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CONTENT

Bill for Introduction into the National Assembly —	PAGE
The Breastfeeding Mothers Bill, 2024	281

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THE BREASTFEEDING MOTHERS BILL, 2024

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1.—Short title.
- 2.—Interpretation.

**PART II— PROVISIONS RELATED TO
BREASTFEEDING MOTHERS**

- 3—Breastfeeding at work.
- 4—Lactation place.
- 5—Breastfeeding time.
- 6—Flexible work arrangement.
- 7—Freedom from discrimination.
- 8— Baby changing facility.
- 9—Right to breastfeed in public.
- 10— General penalty.

**PART III— PROVISIONS ON DELEGATED
POWERS**

- 11— Regulations.

THE BREASTFEEDING MOTHERS BILL, 2024

A Bill for

AN ACT of Parliament to make provision for breastfeeding mothers; to provide for employers’ obligations towards breastfeeding working mothers in the workplace; to provide for baby changing facilities for use by the public; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

1. This Act may be cited as the Breastfeeding Mothers Act, 2024 and shall come into operation upon the expiry of one year from the date of its publication.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“baby” means a child within zero to twenty four months of age;

“breastfeeding” means the act of feeding an infant directly from the mother’s breast;

Cap. 226.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to labour;

“employer” has the meaning assigned to it under the Employment Act;

“expressing milk” means the act of extracting human milk from the breast by hand or by pump into a container;

“flexible working arrangement” means the change of an employer’s terms and conditions of employment that provides ease in assisting the employee’s responsibilities of breastfeeding the baby;

“lactation place” means private, clean, sanitary, and well ventilated rooms or areas in the workplace or public places where breastfeeding mothers can wash up, breastfeed or express their milk comfortably;

“workplace” means work premises, whether private enterprises or government agencies, including their subdivisions;

PART II — PROVISIONS RELATED TO BREASTFEEDING MOTHERS

3. A woman who has a baby may breastfeed or express breast milk at a lactation place in the work place.

Breastfeeding at work.

4. (1) Every employer shall establish a lactation place in the manner prescribed under this Act. Lactation place.

(2) A lactation place shall—

- (a) be shielded from view and be free from intrusion from co-workers;
- (b) be clean, quiet, private and warm;
- (c) not be a bathroom or toilet;
- (d) have a lockable door;
- (e) have a wash basin;
- (f) have a fridge for storing expressed milk;
- (g) have a provision for an electric outlet and lighting;
- (h) have a chair, table and a clean space to store equipment; and
- (i) have any other requirements as may be prescribed by the Cabinet Secretary in regulations.

(3) An employer, who establishes a lactation place for breastfeeding purposes, shall in addition to the requirements provided for under subsection (2)—

- (a) provide a physical environment that is safe for the baby that meets the requirements under the relevant law; and
- (b) provide appropriate programs that develop a baby's cognitive, emotional, social and language abilities.

(4) Any employer who does not comply with this section commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

5. (1) A breastfeeding mother shall only use the lactation place during working hours for breastfeeding or expressing milk.

Breastfeeding time.

(2) An employer shall provide a reasonable break time to a breastfeeding mother for purposes of breastfeeding the baby or expressing breast milk for the baby.

(3) The break time provided for breastfeeding and expressing milk under subsection (2) shall be prescribed by the Cabinet Secretary in regulations.

(4) Where circumstances require a baby to be breastfed for a long period exceeding the time prescribed by regulations, the mother may with the written instructions from a registered medical practitioner, breastfeed the baby for a longer period.

6. (1) A breastfeeding mother may, in the prescribed manner, apply for a flexible work arrangement from the employer for the purposes of breastfeeding or expressing breast milk for the baby.

Flexible work arrangement.

(2) The flexible work arrangement under subsection (1) shall specify—

- (a) the number of hours the employee is to work;
- (b) the type and number of work assignments; and
- (c) the exact location of where the employee is to work.

(3) Where an application is made under subsection (1), the employer shall respond in writing within fourteen days of receipt of such application.

(4) Where the employer rejects the application, the employer shall provide a written statement stating reasons for such rejection.

