only 55% are still breastfeeding.¹⁴ While some of that drop may be due to complications with breastfeeding or a desire to stop, much of the decrease is due to barriers to pumping while working.¹⁵ Breastfeeding carries a number of benefits, including bonding between parent and child and protection from short- and long-term illnesses and diseases for both breastfeeding parent and infant.¹⁶

Therefore, for many parents, pumping is a priority. When someone is lactating, they typically need to pump every 2-3 hours to preserve their milk supply. Thus, for those who are lactating while working, access to lactation rooms is critical. Having a clean place to sanitize hand or electronic pump components is also essential for parent-child health.¹⁷ Parents who are unable to access lactation rooms may lose milk supply or develop mastitis, which can lead to pain and health complications.¹⁸

The challenges that advocates in immigration court face compound medical needs. Generally, pumping advocates are already exhausted, and out of bandwidth to advocate for themselves in addition to clients or *pro se* participants. Often, advocates' first thoughts are to their clients and ensuring access to counsel or preserving legal arguments. But advocates also need to focus on their own accommodations to support others. Therefore, without access to clean private spaces and time off to pump, lactating advocates can find themselves in a challenging predicament to carry out their duties to their clients, their families, and themselves. This guide acknowledges the false choice that advocates might feel where the only options are either support clients but ignore body and child (and vice versa). This guide seeks to offer alternative paths.

¹¹ This is not a guide about lactation rights at work. See, e.g., CDC, Breastfeeding and Returning to Your Workplace, Reviewed 24 OCT 2024, available at www.cdc.gov/nutrition/infantandtoddlernutrition/breastfeeding/workplace-breastfeeding.html (last accessed March 21, 2025). ICE's detention of nursing and pregnant persons also deserves its own practice advisory, but that will not be the primary focus of this guide, although there are cross-over tools contained within. Additionally, this advisory does not cover employer obligations to provide accommodations.

¹² CDC, *2022 Breastfeeding Report Card*, June 14, 2024, available at <https://www.cdc.gov/breastfeeding-data/breastfeeding-report-card/index.html#:~:text=What%20the%20numbers%20tell%20us&text=Among%20infants%20born%20in%202019,to%20reach%20their%20breastfeeding%20goals>

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* See also Odom EC, Li R, Scanlon KS, Perrine CG, Grummer-Strawn L. *Reasons For Earlier Than Desired Cessation of Breastfeeding*. PEDIATRICS, February 18, 2013, 131(3):e726-32, available at <https://europepmc.org/article/PMC/4861949> (last accessed March 6, 2025).

¹⁶ Sulaski Wyckoff, Alyson. Updated AAP Guidance Recommends Longer Breastfeeding Due to Benefits, AMERICAN ACADEMY OF PEDIATRICS, June 27, 2022, available at <https://publications.aap.org/aapnews/news/20528/Updated-AAP-guidance-recommends-longer?autologincheck=redirected> (last accessed March 24, 2025). See also CDC, *Breastfeeding Benefits Both Baby and Mom*, December 14, 2023, available at <https://www.cdc.gov/breastfeeding/features/breastfeeding-benefits.html#:~:text=Breastfeeding%20can%20help%20protect%20babies,ear%20infections%20and%20stomach%20bugs> (last accessed February 18, 2025).

¹⁷ *Id.*

¹⁸ Abbey Rose, Managing Plugged Ducts, Mastitis When Breastfeeding, MAYO CLINIC, July 26, 2024 available at <https://www.mayoclinichealthsystem.org/hometown-health/speaking-of-health/managing-plugged-ducts-mastitis-when-breastfeeding> (last accessed November 30, 2024).

B. Timing of Advisory & Updates in the Law

Two federal laws recently went into effect that support practitioners' access to lactation space while at work: (1) the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act);¹⁹ and (2) an amendment to the Fairness for Breastfeeding Mothers Act (FBM Act).²⁰ A 2010 lactation law, Break Time for Nursing Mothers, mandated that employers provide reasonable break time and a private, non-bathroom space for lactating employees to pump during the workday. The PUMP Act expanded this law to cover more employers and created a private right of action for violations. All employees are now covered by the PUMP Act's protections except airline flight crew members.²¹ The amendment to the Fairness for Breastfeeding Mothers Act required that certain public buildings open to the public and containing a public restroom must also provide a sanitary lactation room, separate from the restroom, furnished with a surface to put breast milk and an electrical outlet.²²

The Pregnant Workers Fairness Act (PWFA) also requires covered employers to provide reasonable accommodations to qualified employees affected by pregnancy, childbirth, or related medical conditions, unless it would cause undue hardship on the employer.²³ This provides additional protections for lactating people, as lactation is recognized as a related medical condition.

Also, in January 2019, the American Bar Association ("ABA") adopted Resolution 101A, which encouraged the "establishment and maintenance of lactation areas in courthouses" for use by "lawyers, jurors, litigants, witnesses, and observers." Resolution 101A outlined that the rooms should include a lock, a place to sit with a table, and an electrical outlet. In addition, they should be accessible to those with disabilities and not be located inside of a restroom.²⁴

These laws are welcome developments in the rights of pumping parents, and they may provide new opportunities for advocacy in this space.

