

Calendar No. 254

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-115

PUMP TECHNICAL CORRECTION ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2219

TO AMEND THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995
TO EXPAND ACCESS TO BREASTFEEDING ACCOMMODATIONS IN
THE WORKPLACE



NOVEMBER 30, 2023.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

49-010

WASHINGTON : 2023

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

GARY C. PETERS, Michigan, *Chairman*

THOMAS R. CARPER, Delaware	RAND PAUL, Kentucky
MAGGIE HASSAN, New Hampshire	RON JOHNSON, Wisconsin
KYRSTEN SINEMA, Arizona	JAMES LANKFORD, Oklahoma
JACKY ROSEN, Nevada	MITT ROMNEY, Utah
JON OSSOFF, Georgia	RICK SCOTT, Florida
RICHARD BLUMENTHAL, Connecticut	JOSH HAWLEY, Missouri
LAPHONZA R. BUTLER, California	ROGER MARSHALL, Kansas

DAVID M. WEINBERG, *Staff Director*

LENA C. CHANG, *Director of Governmental Affairs*

DEVIN M. PARSONS, *Professional Staff Member*

WILLIAM E. HENDERSON III, *Minority Staff Director*

CHRISTINA N. SALAZAR, *Minority Chief Counsel*

ANDREW J. HOPKINS, *Minority Counsel*

LAURA W. KILBRIDE, *Chief Clerk*

Calendar No. 254

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 118–115

PUMP TECHNICAL CORRECTION ACT

NOVEMBER 30, 2023.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2219]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2219) to amend the Congressional Accountability Act of 1995 to expand access to breastfeeding accommodations in the workplace, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	4
IV. Section-by-Section Analysis of the Bill, as Reported	5
V. Evaluation of Regulatory Impact	5
VI. Congressional Budget Office Cost Estimate	5
VII. Changes in Existing Law Made by the Bill, as Reported	6

I. PURPOSE AND SUMMARY

S. 2219, the *PUMP Technical Correction Act*, would extend coverage of pumping accommodation requirements in the *Fair Labor Standards Act of 1938* (FLSA) to federal employees of the legislative branch. Since 2010, the FLSA has required employers to provide accommodations for an employee to express breast milk for their nursing child. Language in the *Congressional Accountability Act of 1995* (CAA) applied these FLSA accommodation requirements to legislative branch employees. In 2022, Congress passed the *PUMP for Nursing Mothers Act*, a bill that moved the provisions regarding pumping accommodation requirements to a new

section of the FLSA and expanded coverage to employees regardless of their eligibility for overtime. *The PUMP Technical Correction Act* would update the CAA to reflect these 2022 changes by ensuring a correct reference to the FLSA section regarding pumping accommodations for legislative branch employees.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Since 2010, federal law has required most U.S. employers to provide pumping accommodations for nursing mothers.¹ Breastfeeding has a range of positive health and development benefits for infants, as well as health benefits for the nursing mother. The Centers for Disease Control and Prevention (CDC) describes breast milk as “the best source of nutrition for most babies.” Breastfeeding can help protect babies against short- and long-term illnesses like asthma, obesity, type 1 diabetes, ear infections, stomach bugs, and sudden infant death syndrome. It can also reduce the mother’s risk of breast and ovarian cancer, type 2 diabetes, and high blood pressure.²

The American Academy of Pediatrics (AAP) recommends exclusive breastfeeding for infants for up to six months after birth and continued breastfeeding as long as mutually desired by the mother and child for two years and beyond. AAP further states: “The short- and long-term medical and neurodevelopmental advantages of breastfeeding make breastfeeding, or the provision of human milk, a public health imperative.”³ The World Health Organization and UNICEF similarly recommend exclusive breastfeeding for children in their first six months of life and continued breastfeeding for up to two years or beyond.⁴ According to the CDC, 83% of infants in the United States receive breast milk at the beginning of their lives.⁵

In March 2010, Congress passed the *Break Time for Nursing Mothers Act* as part of the *Patient Protection and Affordable Care Act*, which added pumping accommodation requirements for employers to the FLSA.⁶ Specifically, this legislation added a subsection to section 7 of the FLSA, pertaining to overtime requirements for “non-exempt” employees. The pumping-related requirements include providing “reasonable break time” and a private location other than a bathroom for an employee’s use to express milk within one year after the child’s birth. These provisions also exempt certain employers with 50 or fewer employees from the accommodation requirements, specify that employers are not required to compensate employees during break time for pumping, and clar-

¹Department of Labor Wage and Hour Division, Section 7(r) of the Fair Labor Standards Act—Break Time for Nursing Mothers Provision (www.dol.gov/agencies/whd/nursing-mothers/law) (accessed Aug. 9, 2023).

