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Breastfeeding in the Philippine Workplace: What's Wrong with the Right?

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There are four main differences between the Philippine and American statutes that promote breastfeeding. First, the Philippine law provides that lactation breaks should be compensated while the American law explicitly stated that employers are under no such obligation. Second, the Philippine law provides for "culturally appropriate lactation care and services" whereas majority of American states exempt breastfeeding from public indecency laws. Third, the Philippine law makes a conclusive statement that breastfeeding "enhances mother-infant relationship". The American law wisely left such matter to individual realization. Fourth, the Philippine law puts the right of a mother to breastfeed on equal footing with the right of her child to her breast milk. American law prudently refrained from creating an adversarial contest between the rights of women vis-à-vis the rights of their children. Meantime, the duty to accommodate breastfeeding in the Canadian workplace is much broader in scope than a superficial directive to establish lactation stations. Instead, it includes within its purview the flexibility of allowing extensions of maternity leave and/or adjustment of work schedules and the liberality of bringing infants to the workplace so that they may be breastfed by their working mothers. The misplaced benevolence of paid lactation breaks is nowhere indicated for this will certainly step into the bounds of undue hardship that shields an employer from the duty to accommodate. In not so many words, the nature and extent of accommodation of breastfeeding in the workplace has a significant impact on the ability of every working woman to fulfill her family responsibilities without forfeiting her employment opportunities. Keeping it at bare minimum will readily result in reduced options after childbirth. Unguarded generosity, on the other hand, will not do women any better. The key lies in striking a good balance, an elusive quest that deserves to be given much greater thought.

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INTRODUCTION

The statutory recognition of breastfeeding as a valuable right was first made by the Philippine legislature in 1992 through Republic Act No. 7600, otherwise known as the Rooming-In and Breastfeeding Act of 1992. The Filipino lawmakers, an overwhelming majority of whom are men then and now, started off on the wrong foot as the law proclaimed that "it shall be the mother's right to breastfeed her child who equally has the right to her breastmilk" (Republic Act No. 7600, 1992, §9), and enforced a subtle coercive effect on women contemplating the use of infant formula by requiring them to reduce in writing any decision favoring the latter over breastfeeding. What's wrong with the right blasts off at the very outset, but wait, there is more.

The Right to Breastfeed in the Philippines

The Rooming-In and Breastfeeding Act of 1992 aimed its myopic eye on health institutions, both public and private, that render care and assistance during childbirth. Rooming-in was declared a national policy to encourage, protect, and support the practice of breastfeeding because of its various stated advantages ranging from promotion of infant health to preservation of national resources. More specifically, the law recognized that breast milk is "nature's first immunization, enabling the infant to fight potential serious infection" and that is the "best food" for the infant because it contains "essential nutrients completely suitable for the infant's needs" and "growth factors that enhance the maturation of an infant's organ systems"(Republic Act 7600, 1992, §2). The law also stated that the practice of breastfeeding could save the country valuable foreign exchange that may otherwise be used for milk importation. To encourage compliance, private health institutions were allowed up to twice the amount of expenses incurred in providing the necessary equipment, facilities, and supplies for breast milk collection, storage, and utilization as deductible expenses for income tax purposes while public health institutions were guaranteed additional budgetary appropriations equivalent to the savings that they may derive from adopting the rooming-in policy and promoting breastfeeding practices.

At best, the law provided a superficial safeguard, rendering valuable assistance only within the limited confines of a health institution, obviously spanning barely the first few days after childbirth, leaving the mothers and newborns it aimed to care for practically on their own immediately thereafter.