(5) A flexible working arrangement may be revoked where—

- (a) there is abuse of the terms of the agreement; or
- (b) either party decide to terminate the agreement.

(6) A revocation of grant of a flexible working arrangement shall be in writing.

7. A person shall not discriminate a woman on any ground including pregnancy, childbirth, breastfeeding, or any other maternity related condition, in accessing employment opportunities or benefits.

Freedom from discrimination.

8. (1) A person who owns, leases or rents a public or private building accessible to the public, which has a

Baby changing facility.

minimum occupancy capacity of fifty persons, shall install a baby changing facility.

(2) A facility contemplated under subsection (1) shall—

- (a) be clean and private;
- (b) have a baby changing table;
- (c) have a waste bucket; and
- (d) have signs indicating its location.

(3) A person who is accompanied by a baby in public may use any baby changing facility within reasonable distance for the purposes of cleaning and changing the baby.

9. (1) A woman may breastfeed her child in public.

Right to
breastfeed in
public.

(2) The act of a woman breastfeeding a child in public shall not be construed to amount to an indecent act.

10. (1) A person convicted of an offence under this Act for which no penalty is provided shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

General
penalty.

(2) Where an offence is a continuing offence, the person convicted shall, in addition to the penalty prescribed, be liable to a fine of ten thousand shillings for each day during which the offence continues.

PART III—PROVISIONS ON DELEGATED POWERS

11. (1) The Cabinet Secretary may make regulations for the better carrying into effect the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary, in consultation with the Ministry of Health may, make regulations prescribing—

- (a) the requisite standards and contents of the rooms or buildings contemplated under this Act;
- (b) any other requirements for lactating area;
- (c) break periods for breastfeeding or expressing milk;
- (d) the manner and conduct of promoting the public awareness on breastfeeding mothers at the workplace;

- (e) the standards of safety for the breastfeeding mother and the baby at the work place;
- (f) the conduct and obligations of an employer at the workplace with respect to a breastfeeding mother;
- (g) the manner and conduct of inspection and certification of lactation rooms as mother baby friendly; and
- (h) the forms to be used in application for the flexible work arrangement.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to provide a legal framework on mothers who may wish to breastfeed their children at the work place.

The Bill provides for the right of a mother to breastfeed freely or express milk for her infant. The Bill further requires employers to provide breastfeeding employees with lactation rooms to either breastfeed or express their milk for their children.

Breastfeeding is the first preventive health measure that can be given to a child at birth and it also enhances mother-infant relationship. It is nature's first immunization, enabling the infant to fight potential serious infection and it contains growth factors that enhance the maturation of an infant's organ systems.

Kenya is a signatory to treaties that provide for the right of an infant to exclusive breastfeeding for six months. The government should therefore promote and encourage breastfeeding and provide the specific measures that would present opportunities for working mothers to continue expressing their milk and breastfeeding their infant or young child. Furthermore, the practice of breastfeeding may save the country's valuable foreign exchange that may otherwise be used for milk importation.

Presently, female employees exit the work force or stop breastfeeding in order to secure their job security. No woman should be forced to compromise the health of her child in order to make a living.

Part I (Clauses 1-2) of the Bill provides for preliminary matters including the title of the Bill and the interpretation of terms used in the proposed Act.

Part II (Clauses 3-10) of the Bill provides for the fundamental principles and rights at work for a breastfeeding mother. It provides for the right to freely breast feed or express one's milk for the baby. It also places an obligation on the employers to provide breastfeeding working mothers with rooms to either breastfeed or express their milk. It also provides for the standards of such rooms. The Bill further provides for baby changing tables. This is important because the greater majority (public) finds it unsanitary to change a baby in a public setting such as a restaurant. This provision will also cater for persons who are travelling long distances in the accompaniment of babies, ensuring that in each public restroom a baby changing facility is provided. This part also provides for a general for offences under the Act.

Part III (Clause 11-12) of the Bill provides for the power of the Cabinet Secretary to make regulations for the better carrying out of the proposed Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedom

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

This Bill is a Bill affecting counties and is an ordinary Bill.

Statement on whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds to be provided through the estimates.

Dated the 8th January, 2024.

SABINA W. CHEGE,
Member of Parliament.