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For Breast-Pumping Lawyer Moms, Accommodations Often Fall Short

MothersEsquire, a group with 3,000 lawyer-moms spread around the nation, is working to improve workplace conditions.

By Angela Morris | October 31, 2018



<https://images.law.com/contrib/content/uploads/sites/292/2018/10/breastmilk->

The old saying, “Don’t crying over spilled milk,” doesn’t apply when you’re a nursing lawyer-mom, using a toilet as a table while pumping your breast milk during your practice group’s annual retreat.

Utilizing the bathroom as a makeshift baby-food kitchen wasn’t labor and employment litigator Elise Elam’s first choice. She recalled she was relegated to the loo only after staff in the retreat facility offered up a room with a non-closing door that left a gap where she could see the speaker talking to all her colleagues. The toilet stall was private, at least. After she finished pumping and started to gather her gear, that’s when it happened: Elam’s milk spilled all over the toilet and floor. She acknowledges—she cried.

“It was stressful,” explained Elam, staff attorney at Frost Brown Todd in Cincinnati.

Like many nursing lawyer-moms, Elam is happy with her law firm’s breastfeeding accommodations—she has a private office and closes her door with a do-not-disturb sign when she expresses her milk—yet she continues facing struggles when depositions, hearings or legal conferences take her away from home base for extended periods of time. Courthouses have emerged as a primary problem area for nursing lawyers who need a private place, and time, to pump milk for their babies.

One group advocating on behalf of breastfeeding attorneys is MothersEsquire, a Facebook group with 3,000 lawyer-moms spread around the nation, which created a breastfeeding accommodations advisory committee in early 2017.

“Part of the reason why it is so critical is because it’s a metaphor in my mind to what happens to professional women with children throughout their careers. All of a sudden, they’re at this intersection between a core part of being a mother—feeding your child—

and being a professional,” said Michelle Browning Coughlin, who founded MothersEsquire five years ago. “It literally feels like a choice between being a good mom, or good lawyer.”

The American Academy of Pediatrics recommends that babies drink only breast milk for the first six months because of numerous health benefits. Centers for Disease Control and Prevention data shows that breastfeeding rates have increased over the past 10 years, and mothers now stick with breastfeeding longer. The agency noted in its 2018 breastfeeding report card that 83 percent of babies were exclusively breastfed at birth, which is up from 74 percent, compared with the 2008 report card. This year’s data said 25 percent of babies were still breastfeeding exclusively at 6 months old, compared to just 12 percent in 2008. A lack of support at work is one of the main reasons women quit breastfeeding early, the agency noted.

Although the Affordable Care Act in 2010 required employers to provide a private place and break time for nursing mothers who are hourly, it doesn’t apply to lawyers on salary, noted Liz Morris, whose work as deputy director at the Center for WorkLife Law at the University of California, Hastings College of the Law focuses on gender equity and workers’ rights for pregnant and breastfeeding moms.

Morris said Title VII of the Civil Rights Act includes a prohibition on discrimination based on pregnancy, childbirth and related medical conditions—breastfeeding counts—yet that law doesn’t clearly provide a right to accommodations. A patchwork of state laws (<https://www.pregnantatwork.org/state-workplace-lactation-laws/>) do apply to lawyers, promising breaks and a private space to pump. Even when a lawyer works in a state without strong breastfeeding protections, her law firm may provide accommodations voluntarily—but this varies widely.

“Some law firms pay to ship breast milk home when lawyers are on a work trip,” Morris explained. “Some people lose their jobs over this.”

While many MothersEsquire members who are nursing moms are happy with their law firm's accommodations, other lawyer-moms have experienced disappointment, said Coughlin, partner in Wyatt Tarrant & Combs in Louisville, Kentucky. Some law firms have rules not to lock your door, and the recent fad for law firm offices to have glass walls and doors is not ideal for a nursing lawyer who needs privacy.

"Even in firms where they may have an office, often the offices are not as private as they have been, or women say, 'I'm able to lock my door, however, every time I'm in there, someone is banging on my door or keeps sending me messages or calling me,'" Coughlin said.

She recalled that years ago when she nursed her two children, who are now 11 and 13, the only place she could pump while out and about was the bathroom. Sadly, that hasn't changed for a lot of the MothersEsquire members.

Pushing for courthouse breastfeeding accommodations is one of the first goals of MothersEsquire's breastfeeding committee, explained committee chairwoman Kristin Worthen, who's currently nursing her 10-month-old son and has two older children.

In Worthen's hometown courthouse, one member of the MothersEsquire breastfeeding committee worked with the local bar association on a solution. The bar association has a room at the courthouse where any lawyer can go in between hearings to work, relax or eat lunch. The committee member sent a letter and convinced the bar to use cubical walls to create a semi-private space inside of the break room for pumping.

"They were supportive, and didn't pay for any supplies needed for it, but agreed we could use the room for that purpose," added Worthen, corporate counsel for a Texas technology company.

Law firms could help sponsor a courthouse pumping space by providing chairs and partitions, and encouraging judges and court administrators to support breastfeeding lawyers. She said bar associations have a large role to play in helping attorneys get better nursing accommodations in courthouses, CLE events and the bar exam.

On the national stage, the American Bar Association Young Lawyer's Division is aware of the problem and working on a solution. It's drafting a resolution to encourage courts and legislatures to create lactation rooms, said director Robin Rone.

"One of our members, the lead drafter of the resolution, happened to be pregnant and is nursing and it was something that was front of mind for her and others," Rone said.

Sarretta McDonough, president of the National Association of Women Lawyers, said the association has focused on encouraging law firms and corporations to support lawyers who return to work after having a baby, which included making nursing attorneys comfortable with facilities to pump at work. Many law firms and corporations have made strides in providing dedicated spaces for nursing lawyers, she said, but there's still a gap in the public sector—especially courthouses.

"Remember, most of these courthouses were built at times it was just white males going to court," McDonough said. "We've focused so much on the private sector—we haven't focused enough on public facilities."

MothersEsquire member Cassie Springer Ayeni didn't wait around for an accommodation—she forged a path herself. Springer Ayeni, president and founder of Springer Ayeni in Oakland, California, has four kids—they're now 10, 8, 2 and 8 months—and she's brought every one of them to work with her at her three-attorney firm for the first year of their lives.

She'd arrange for family members to care for the children when she had unavoidable work conflicts, or schedule her associates for certain court appearances, but otherwise, she brought her babies wherever she went for work. Rather than pumping, she just nursed the babies on the spot.

"I nursed him during a presentation this year. It's crazy when I think about it, but people, this is a normal part of life: We feed our children. I feel people need to get over it and understand, and if they don't, maybe I can start to change their minds by bringing some normalcy to it," she said.

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