The promotion of breastfeeding reached greater heights in 2009 when Republic Act No. 10028, otherwise known as the Expanded Breastfeeding Promotion Act, was passed. Under the new law, the concept of protection for working women through the provision of "safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation" (Republic Act No. 10028, 2009, §2) came to fore, consistent with Section 14, Art. XIII of the 1987 Constitution. The law also purports to be consistent with international treaties and conventions to which the Philippines had been a signatory, specifically enumerating the Convention on the Elimination of Discrimination Against Women, the Beijing Platform for Action and the Convention on the Rights of the Child. Hence, the scope of the law was expanded to include all public and private enterprises, which were required to establish lactation stations and provide their employees with paid lactation breaks. The said lactation stations must be equipped with necessary facilities, such as a lavatory for hand-washing, refrigeration or appropriate cooling facilities for storing expressed breast milk, electrical outlets for breast pumps, a small table, and comfortable seats. The law also stressed that these lactation

stations should not be located within toilets for obvious sanitary reasons. Complementarily, nursing employees are granted lactation breaks with full pay up to a total of 40 minutes for every eight-hour working period for the purpose of expressing breast milk.

The law, however, allowed a means of securing exemption, a woeful display of lack of sincerity and fortitude. Establishments may be relieved from the obligation of providing lactation stations for a renewable period of two years if able to prove that the same are not feasible or necessary due to the peculiar circumstances of the workplace or public place taking into consideration, among others, number of women employees, physical size of the establishment, and the average number of women who visit. Applications for exemption and extensions thereof may be granted by the Secretary of Labor for the private sector, or by the Chairperson of the Civil Service Commission for the public sector. A phony attempt to compensate appears in the mandate for comprehensive national public education and awareness program to (a) protect, promote, and support breastfeeding in the Philippines as the normal, natural, and preferred method of feeding infants and young children; (b) guarantee the rightful place of breastfeeding in society as a time honored tradition and nurturing value as well as a national health policy that must be enforced; (c)provide information about the benefits and superiority of breastfeeding and the high risks and costs of bottle-feeding, (d) generate awareness on, and full enforcement of, national and international laws, codes, policies, and programs on the promotion and protection of safe and adequate nutrition for infants and young children by promoting and protecting breastfeeding and regulating the marketing of certain foods and feeding bottles, teats, and pacifiers; and (e) instill recognition and support and ensure access to comprehensive, current, and culturally appropriate lactation care and services for all women, children and families, including support for breastfeeding mothers in the work force.

Exploring the American Contrast

Not too long after the passage of the Expanded Breastfeeding Promotion Act in the Philippines in 2009, the Patient Protection and Affordable Care Act was signed into law in the United States in 2010. The latter statute required employers to provide a similar suitable place for their nursing employees, shielded from view and free from intrusion from their coworkers and from the public. These nursing employees are also allowed to take reasonable breaks from work to express breast milk whenever necessary within a period of one year from the birth of a child.

Like its Philippine counterpart, the American statute suffers from a weak point. An employer with less than 50 employees is exempted from providing this facility if it will impose undue hardship by causing significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of its business. Moreover, since this specific provision is actually an amendment to Section 7 of the Fair Labor Standards Act of 1938, the guidelines in the latter statute insofar as excluded (e.g., agricultural workers) and exempted (e.g., employees exercising supervisorial, professional, and administrative job duties) employees are concerned likewise find application, thereby further limiting the coverage of the benefit.

As of 2011, almost all American states, including the District of Columbia, have come up with their own state laws supporting the right of women to breastfeed in any public or private location. Moreover, 28 states exempted breastfeeding from public indecency laws and 24 states have laws supportive of breastfeeding in the workplace that echo the requirements of the federal law for the creation of sanitary locations where nursing employees may express breast milk in private.

Quite notably, Maryland exempts from sales and use tax tangible personal properties manufactured for the purpose of initiating, supporting, or sustaining breastfeeding. California, Illinois, Minnesota, Missouri, and Vermont implemented breastfeeding awareness education campaigns and New York created a Breastfeeding Mothers' Bill of Rights and required the same to be posted in maternal health care facilities. Finally, California, New York, and Texas have laws regulating the procurement, processing, distribution, and use of human milk by donor milk banks.

The most interesting fact, however, is that only one American state provides for paid breastfeeding breaks for nursing employees – Indiana.