II. Experiences of Nursing Advocates

Below are quotes from immigration advocates across the country about pumping and lactating in courts and detention centers. Not included are the experiences of advocates lactating at U.S. Citizenship and Immigration Services ("USCIS"), Customs and Border Protection ("CBP") offices, nor other immigration spaces outside of courts and detention facilities. The quotes below highlight the range of experiences, practical tips, the need for negotiation and collective advocacy, as well as challenges and successes. Central to these experiences is how advocates balance addressing their own physical needs while prioritizing client goals. Discussing experiences and

¹⁹ 29 U.S.C. §218d (2022); Fair Labor Standards Act (FLSA) 29 U.S.C. § 218d (2022); Pub. L. No. 117-328, 136 Stat. 6093 (2022). ("PUMP Act").

²⁰ 40 U.S.C. § 3318 (2019); See Also Fairness for Breastfeeding Mothers Act of 2019, Pub. L. No. 116-30, 133 Stat. 1024 (2019). ("FBM Act").

²¹ 29 U.S.C. §218d (2022). ("PUMP Act").

²² FBM Act.

²³ Pregnant Workers Fairness Act, 42 U.S.C. § 2000 gg to 2000gg-6 eff. June 18, 2024 (Pub. L. 117-328 Div. II, 136 Stat. 4459, 6084) (2022). ("PWFA").

²⁴ Kristin Kruse Lotz & Jill Schumacher, *Houston Courthouse Lactation Rooms Support Attorney Mothers*, Hous. Law., November/December 2022, at 18, available at https://issuu.com/leosur/docs/thl_novdec22 (last accessed March 6, 2025).

normalizing accommodations is the first step in advancing the issue and we appreciate those who shared their stories:

A. Immigration Court Experiences

“Going through this now. I have submitted lots of requests for remote hearings (State court hearings and immigration court), to avoid [pumping in] these places. The most difficult situation I recently had was a six hour interview an hour away from me. Thankfully, I informed the [agency] and my client ahead of time and asked if the [agency] could make special accommodation and they did! They allowed me to take a break for this purpose and provided me with a room where I could do this. I have also reserved a room at a co-workspace for this.” - Maryland Advocate.

“The Chicago court finally has a mother’s room when the court moved in July 2023. The new layout included a quiet private room for nursing [or] pumping.” – Illinois Advocate

“Reminds me [of the time] when I got cleared from the clerk to use the pro bono room (after declining the initial offer of using the staff bathroom) and IJ granted a longer recess for me to pump. When I asked the security guard to kindly keep an eye on the door because it does not lock, she said ‘you can’t do that in there’.” - Advocate

B. Detention Center Experiences

“I had different experiences in various detention centers. In one I worked it out with the guard that between intakes I would use the bathroom to pump, sitting on the lid of a toilet in a bathroom without a camera and then I was allowed to bring in my cooler to keep the milk cold. At another jail far from home, usually 12–17-hour days away from my baby, I had to exit the jail to pump in the car, in a surveilled lot, with a [nursing] cover on. I worked it out with the detention center to keep the milk in a covered case in their fridge where the guards kept their lunch when I went back in to meet and prepare clients for trial.” – DC, Maryland, Virginia Advocate

“I would take photos on visits or videos of my baby on my cellphone when at court to help with flow. I would find a space to watch it before or while I was pumping. . . I needed it between intaking people in our orientation program about the horrible persecution that happened to them, as that affected milk supply and my ability to relax and shift my mind to another focus. Mind really has an impact on body. I would then sit on a toilet in a detention center with an unlocked door and pump.” – Advocate

“My savior was a hands-free pump! I would pump in the car on the way to court or jails and back.” – Advocate

C. Shared Use Court-Detention Space Experiences

In immigration settings, some spaces serve as both immigration courts and detention centers. For example, the Stewart Detention Center in Georgia, Adelanto ICE Processing Center in California, and the former York County Detention Center in Pennsylvania have courts contained within the detention centers.

“I had to educate the security guards and beg the EOIR clerk at [Detention Center Based Immigration Court-mixed space] to let me use the pro bono room for 20 minutes so I could pump. The security guards [did not understand] it was a breast pump in the bag.” When pumping in the pro bono room, “someone walked in on me [while I was pumping], I was wearing a cover so you couldn’t see anything anyways and the [guard] was so sorry.” - Florida Advocate.

III. Legal Framework

A. Applying the Medical-Legal Framework to Pumping

Lactation is a “medical condition” and protected under the Civil Rights Act.²⁵ From that perspective, just as individuals with asthma or diabetes require access to their inhalers, glucose monitors, or other medications, a lactating advocate similarly needs access to a pump or related support.²⁶

For immigration advocates, the issue centers on two key legal concepts: the employer-employee relationship and whether the space needed for lactation is classified as public or private.