²Centers for Disease Control and Prevention Division of Nutrition, Physical Activity, and Obesity, Breastfeeding Benefits Both Baby and Mom (www.cdc.gov/nccdphp/dnpao/features/breastfeeding-benefits/index.html) (accessed Aug. 9, 2023).

³Joan Younger Meek and Lawrence Noble, *Policy Statement: Breastfeeding and the Use of Human Milk*, PEDIATRICS Official Journal by the American Academy of Pediatrics (July 27, 2022) (publications.aap.org/pediatrics/article/150/1/e2022057988/188347/Policy-Statement-Breastfeeding-and-the-Use-of).

⁴World Health Organization, Breastfeeding (www.who.int/health-topics/breastfeeding) (accessed Aug. 9, 2023).

⁵Centers for Disease Control and Prevention, Breastfeeding Report Card: United States, 2022 (www.cdc.gov/breastfeeding/data/reportcard.htm) (accessed Aug. 9, 2023).

⁶Patient Protection and Affordable Care Act, Pub. L. No. 111–148, Sec. 4207 (2010).

ify that the provisions do not preempt state laws with greater protections for nursing mothers in the workplace.⁷

The 2010 accommodation requirements applied to legislative branch employees due to existing language in the CAA.⁸ The CAA establishes workplace standards for over 30,000 individuals employed by legislative branch offices, including the U.S. House of Representatives, U.S. Senate, U.S. Capitol Police, Office of the Architect of the Capitol, Congressional Budget Office, and Library of Congress, as well as other entities associated with Congress.⁹ Section 203 of the CAA applies the fair labor standards of the FLSA to legislative branch employees.¹⁰

The implementation of the 2010 *Break Time for Nursing Mothers Act* revealed that the placement of pumping accommodation requirements in section 7 of the FLSA left millions of nursing mothers outside of these workplace protections. According to a December 2010 publication by the Department of Labor’s Wage and Hour Division, due to this drafting error, employees who were “exempted” from the overtime requirements of section 7 of the FLSA would not be entitled to break time to express breast milk.¹¹ There are a wide range of positions “exempt” from section 7 overtime requirements, including executive, administrative and professional employees.¹² Examples of “exempt” positions include teachers, registered nurses and nurse practitioners, agricultural workers, retail workers, managers, computer programmers, and others.¹³ The structure of the 2010 law left an estimated 25% of female workers of childbearing age, or 9 million women, uncovered by the federal pumping accommodation requirements.¹⁴

To address the gaps in coverage, Congress passed legislation in December 2022 to further amend the pumping accommodations requirements in the FLSA.¹⁵ Specifically, the *Providing Urgent Protections (PUMP) for Nursing Mothers Act* struck the relevant provisions in section 7 of the FLSA and moved them to a new section 18D of the FLSA. The bill also added language to: specify which positions and circumstances are exempt from pumping-related requirements; clarify when employers must consider break time as hours worked for compensation purposes; and strengthen processes for ensuring employer compliance.¹⁶

The *PUMP for Nursing Mothers Act* passed as an amendment to a larger appropriations bill for fiscal year 2023, signed into law at

⁷Department of Labor Wage and Hour Division, *supra* note 1.

⁸Congressional Accountability Act of 1995, Pub. L. No. 104–1, Sec. 203(a)(1); 2 U.S.C. § 1313(a)(1).

⁹Office of Congressional Workplace Rights, Fair Labor Standards Act (www.ocwr.gov/employee-rights-legislative-branch/fair-labor-standards-act/) (accessed Aug. 9, 2023); Office of Congressional Workplace Rights, Covered Community (www.ocwr.gov/the-congressional-accountability-act/covered-community/) (accessed Aug. 9, 2023).

¹⁰Congressional Accountability Act of 1995, *supra* note 8.

¹¹Department of Labor Wage and Hour Division, *Reasonable Break Time for Nursing Mothers*, 75 Fed. Reg. 80073 (Dec. 21, 2010) (notice).

¹²Department of Labor Wage and Hour Division, Handy Reference Guide to the Fair Labor Standards Act (www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa) (accessed Aug. 9, 2023).

¹³Center for Worklife Law, Hastings College of Law, University of California, *Exposed: Discrimination against Breastfeeding Workers* (2019) (www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf).

¹⁴*Id.* at 5.

¹⁵Consolidated Appropriations Act, 2023, Pub L. No. 117–328, Division KK.