There are four main differences between the Philippine and American statutes that promote breastfeeding. First, the Philippine law provides that lactation breaks should be compensated while the American law explicitly stated that employers are under no such obligation. Second, the Philippine law provides for "culturally appropriate lactation care and services" (Republic Act No. 10028, 2009, §12) whereas majority of American states exempt breastfeeding from public indecency laws. Third, the Philippine law makes a conclusive statement that breastfeeding "enhances mother-infant relationship". The American law wisely left such matter to individual realization. Fourth, the Philippine law puts the right of a mother to breastfeed on equal footing with the right of her child to her breast milk. American law prudently refrained from creating an adversarial contest between the rights of women vis-à-vis the rights of their children.

Did We Go Overboard?

There is absolutely no contest that the practice of breastfeeding must be promoted and protected for the greater good of society. However, did we go overboard when we provided for paid lactation breaks? On the other hand, did we sell our women short by insisting only on what might be considered "culturally appropriate lactation care and services"? Did we underestimate our family values by making a careless statutory policy that breastfeeding "enhances mother-infant relationship"? Did we create a needless competition between the liberty rights of mothers and the nutrition rights of their children?

Accommodating the need of a nursing employee to take regular breaks to express breastmilk is appropriate and desirable but giving her full pay while clearly not engaged in her usual duties is undoubtedly the very kind of special treatment that paves the way to injurious animosity not only between employer and employee but also among co-employees.

Forty minutes of paid lactation break for every eight-hour working day translates to approximately 22 days of paid leave each year. This compulsory generosity is certainly no joke for small and medium-sized business enterprises. On this basis alone, employers already have a good reason to discriminate against the hiring of female employees of child-bearing age. It would have been more equitable if the burden were not imposed on employers and lactation breaks were instead compensated through either the Social Security System or the Government Service Insurance System. Responsibility should be shared by society in general, which is the ultimate beneficiary of a healthier populace, a manifest truth that the law seems to have overlooked.

Along the same vein, resentment might also arise among the nursing employee's co-workers because of possible perception of unfair special treatment. This can be especially true for women who do not breastfeed, whether by choice or by necessity. It is a difficult proposition to advance that a single father, an adoptive mother, or a biological mother who is suffering from a medical condition that precludes her from breastfeeding, might need to work overtime to earn extra income to purchase expensive infant

formula while a nursing mother protected under this law receives her regular income even when she is not performing her usual occupational duties. In the end, the privilege can result in subtle discrimination against a nursing employee because of the perception that her family duties are getting in the way of her job performance, and, she even gets paid for it.

Finally, the statutory grant of paid lactation breaks might be hovering around excessive government endorsement of breastfeeding to the point of casting stigma on women who cannot or do not want to breastfeed. It is not within the province of any legislature to make a conclusive statement that breastfeeding enhances mother-infant relationship, as if the act is the only possible means towards this desirable end and anyone who dares to digress is depraved, or that the act cannot be performed for reasons other than maternal altruism, belying the fact that wet-nursing as a means of livelihood still thrive in many rural areas.

There is a very simple, uncomplicated solution to the overstated and overstressed issue of "bonding"—holding the baby close to its mother's bosom while bottle-feeding. Of course, there can also be a more intricate approach using a nipple shield coupled with a feeding tube attached to a syringe that contains infant formula (often resorted to by mothers with physical conditions that limit their feeding options such as sore or cracked nipples that result in painful breastfeeding or some illness requiring special medication that may be harmful if passed on to the child through breast milk). Whichever method a mother opts to use can no doubt contribute to the proverbial tie between her and her child because the desire to nurture is not necessarily dependent on the source of the sustenance—whether expressed from her own breast, fruit of her nourishing flesh, or purchased from the grocery store, fruit of the sweat of her brow. That we often underestimate the depth of affection that fuels the latter is a grave error.