B. Federal Laws

The PUMP Act took effect gradually, with specific provisions expanding incrementally:

1. **December 29, 2022** – The law was signed and became effective immediately for most employers.²⁷
2. **April 28, 2023** – The enforcement provisions became effective, allowing employees to file claims against employers who violate the law.²⁸
3. **December 29, 2025** – Delayed implementation for certain rail carriers and motorcoach employers.²⁹

The PUMP Act³⁰ provides that most employers, with very few exceptions, must provide all lactating employees:

- A reasonable break, based on employee’s needs, to express breast milk for one year after child’s birth.
- A clean, private space that is not a bathroom to express milk.
- Breaks to express count as hours worked.

²⁵ Lactation is “medical condition” related to childbirth that is protected by Title VII as amended by Pregnancy Discrimination Act (PDA). Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e(k)(2). See Also, *Allen-Brown v. D.C.*, 174 F. Supp. 3d 463 (D.D.C. 2016).

²⁶ 21 C.F.R. § 884.5160 (classifying a breast pump as a medical device under the FDA). See Also, 14 C.F.R. § 382.121 (noting that assistive medical devices, such as prescription medications and any medical devices needed to administer them such as syringes or auto-injectors, vision-enhancing devices, and POCs, ventilators and respirators, do not count towards carry-on allowance). See Also, Performance Based National Detention Standards, *Disability Identification, and Accommodations* 4.7 D.2. PBNDS 2019 (noting [detained persons] with disabilities shall generally be permitted to keep assistive devices (including such aids as canes and crutches) with them at all times, including in general population. Placement apart from the general population due to security concerns related to the use of any such item must be based on individualized review, and the justification for the placement must be documented, whether the detained person is placed in an SMU, medical clinic, or elsewhere. The justification shall set forth the individualized assessment of the safety or security concern created by the assistive device that could not be eliminated or mitigated by modification of policies or procedures.). See Also, *Care* 4.3 PBNDS (2019) (noting medication will not be delivered or administered by detained persons. In facilities that are medically staffed 24 hours a day, a health care practitioner will distribute medication. In facilities that are not medically staffed 24 hours a day, medication may be distributed, consistent with state law and/or regulations, by detention officers who have received proper training, but only when medication must be delivered at a specific time when medical staff is not on duty. Distribution of medication by non-medical staff will be according to the specific instructions and procedures established by the CMA).

²⁷ PUMP Act; See Also Fair Labor Standards Act (FLSA) 29 U.S.C. § 218d (2022); Pub. L. No. 117-328, 136 Stat. 6093 (2022). See Also. Liz Morris, Jessica Less, Aditi Fruitwala, An Introduction to the PUMP Act, June 2023, available at <https://www.nela.org/wp-content/uploads/2023/06/NELA-PUMP-Act-Slides.pdf> (last accessed December 3, 2024).

²⁸ PUMP ACT. § 103(b), 136 Stat. at 4461.

²⁹ *Id.* PUMP Act § 103(c), 136 Stat. at 4461.

³⁰ See Footnote 7.

Although subcontractors and legal advocates are not employees of EOIR or detention centers, these facilities provide accommodations for their own employees and may be willing to make them available to legal advocates, as they are already required to do for their own staff. Additionally, even if immigration advocates are not employees, they often work in shared public spaces where the federal law supports providing accommodations for expressing milk.

i. Is a Courthouse a Public Space such that the Fairness for Breastfeeding Mother's Act applies?

The Fairness for Breastfeeding Mothers Act requires public buildings to provide lactation rooms for general public use.³¹ However, an exception applies if the building does not already have a lactation room for employees and does not have an existing space that could be repurposed or created with portable materials at a reasonable cost.³²

Since these federal statutes are still relatively new, there is little case law interpreting them. However, publicly accessible spaces include Immigration Courts as well as state courts handling Special Immigrant Juvenile related matters. The public must pass through security to attend hearings, serve as witnesses, or fulfill other roles. This includes a wide range of individuals, such as law students, expert witnesses, academics, family members of individuals in removal proceedings, advocates (including pro bono attorneys), and occasionally the media. Given this, advocates have grounds to argue for the provision of lactation pods or dedicated lactation spaces.

Clearly defining “public spaces” and “public buildings” is essential for advocates and their colleagues to engage with stakeholders and understand the legal framework.

a. Public Building Definition

Public buildings are typically understood to be either buildings owned by the government or buildings open to the public.

As defined in the United States Code, a “public building” generally refers to any building, whether single- or multi-tenant, along with its grounds and related structures, that is suitable for use as office or storage space by one or more federal agencies or mixed-ownership government corporations.³³ The federal statute provides examples, including federal office buildings, courthouses, border inspection facilities, records centers, and relocation facilities.³⁴ However, the statute specifically excludes certain properties from this definition, such as those owned by foreign governments, land on the public domain, Indian or native Eskimo property held in trust, or property used for river or housing projects.³⁵

The term “public building” appears in a federal law requiring baby changing tables in restrooms. The law states that, unless an exception applies, restrooms in public buildings must have baby changing facilities that are safe, sanitary, and appropriate, as determined by the designated agency lead, such as the General Services Administrator.³⁶ Exceptions include restrooms not open to the public, those with clear signage directing users to a nearby restroom with a baby changing table on the same floor, or instances where installation is not financially

³¹ FBM Act.