¹⁶*Id.*; 29 U.S.C. § 218d.

the end of the 117th Congress.¹⁷ The provisions stemmed from versions of a bipartisan bill introduced in both the U.S. Senate and U.S. House of Representatives by Senator Jeff Merkley (D–OR) and Rep. Carolyn Maloney (D–NY), respectively.¹⁸ The Senate Committee on Health, Education, Labor, and Pensions voted unanimously to advance the *PUMP for Nursing Mothers Act*, as amended, in May 2021.¹⁹ The House Education and Labor Committee also advanced a version of the bill in May 2021, and the full U.S. House of Representatives passed the amended bill in July 2021 by a vote of 276–149.²⁰ On December 22, 2022, the Senate voted in favor of the final version of the *PUMP for Nursing Mothers Act* as an amendment to the *Consolidated Appropriations Act, 2023* by a roll call vote on the amendment of 92–5.²¹

Moving the pumping accommodation requirements to section 18D of the FLSA expanded coverage to millions of working mothers, but also resulted in federal employees of the legislative branch losing coverage due to a technical oversight. Currently, section 203 of the CAA applies section 7 of the FLSA to legislative branch employees but does not mention the recently established section 18D. The *PUMP Technical Correction Act* makes a necessary correction to the labor standards section of the CAA by adding “section 18D” to the list of FLSA provisions that apply to legislative branch employees. This bill would provide pumping-related protections to nursing mothers who work in offices associated with Congress, regardless of whether or not their position qualifies for overtime.

III. LEGISLATIVE HISTORY

Senator Jeff Merkley (D–OR) introduced S. 2219, the *PUMP Technical Correction Act*, on July 10, 2023, with original cosponsors Senator Lisa Murkowski (R–AK) and Senator Amy Klobuchar (D–MN). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2219 at a business meeting on July 26, 2023. During the business meeting, S. 2219 was ordered reported favorably by roll call vote of 8 yeas to 1 nay, with Senators Peters, Hassan, Sinema, Rosen, Ossoff, Blumenthal, Lankford, and Scott voting in the affirmative and Senator Paul voting in the negative. Senators Carper, Padilla, Johnson, Romney, Hawley, and Marshall voted yea by proxy, for the record only.

¹⁷ Consolidated Appropriations Act, 2023, *supra* note 15; S. Amdt 6595, 117th Cong. (2022).

¹⁸ PUMP for Nursing Mothers Act, S. 1658, 117th Cong. (2021); PUMP for Nursing Mothers Act, H.R. 3110, 117th Cong. (2021).

¹⁹ Senate Committee on Health, Education, Labor and Pensions, *Executive Session: S. 1675, Maternal Health Quality Improvement Act; S. 1491; S.1662; S. 1301; S. 610; and S. 1658*, 117th Cong. (May 25, 2021); Chair Murray: *HELP Committee Unanimously Passes Bipartisan Bills to Address Maternal Mortality Crisis, Support Mental Health of Health Care Workers, And More* (May 25, 2021).

²⁰ U.S. House of Representatives, Committee on Education and Labor, *Providing Urgent Maternal Protections for Nursing Mothers Act*, H. Rept. 117–102 (July 22, 2021); U.S. House of Representatives, Roll Call Vote on Passage of H.R. 3110 PUMP for Nursing Mothers Act (Oct. 22, 2021) (276 yeas, 149 nays).

²¹ U.S. Senate, Roll Call Vote on Merkley Amendment No. 6595 (Dec. 22, 2022) (92 yeas, 5 nays).

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the “PUMP Technical Correction Act.”

Section 2. Breastfeeding accommodation coverage for certain congressional employees

This section amends section 203(a)(1) of the *Congressional Accountability Act of 1995*, which applies provisions from the *Fair Labor Standards Act of 1938* to employees covered by the CAA. The text adds “section 18D” to the list of FLSA provisions that apply to legislative branch employees. Section 18D of the FLSA establishes pumping accommodation requirements for employers, including to provide a reasonable amount of break time and appropriate facilities to nursing mothers to express milk.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2219, PUMP Technical Correction Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 26, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 2219 would amend the Congressional Accountability Act to expand access to breastfeeding accommodations to employees of the Congress. Specifically, the bill would apply a provision in the Fair Labor Standards Act granting such accommodations to cover Congressional employees.

CBO estimates that the cost of any violations of those protections, together with administrative costs for the legislative branch to implement the bill would not be significant. Any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by Chad Chirico, Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 2—THE CONGRESS

* * * * *

CHAPTER 24—CONGRESSIONAL ACCOUNTABILITY

* * * * *

Subchapter II—Extension of Rights and Protections

* * * * *

PART A—EMPLOYMENT DISCRIMINATION, FAMILY AND MEDICAL LEAVE, FAIR LABOR STANDARDS, EMPLOYEE POLYGRAPH PRO- TECTION, WORKER ADJUSTMENT AND RE- TRAINING, EMPLOYMENT AND REEMPLOY- MENT OF VETERANS, AND INTIMIDATION

* * * * *

SEC. 1313. RIGHTS AND PROTECTIONS UNDER FAIR LABOR STANDARDS ACT OF 1938.

(a) FAIR LABOR STANDARDS.—

(1) IN GENERAL.—The rights and protections established by subsections (a)(1) and (d) of section 6, section 7, [and section 12(c)] *section 12(c), and section 18D* of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1) and (d), 207, 212(c), *218d*) shall apply to covered employees.

* * * * *