Likewise often taken for granted is the fact that the precious bond between a child and its parents, and this includes both the mother and the father, can be enhanced in each and every shared family activity all throughout the child's growing up years. Simply put, there is no limit to what a mother or a father can do for her or his child and there is no need for the government to apparently stress one over the other. We should also keep in mind the case of adoptive families where even non-biological parents can prove to be capable of genuinely caring for a total stranger thereby attesting to the fact that bonds of love need not always be based on bonds of flesh and blood.

The bottom line is that breastfeeding should purely be a woman's choice that must be accorded full respect regardless of whether her decision is to engage or not to engage in such activity, and regardless of her reason, or even the lack of it, behind either decision. Encouragement is appropriate, in view of the uncontested evidence that breast milk contains colostrum that strengthens a child's immune system but it must not be conveniently forgotten that feeding an infant with commercially available formula does not, by itself, automatically result in inferior health condition, hence, the government should not rush into condemnation of bottle-feeding's "high risks and costs". We should in fact be grateful to the reality that commercial formula has nourished millions of children the world over, across decades, beyond races. If it were solely to be blamed for all the ailments that plague the world as we know, perhaps the human race should now be at the verge of dreadful extinction.

Above all things, breastfeeding is an imposition upon a woman's body, a servitude that cannot be required against her consent. Emotional manipulation should not be used to draw attention to the child's right to nutrition while equating evil with the mother's exercise of choice. While it may be a natural function, it is far from being an entirely natural instinct because for the most part, effective breastfeeding is a skill

that must be learned. For one, a considerable amount of practice is usually needed before new mothers become adept at proper positioning and latching-on techniques. Moreover, maternal nutrition and hygiene, correct use of equipment and accessories such as pumps and caps, as well as safe and sanitary storage of expressed milk are important things that certainly need to be learned in a scientific manner. Taking all these into consideration, some, but definitely not all women, may opt to breastfeed their infant, hence, it is enough that we provide the opportunity to express and store breast milk for those who have the capacity and the desire to do the same. However, we should not go further towards discrediting, whether directly or indirectly, those who cannot or do not. After all, basic childcare functions, including feeding, are not exclusive functions of mothers. Breast milk can be expressed by the mother, safely stored, and later fed to an infant by the father. Interestingly, in more advanced countries, breast milk can already be purchased at government-regulated milk banks and fed to an infant by a caregiver who is not necessarily a parent.

The unmistakable error in the present state of Philippine law on breastfeeding is the glaring reinforcement of the stereotypical view that every good woman must be a nurturing mother. This very same view had always been the culprit behind female oppression.

Looking back, history taught us that this had been the most convenient excuse for protective labor legislation that limited women's opportunities outside the home. Laws that impose restrictions on women's working hours and conditions were deemed necessary because their time and effort should be devoted primarily to the care of the family. It was not too long ago when we prohibited women from working at night, at underground mines, or at factory jobs that are perceived to be too taxing for their fragile bodies, which must be protected from exhaustion and preserved for the divine design of procreation. Today, we still dare to ask why most of our engineers, doctors, and soldiers are men, while our teachers, nurses, and secretaries are usually women, as if we do not know the reason behind occupational segregation and the resulting gender pay gap.

Looking forward, contemporary trends indicate that we have not taken away women's domestic caregiving duty even as we have opened the doors to the world thereby lodging double burden on their shoulders. Today's women perform a "first shift" in the workplace, exerting as much effort as their male counterparts. Thereafter, however, women are still expected to perform a "second shift" at home, while their husbands share in household and childcare duties sparingly, if at all (Hochschild, 1989).