³² Id.

³³ 40 U.S.C.A. § 3301(a)(5) (2002).

³⁴ Id.

³⁵ Id.

³⁶ 40 U.S.C.A. § 3314 (2016).

feasible.³⁷ Given the specific examples listed in the statute, courthouses should qualify as public buildings under breastfeeding and pumping laws so advocates can use these definitions of public buildings and spaces to strengthen their arguments for lactation accommodations.

ii. *Is a Detention Center a Public Building such that the Fairness for Breastfeeding Mother’s Act applies?*

In contrast to the courthouse analysis, the law does not provide as sharp an answer to this question: whether detention centers are public buildings. Detention centers are not buildings where the public can readily ingress and egress, even as a visitor; however, visitation by the public is clearly permitted within set guidelines. Still, the security procedures at detention facilities do not automatically disqualify them from the “public building” definition. Indeed, by statute, border inspection facilities and relocation facilities are public buildings.³⁸

Advocates should argue that restrooms and visitation areas are factors that help qualify detention centers as public buildings, despite the security requirements for entry. Even for courthouses- the security apparatus alone does not preclude the space from the public building definition. Further, encountering courts contained within detention centers, advocates should argue that the categorization as courthouses as public buildings confers that category to the entire space.

But the question of whether detention centers qualify as public buildings requiring lactation spaces for advocates lacks an immediate answer, especially given the recent enactment of updated federal laws. To better understand this issue, it is helpful to examine the evolution of accommodation requirements in three contexts: (1) workplace accommodations generally, (2) accommodations in jail-like settings, and (3) recent court rulings that closely reflect advocates’ experiences.

First, examining how lactation protections apply in more traditional work environments, in the employer-employee context, will provide a foundation for how the law has expanded. In *Dillard v. Maverick Inc.*, a plaintiff filed a nationwide collective action on behalf of current and former Maverick employees who were denied necessary accommodations under the PUMP Act.³⁹ Maverick operates a series of gas marts across the United States. Dillard claimed that she informed her managers that she was a new mother who needed to pump at work, but they failed to provide her with a secure, private space and reasonable breaks.⁴⁰ As of late 2024, the case was still in the preliminary motions phase, with the claim surviving the employer’s motion to limit discovery.⁴¹

Secondly, in another context- a criminal detention center, plaintiff, *Haner*, filed a lawsuit alleging gender-based discrimination due to the failure to accommodate or compensate lactation breaks under the Title VII of the Civil Rights Act of 1964⁴² (“Title VII”), the Pregnancy Discrimination Act⁴³ (“PDA”), and the Americans with Disabilities

³⁷ Id.

³⁸ Id.

³⁹ *Dillard v. Maverick, Inc.*, No. 2:24-CV-00285-TS-JCB, 2024 WL 4145162, at *1 (D. Utah Sept. 11, 2024), objections overruled, No. 2:24-CV-285-TS-JCB, 2024 WL 4534694 (D. Utah Oct. 21, 2024).

⁴⁰ Id.

⁴¹ Id.

⁴² 42 U.S.C. § 2000e–2(a)(1).

⁴³ U.S.C. § 2000e(k).

Act⁴⁴ (“ADA”).⁴⁵ It is important to note that this case involved a detention center employee, not an immigration advocate. However, the way detention centers manage lactation accommodations for their employees may provide insight into the challenges immigration advocates could face, as well as potential legal arguments to draw parallels, even though advocates are not direct employees of the detention centers.

As of July 2024, *Haner v. County of Niagara, New York* was still in the preliminary motions phase addressing claims of violations that occurred between 2016 and 2020. The plaintiff alleged that during her lactation breaks, she was required to remain on call with her radio on and respond when needed but was not compensated for this time.⁴⁶ The court noted that at the time of the alleged violations, the expanded PUMP Act had not yet taken effect. The plaintiff argued that she should have been paid for these breaks just as other correction officers were compensated when they remained on call during meals or smoking breaks.⁴⁷ The U.S. District Court of the Western District of New York denied the defendant’s motion for summary judgement on the disparate treatment claim regarding lactation breaks, and the case remains ongoing.

Thirdly, in the U.S. District Court of the Northern District of Oklahoma, a parent, *Forbes*, returned to work in early 2023, shortly after the PUMP Act took effect. The parent needed to use a breast pump twice per shift to express milk for her nursing child.⁴⁸ Management provided her with an office to pump but informed her that others could enter if they needed access. As a result, coworkers walked in on the parent multiple times while pumping, sometimes while she was under a security camera.⁴⁹ This case highlighted the significant issues that many lactating parents face when the lactation room does not lock and closely mirrors the lived experiences of immigration advocates. Adding to these issues, managers restricted her pumping to specific times and treated her “with hostility and animosity when she needed to pump.” This ultimately led her to leave her job by July 2023.⁵⁰ In response to her lawsuit, the defendants argued that the parent had failed to notify them of the violation, however, the District Court found the employer had no intention of providing a compliant lactation space that complied with § 218d(a)(2), rejecting their defense.⁵¹

Recent cases affirm the PUMP Act’s applicability to several circumstances, but it’s not clear how it will be applied to immigration detention. While these rulings in ongoing cases do not directly address lactation accommodations for non-employees, they send a clear message: detention centers must, at a minimum, provide private lactation spaces for its own employees such as in *Haner v. County of Niagara*, and ensure no one enters while an employee is pumping, as in *Forbes v. BG3 Group*. Advocates can reference these recent rulings on the updated law when negotiating accommodation for themselves, even if they are not direct employees, to emphasize the broader right to lactation space. At the very least, these cases offer persuasive support for immigration advocates.