A More Equitable Approach

It is submitted that the better approach to encourage breastfeeding is to guaranty the right of a nursing mother to feed her child in any public or private place where they have the right to be present. To this day, many Filipinos do not approve of breastfeeding in public because the act still incites malicious thoughts and is often labeled as indecent exposure, if not scandalous conduct. At the very least, one should use a nursing cover, a fancy-looking over-sized bib that rakes in unprecedented sales from women who fall prey to the senseless campaign for discreet and fashionable breastfeeding, or a handy baby blanket to the plain and simple, to shield the breast from public view, and, naturally, cover the nursing child's face as well, at the risk of asphyxiation in the midst of the hot weather that mark most of the year in our tropical country. It does not help at all that under Article 201 of the Revised Penal Code (1930), the crime of immoral doctrines, obscene publications and exhibitions, and indecent shows, is punishable with *prision mayor* (imprisonment ranging from six years and one day to 12 years) or a fine ranging

from 6,000 to 12,000 pesos, or both, upon the discretion of the appropriate court. The article is so encompassing that it can easily interpret breast exposure as an act of indecency contrary to good customs and punishable when exhibited in any public place thereby giving the sanctimonious among us the green light to censure mothers nursing in the open.

The current phraseology of the law that lactation care and services shall be "culturally appropriate" further poses a formidable challenge because it implies misplaced concepts of modesty and chastity. It works as a subtle reminder of the tragic era of Maria Clara when women should be appropriately dressed to hide their charms lest they tempt the men to commit sin. For centuries, the Spanish clergy preached about the direct connection between sin and sex and emphasized the restriction of female sexual behavior as the means to curb it (Eviota, 1992). Sadly, to this very day, we still find ourselves influenced by the flawed dichotomy of the good woman versus the bad woman. The former is pure and virtuous, thus, worthy of respect and emulation. Anything less falls within the latter category and must be penalized. We are stuck with the archaic thinking that chaste women deserve to be revered on a pedestal while unchaste women have only themselves to blame when subjected to abuse as in the case of rape, pornography, and prostitution, effectively hindering our advancement towards genuine respect for women's rights.

Lest we forget, women's rights are human rights. On this score, there is a lot to learn from various provinces in Canada.

Valuable Lessons from Canada

To begin with, in the province of Alberta, it is a violation of the Human Rights Code to deny women the decision to breastfeed in public or at work (Alberta Human Rights Commission, 2010).

In British Columbia, nursing mothers enjoy a similar right to breastfeed their children in public areas. The guideline promulgated by the Ministry of Attorney General (2008) provides that it is discriminatory to ask nursing mothers to cover up or to breastfeed somewhere else.

This is paralleled in New Brunswick where the guideline on pregnancy discrimination promulgated by the Human Rights Commission provides that breastfeeding women have the right to breastfeed in public and it is discriminatory to ask a nursing mother to stop, to move to another location, or to be more discreet, without reasonable cause (New Brunswick Human Rights Commission, 2011).

In Manitoba, it is also contrary to the Human Rights Code to discriminate, without reasonable cause, against a nursing mother because she is breastfeeding her child in a public area (Manitoba Human Rights Commission, 2010). While service providers may provide a quiet, comfortable area for the use of nursing mothers, nursing mothers who are told to move to another place without reasonable cause may file a human rights complaint.

Not to be outdone, in Ontario, the Human Rights Code guarantees that women should not be disadvantaged in services, accommodation, or employment because they have chosen to breastfeed their children nor should they be harassed or subjected to negative treatment because they have chosen not to (Ontario Human Rights Commission, 2008). Breastfeeding is recognized as a health issue and not one of public decency. Women should have the choice to feed their babies in the way that they feel is most dignified, comfortable, and healthy.

The most recent addition to the foregoing is the breastfeeding policy issued by the Human Rights Commission in Nova Scotia. Women have the right to breastfeed a child in public areas, including restaurants, retail stores and shopping centers, theatres and so forth. Women should not be prevented from nursing a child in a public

area, nor asked to move to another area that is more "discreet" (Nova Scotia Human Rights Commission, 2011).

With this as a backdrop, one cannot help but ask whether our very own Commission on Human Rights might be poised to make a similar stand on breastfeeding. Created under the 1987 Constitution for the primary purpose of investigating "all forms of human rights violations involving civil and political rights", its mandate was expanded in 2009 when the legislature passed Republic Act No. 9710, otherwise known as the Magna Carta of Women, constituting the Commission as a Gender and Development Ombud and giving it a more specific responsibility of "formulating and implementing programs and activities related to the promotion and protection of the human rights of women, including the investigations of complaints of discrimination and violations of their rights" (Republic Act No. 9710, 2009, §39). Beyond this, however, the Commission has not dared to tread anywhere near the issue of breastfeeding. Regrettably, not much can be expected from a thoughtless Commission on Human Rights that characterizes abortion as an "unspeakable crime", homosexuality as a "grave depravity," and divorce as a "plague on society", truly a disgrace to genuine feminism.

It is interesting to note at this juncture that unlike the Philippines and the United States, there is no national legislation in Canada that explicitly guarantees the right of working women to breastfeeding breaks whether paid or unpaid. While it is not accurate to say that one is not necessary at all, it practically appears to be so because the right of Canadian women to breastfeed their infant is amply protected in any and all public and private venues. This springs from the right to equal treatment without discrimination on the basis of sex under Section 15 of the Canadian Charter of Rights and Freedoms (1982) which is broadly interpreted to include the right to equal treatment without discrimination because a woman is experiencing the process of pregnancy, a situation that spans a relatively long period of time from the moment of conception up to the period immediately following childbirth when breastfeeding ensues.

A case in point was that of Michelle Poirier (Poirier v. British Columbia, 1997), a speech writer employed by the Ministry of Municipal Affairs, Recreation and Housing in British Columbia. After giving birth in August 1990, Poirier regularly brought her child to her workplace for one and one-half hours each day between the hours of 12:30 p.m. and 2:00 p.m., for the purpose of being breastfed. Such coincided with her lunch break during which she ate at her desk and breastfed her child while she worked. If the child fell asleep during her feeding, she was put down in an infant bed. Otherwise, she played in her stroller or on a blanket on the floor. Prior to bringing her daughter into the workplace for the purpose of breastfeeding, Poirier consulted her supervisor as well as her colleagues who worked in close geographical proximity to her workstation, a three-sided cubicle arrangement with an open space on one side fronting the hallway, as the Ministry had no formal policy regarding children in the workplace. All were in agreement that it would not create any difficulties if Poirier brought her child into the workplace over the lunch period for the purpose of breastfeeding.

In March 1991, the Ministry held a series of noon hour seminars during International Women's Week. Poirier attended two of these seminars and breastfed her child during the said sessions. Acting on several complaints regarding Poirier's breastfeeding in the presence of both male and female seminar participants, the Ministry prohibited Poirier from bringing her child to a subsequent noon hour event. Her supervisor likewise asked Poirier not to breastfeed her child in her workstation for a period of about two weeks in the hope that the controversy in the Ministry over her breastfeeding in the workplace

would somehow cool down. Sensing that the message being sent to her was that her child was no longer welcome, Poirier never again brought her child to work.

At the time when Poirier lodged the pertinent complaint, the Human Rights Code in British Columbia was silent on whether it is prohibited to discriminate against a woman because she is breastfeeding. Moreover, there were no reported cases yet in Canada that can be used as a precedent in deciding the issue. Nonetheless, the Human Rights Tribunal ruled that analogy could be drawn to cases related to pregnancy, citing the landmark decision of the Canadian Supreme Court in the case of Brooks v. Canada Safeway (1989):

> Combining paid work with motherhood and accommodating the childbearing needs of working women are ever-increasing imperatives. That those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged seems to bespeak the obvious… it is unfair to impose all of the costs of pregnancy upon one-half of the population. It is difficult to conceive that distinctions or discriminations based upon pregnancy could ever be regarded as other than discrimination based upon sex… The capacity for pregnancy is an immutable characteristic, or incident of gender and a central distinguishing feature between men and women. (p. 1221)

The same reasoning was applied to breastfeeding. Since the capacity to breastfeed is unique to the female gender, the Tribunal ruled that discrimination on the basis that a woman is breastfeeding is a form of sex discrimination (Poirier v. British Columbia, 1997).