⁴⁴ 42 U.S.C. §§ 12101 *et seq.*

⁴⁵ *Haner v. Cnty. of Niagara, New York*, No. 19-CV-754-LJV-MJP, 2024 WL 3540645, at *15 (W.D.N.Y. July 25, 2024).

⁴⁶ *Id.* (noting the “Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”) went into effect January 1, 2023, and replaced the breastfeeding provisions in 29 U.S.C. § 207. The PUMP Act expands the protections provided to nursing women. 29 U.S.C. § 218d.”).

⁴⁷ *Id.*

⁴⁸ *Forbes v. BG3 Cap. Grp., LLC*, No. 23-CV-00418-SH, 2024 WL 3730261, at *1 (N.D. Okla. Aug. 8, 2024).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 6.

C. State Laws

All 50 states, as well as the District of Columbia, Puerto Rico, and the Virgin Islands, have laws allowing people to breastfeed in any private or public place, with relatively few caveats. What's more, many of these laws have been in effect for many years. For quick reference visit the National Conference of State Legislatures's Summary of [Breastfeeding State Laws](#).⁵² The compilation also includes legal protections for people incarcerated and nursing. Although the operable language in many states focuses on "breastfeeding," advocates should argue that breastfeeding also includes pumping milk as courts have not found otherwise.⁵³ Because all states have laws on pumping or breastfeeding, this advisory includes just a few states to showcase the range of accommodations and protections states have enacted, and examples of potential arguments. Advocates should review the state laws related to breastfeeding that apply in their jurisdiction and determine whether there are arguments under state law that the immigration detention facilities must provide a space to pump, as federal law provides the floor, but state law can elevate the accommodations, in some instances.

- Colorado

A parent can breastfeed in any place they have a right to be.⁵⁴ Advocates should argue that for the detention center context, if they are authorized to be in detention, then they have a right to pump.

- Illinois

Court rooms must have at least one designated lactation room or private area for the public to express breast milk. This space cannot be a restroom and should include a chair, table, electrical outlet, and if possible, a sink with running water.⁵⁵

It appears, from advocate reports, that the Chicago Immigration Court has a lactation space, in compliance with the PUMP and FBM Act requirements.

- Florida

Breastfeeding is permitted in any public or private location.⁵⁶

Florida's expansive law should arguably include detention centers and courts. Although the operable language is "breastfeeding," under this statute, advocates could argue that breastfeeding also includes pumping milk.

- Louisiana

⁵² *Breastfeeding State Laws*, Nat'l Conf. State Legislatures (August 26, 2021), available at <https://www.ncsl.org/health/breastfeeding-state-laws>, (last accessed March 26, 2025).

⁵³ Any argument that lactation and breastfeeding should be treated differently is misplaced. Such a distinction between such intertwined acts would be unworkable for courts. Furthermore, "[t]he fact that breastfeeding, unlike lactation, is a choice ... does not change its gender-specific nature." Diana Kasdan, *Reclaiming Title VII and the PDA: Prohibiting Workplace Discrimination Against Breastfeeding Women*, 76 N.Y.U. L. Rev. 309, 339 (2001); See Also *Hicks v. City of Tuscaloosa, Alabama*, 870 F.3d 1253, 1260 (11th Cir. 2017).

⁵⁴ Colo. Rev. State. § 25-6-302 (2004).

⁵⁵ Ill. Rev. Stat. Ch. 55 §5/5-1106 (2018). See also *Stachler v. Bd. of Educ. of City of Chicago*, 2023 IL App (1st) 221092, 229 N.E.3d 899, [appeal denied](#), 226 N.E.3d 13 (Ill. 2024). (noting that without any objection by teacher to put city board of education on notice that lactation room provided by teacher was inadequate, board's provision of lactation room, which was on different floor than floor that teacher worked on, did not violate Nursing Mothers in the Workplace Act, which required employer to make reasonable efforts to provide a lactation room in close proximity to the work area, even though there could have been an open factual question of whether the room board provided was in close proximity. 820 Ill. Comp. Stat. Ann. 260/15.) See Also, Kristin Kruse Lotz & Jill Schumacher, [Houston Courthouse Lactation Rooms Support Attorney Mothers](#), Hous. Law., November/December 2022, at 18, 19.

⁵⁶ Fla. State. § 383.015 (1993).

State-owned buildings must provide suitable accommodation for breastfeeding and lactation, including for the exclusive use of expressing or breastfeeding with a lockable door, work surface and chair, storage for cleaning supplies, and electrical outlets. The statute explicitly outlines funding and deadlines for construction of such spaces, delineating at least 20 buildings by 2016.⁵⁷

For state facilities contracted by ICE, via IGSA, advocates could argue that the detention center must provide a private area that can be locked in compliance with the statute. The Louisiana Immigration Court is inside a commercial building on One Canal Place. The commercial building should be adaptable to accommodate a lactation space.

- Maryland

Maryland law explicitly includes visitors in its lactation policies at the court level. The Maryland State Courts mandate the Judiciary Policy on Lactation Breaks, which upholds an individual's right to pump milk upon returning to work after childbirth. This policy requires courts to provide a clean, private space for employees and visitors to express milk.⁵⁸ The law makes it clear that everyone in the courtroom, including visitors, has the right to pump as needed. Advocates should reference these guidelines when arranging their own lactation breaks.

Maryland's public space laws further support lactation rights. The state allows women to breastfeed in any public or private location where they are authorized to be and prohibits anyone from restricting or limiting this right.⁵⁹ Advocates can argue that this protection extends to pumping as well. Furthermore, the law's reference to a "private place" could be used to argue for pumping accommodations in detention centers, where attorneys are authorized to be present. Since the law's primary intent is to ensure that a child receives food, advocates can make the case that pumping serves the same essential purpose as breastfeeding.

- New Jersey

The state requires certain public facilities and offices to provide an on-site lactation room.⁶⁰ In New Jersey, mothers have the right to breastfeed in any location where they are otherwise allowed. Failure to comply with this law may result in a fine.⁶¹ Advocates should assert the right to a lactation room in public facilities, including courts. At a minimum, they should be allowed to bring their pump-related medical equipment through detention center security.

- Texas

Texas guarantees the right to express breast milk and provides that a mother is entitled to breastfeed or express milk in any location in which the mother's presence is otherwise authorized.⁶² Advocates can rely on state laws to ensure they can bring necessary medical equipment into courtrooms and detention centers, where attorneys are authorized to be, and access space for pumping.

- Nevada

⁵⁷ LA. Rev. State. § 49:148.4.1 (2011).

⁵⁸ 4.8.5.1 Guidelines For Lactation And Religious Observance Breaks at the Maryland Judicial Complex, effective November 15, 2024, available at <https://www.courts.state.md.us/sites/default/files/import/employeehandbook/pdfs/lactationandreligiousguidelines.pdf> (last accessed December 18, 2024).

⁵⁹ Md. Health-General Code Ann. § 20-801 (2003).

⁶⁰ N.J. Rev. Stat. §26:4C-2, -3, -7 (2019).

⁶¹ N.J. Rev. Stat. § 26:4B-4 (1997).

⁶² Tex. Health Code Ann. § 165.002 (1995, 2019).

The law requires that each “courthouse must contain a lactation room that members of the public may use to express breast milk” but exceptions apply if the courthouse does not have a lactation room for employees, a room that could be repurposed, a space that could be made private for a reasonable cost, or new construction would make it unfeasible.⁶³ The law defines a “[l]actation room” as a hygienic place, other than a bathroom, that: (1) Is shielded from the view of others; (2) Is free from intrusion by others; and (3) Contains: (I) A chair; (II) A working surface; and (III) An electrical outlet.”⁶⁴ Privacy is essential, as many advocates, even when given a designated space or a door to close, often had to find ways to secure their privacy—such as improvising locking the door or placing a chair against the doorknob.

Advocates in Nevada should argue that the court must provide them with space, given the clear language of the law.

As for detention centers, the Nevada statute states that “a mother may breastfeed her child in any location, private or public, where the mother is otherwise authorized to be.”⁶⁵ As previously argued for other state statutes, if the parent is authorized to be in a detention center, they should also be allowed to pump.

- New Mexico

New Mexico’s statute was enacted in 1999 and states that “a mother may breastfeed her child in any location, public or private, where the mother is otherwise authorized to be present.”⁶⁶ Again, advocates should argue that if a parent is authorized to be in court or detention center to breastfeed, she should therefore be able to find a space to pump in court or a detention center, so long as she is authorized to be there.

IV. Stakeholder Strategies

A. Advocating for a Lactation Space at the Immigration Courts

Most state courts have guidelines for lactation and religious observance breaks that are useful when advocating for such spaces with EOIR.⁶⁷

Advocates should consider meeting with the Court Administrator (CA) or Assistant Chief Immigration Judge (ACIJ) to request support in creating a lactation space at the immigration court. It may be helpful for advocates to point to the immigration courts that have created lactation rooms and urge their local court to follow suit.

According to advocates, the following courts have lactation rooms or pods:

- Chicago Immigration Court in Chicago, Illinois (lactation room)
- Varick Street Immigration Court in New York, New York (contained within nursing office)
- Fort Snelling Immigration Court in Fort Snelling, Minnesota (lactation pod)

⁶³ Nev. Rev. Stat. Ann. § 1.095 (2021).

⁶⁴ Id.

⁶⁵ Nev. Rev. Stat. § 201.232 (1995).

⁶⁶ N.M. Stat. Ann. § 28-20-1 (1999). See also *Ward v. Convergys Inc.*, No. 1:10-CV-21 WJ/WDS, 2010 WL 11493700, at *2 (D.N.M. Apr. 30, 2010).

⁶⁷ 4.8.5.1 Guidelines For Lactation And Religious Observance Breaks at the Maryland Judicial Complex, effective November 15, 2024, available at <https://www.courts.state.md.us/sites/default/files/import/employeehandbook/pdfs/lactationandreligiousguidelines.pdf> (last accessed December 18, 2024).

Advocates are the experts in their own local jurisdictions and can determine the best approach for this type of advocacy. Some have found that proposing reasonable, cost-effective solutions and conducting research in advance can help reduce the burden on stakeholders. For example, lactation pods typically cost between \$5,000 and \$10,000 and presenting this information to the court may help achieve advocacy goals or demonstrate willingness to collaborate.⁶⁸ For a jump start on research, check out: [Lactation Room Set Up Guide: Best Practices and Design Ideas – Healthy Horizons Breastfeeding Centers, Inc.](#)

Additionally, EOIR has a national accommodations coordinator who handles these types of requests (see Accommodations Avenues, below). While this role is primarily for EOIR employees, advocates might find it useful for initiating conversations and formally documenting concern on behalf of lactating attorneys and advocates.

B. Detention Center Advocacy

Because the detention facilities are not squarely “public” in the same way that courts are, securing lactation space for visitors, including attorneys and advocates, may be more challenging. To strengthen the case for providing a designated pumping area, advocates should explore the following legal frameworks at both the state and federal levels.

i. Is the detention center controlled by helpful state regulations?

ICE Detention facilities include privately owned jails, state detention centers, county jails, and federal detention centers. Advocates can argue that detention centers fall under state laws requiring lactation-friendly accommodations in state facilities for visitors. If the facility is privately owned, it is important to assess whether it complies with PBNDS guidelines. Additionally, various oversight and watchdog agencies may provide support depending on the type of facilities, see the *Resources* section below for more information.

ii. Is the detention facility in a building that also houses an Immigration Court, such as the Otay Mesa Detention Facility in San Diego?

Mixed-use spaces present a unique situation, as court-connected areas are generally considered public buildings under federal and most state laws, requiring accommodations for visitors, including lactation space. Advocates working in mixed-use spaces may be able to use this legal framework to secure designated areas pumping.

iii. What Partners Interact with Detention Center Stakeholders in the Region?

The American Immigration Lawyer Association (“AILA”) Chapters often use their biannual or quarterly meetings with ICE and detention centers as opportunities to discuss access concerns, which could include lactation accommodations. Additionally, Legal Orientation Program (LOP) contracted facilities hold regular stakeholder meetings with ICE and detention centers and are spaces to preemptively address the needs of nursing parents. Several providers have used stakeholder meetings to raise the issue of accommodation lactation.

In the past, advocates have sought opinions from state ethics bars on legal questions to clarify an attorney’s professional responsibilities and gain leverage from the state ethics panel. Since the ABA⁶⁹ has issued an opinion supporting the need for pumping space for advocates, state bars may be open to issuing similar opinions, which could influence key stakeholders.

⁶⁸ Solo Base – Mamava, available at <https://shop.mamava.com/products/mamava-solo-base> (last accessed 6DEC2024); Brighter Booth, available at <https://brighterbooth.com/solo-lactation-pod/> (last accessed December 6, 2024); Shop Lactation & Nursing Stations | Rustica, available at <https://rustica.com/the-beckon/> (last accessed December 6, 2024).

⁶⁹ ABA Resolution 101A (2019).

Additionally, detained individuals themselves are important voices in detention centers. Their advocacy for legal access—whether for orientation or other needs—can be persuasive, and they can share insights on how medical needs, including lactation, are accommodated within the facility. Advocates can also build rapport with guards and other detention center staff to identify available pumping spaces, such as offices or break rooms. Understanding where nursing guards pump should help inform potential solutions.

iv. Can This Advisory Be Used to Advocate for a Client Who Is Detained and Lactating?

Detention centers that detain people for ICE follow the Performance Based National Detention Standards (PBNDS), which require the identification of people with disabilities.⁷⁰ Generally, if an item such as a pump must be used, the PBNDS requires an individualized review for assessing whether the person must pump or access the medical device in another section of the jail.⁷¹

Some facilities are medically staffed 24 hours a day, so medication and medical devices can be administered at any time.⁷² In facilities that are not medically staffed 24 hours a day, medication may be distributed, consistent with state law and/or regulations, by detention officers who have received proper training, but only when medication must be delivered at a specific time when medical staff are not on duty. So, for example, for lactating parents who need to pump at night when medical staff are not present, there should be a designated person to provide the pump and milk storage. Having advocates inquire on these procedures for their own knowledge and anticipating future clients or pro se participants will elucidate also what education detention center staff have already received on these processes.

In strategizing conversations with detention centers, advocates should be aware of how the detention center approaches the lactation needs of people they detain, as that will often set the tone or forecast how the stakeholders will approach the conversation. According to the National Commission on Correctional Health Care, only 11 prisons currently allow breastfeeding, and 5 jails allow breastfeeding and/or pumping in the United States.⁷³ Although this is data related to non-immigration specific detention centers, it suggests that pumping accommodations are rarely provided.

Also important to note is that July 1, 2021, ICE Memo Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals directs ICE to “not detain, arrest, or take into custody for administrative violation of the immigration laws individuals known to be pregnant, postpartum, or nursing, unless release is prohibited by law or exceptional circumstances exist.”⁷⁴ Because many of the facilities are “men-only,” lactation and pumping could be a new subject of discussion for detention center stakeholders. This could be an opportunity to open new ground or could mean that a lot of foundational education must be set in place ahead of planning for pumping space.

⁷⁰ Performance Based National Detention Standards (PBNDS), *Disability Identification, and Accommodations* 4.7 D.2. PBNDS 2019.

⁷¹ *Id.*

⁷² *Id. Medical Care* 4.3 PBNDS (2019).

⁷³ National Commission on Correctional Healthcare, *Breastfeeding in Correctional Settings* (2023), available at <https://www.ncchc.org/position-statements/breastfeeding-in-correctional-settings-2023/> (last accessed February 22, 2025).

⁷⁴ Immigration and Customs Enforcement Directive 11032.4, *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*, (DHS 2021) § 1, available at https://www.ice.gov/doclib/detention/11032.4_IdentificationMonitoringPregnantPostpartumNursingIndividuals.pdf, (last accessed January 7, 2025).

V. Recourse

A. Accommodations Avenues & Reporting Violations

A supervisor or legal service provider leadership team could engage in conversation with the facility to request that a private space be made available for lactating individuals. Below are resources for advocates and their supervisors when deciding how to approach this conversation.

- Center for WorkLife Law
 - o hotline@worklifelaw.org
 - o (415) 703-8276
- A Better Balance (English & Spanish)
 - o 1-833-633-3222
 - o Help Form: abetterbalance.org
- Affordable Health Care Act (P.L. 111-148)
 - o Call 1-866-487-9243
- Department of Labor
 - o www.dol.gov/whd
- Your Legal Doula
 - o yourlegaldoula.com/
- DHS Office for Civil Rights and Civil Liberties (CRCL)⁷⁵
 - o Reporting on violations of civil rights, civil liberties, and human rights by U.S. DHS programs, activities, personnel, or contractors.
 - o Reports can be anonymous
 - o [CRCL Intake - DHS Civil Rights and Civil Liberties Complaint /www.dhs.gov/file-civil-rights-complaint](http://www.dhs.gov/file-civil-rights-complaint)
- Office of Immigration Detention Ombudsman (OIDO)⁷⁶
 - o Although focused primarily on people detained by ICE, “advocates for people who are currently detained” are included.
 - o Case Intake Portal myOIDO: myoido.dhs.gov/
 - o At the bare minimum, jails should have lactation rooms for staff. Advocates can make a general request that this same space be made available to legal visitors and see if the facility is open to accommodate.

B. EOIR Specific Strategies for Accommodations

Some immigration courts may be willing to work with advocates to find a solution for lactating advocates. It bears repeating that advocates have had success talking directly to security personnel, court administrators or clerks to accommodate lactating individuals.

There is also a help line for accommodations at the court. Advocates can reach out to:

- Reasonable Accommodations Coordinator for EOIR
 - o Courtney Cortez
 - o (571) 296-5689

⁷⁵ Noting during drafting of this advisory that the federal government paused this office.

⁷⁶ Noting during drafting of this advisory that the federal government paused this office.

- o Cortney.Cortez@usdoj.gov

Advocates may have success by engaging friendly stakeholders or allies at EOIR. Often, EOIR staff will try to be accommodated.

If you have concerns about your treatment while trying to access a lactation room:

- Specifically for Judge conduct, describe what occurred and email:
 - o Judicial.conduct@usdoj.gov

VI. Conclusion

Access to lactation spaces is not just a workplace convenience but a legal and medical necessity for immigration legal advocates. As lactation is recognized as a medical condition under the Civil Rights Act and other anti-discrimination laws, advocates should have the same access to accommodations as individuals with other medical needs. Recent legislative advancements, such as the PUMP Act and amendments to the Fairness for Breastfeeding Mother's Act, provide a stronger legal basis for advocates to demand lactation spaces in courthouses and, potentially, detention centers. While these spaces may not always be classified as public, legal arguments can be made based on existing definitions of public buildings and shared workspaces.

Additionally, states have laws protecting the right to breastfeed and/or pump in both private and public spaces, many of which have been in effect for years. Advocates can leverage these state-level protections, as well as federal laws, to push for expanded access to lactation accommodations. Moreover, advocates are not alone—there are helplines and ombudsman offices available to provide guidance and support in navigating these legal protections. By understanding both federal and state legal frameworks and utilizing available resources, immigration advocates can make compelling arguments for lactation accommodations, ensuring they can serve their clients effectively while safeguarding their own health and well-being.

This practice advisory is 508 compliant for people with a range of visual abilities.

For feedback on this advisory please email kwhite@acaciajustice.org.