What is most remarkable is that the Canadian Charter of Rights and Freedoms (1982) did not start and end with a mere guaranty of non-discrimination. Section 28 of the Charter further provides that laws, programs, or activities for the amelioration of conditions of disadvantaged individuals or groups are not precluded. Hence, when the exercise of the right is situated in the context of the workplace where women had been, since time immemorial, at the receiving end of discriminatory treatment, the policy is one of accommodation short of undue hardship, a form of affirmative action that is integral to the equality guaranty and not an exemption to it (L'Heureux-Dubé, 2002).

There are at least two cases that are illustrative of this point.

Hayley Cole (Cole v. Bell Canada, 2007) was an employee of Bell Canada who went on maternity leave in 2000 to give birth to her second child. Unfortunately, Cole's son was born with a congenital heart defect for which he had to undergo angioplasty when he was only four months old. Cole was told by her son's physicians that he would likely require surgery to repair the heart defect as he got older. Given his condition, they recommended that she breastfeed him for as long as possible in order to strengthen his immune system.

Cole followed the advice of her son's physicians and breastfed him regularly for which purpose she asked for authorization to take an unpaid one hour off towards the end of each day in order to nurse her son. When the request was not granted, Cole asked that she at least be given a regular work shift that would end no later than 4:00PM to enable her to go home and breastfeed at around the same time every day. The latter was granted on the condition that Cole present sufficient medical documentation that will support her work restriction. Cole obliged by presenting a doctor's note stating that she needs to leave work at 4:00PM everyday for at least 12 months to prevent recurrent mastitis.

Just as the 12-month period was about to end, Bell Canada started implementing Saturday shifts ending at 5:30PM. Cole managed to avoid the first few instances of Saturday work by using her sick leave benefits or by exchanging shifts with a co-worker. Cole sought further accommodation in

working hours in order to continue breastfeeding her son but her medical reason was subjected to exacting scrutiny, mastitis being a condition that most frequently occurs during the first six months after childbirth. As Cole's son was already over two years old, her medical reason was eventually rejected forcing her to cease from breastfeeding.

The Canadian Human Rights Tribunal ruled that Cole was subjected to adverse differential treatment as her dilemma was one that a male colleague would not have had to face:

> In their working lives, women face particular challenges and obstacles that men do not. A woman who opts to breastfeed her baby takes on a child-rearing responsibility, which no man will truly ever face. In order for a working mother to bestow on her child the benefits that nursing can provide, she may require a degree of accommodation. Otherwise, she may end up facing a difficult choice that a man will never have to address. On the one hand, stop nursing your child in order to continue working and make a living for yourself and your family. On the other hand, abandon your job to ensure that your child will be breastfed. This dilemma is unique to women employees and results in their being differentiated adversely, in the course of their employment. It has the potential to create precisely the type of obstacle that would deny women an "opportunity equal to others, to make for themselves the lives they are able and wish to have". (Cole v. Bell Canada, 2007, par. 61)

The Tribunal further ruled that it would not have caused Bell Canada undue hardship to allow Cole to leave work an hour earlier each day to breastfeed her son considering that the time requested was a lean hour and she will not be paid for the time off. There was no evidence indicating that Bell ever tried to accommodate Cole's request as a mother, but rather as a disabled or ill person, a mischaracterization that forced her to repeatedly return to her physician to obtain one medical report after another. The Tribunal awarded compensatory damages and ordered payment of lost income corresponding to the days that Cole spent at her physician's office to obtain the required medical reports (Cole v. Bell Canada, 2007).

A similar case happened in Alberta, albeit decided by a Labour Arbitrator and not the provincial Human Rights Tribunal.

Doris DeGagne was a recreational therapist at Carewest Cross Bow, a continuing care center in Calgary, Alberta (Carewest v. Health Sciences Association of Alberta, 2001). DeGagne sought an extension of her maternity leave to allow her to breastfeed her daughter who, at six months, was completely dependent on breastfeeding for nourishment as she refused bottles and was temporarily off solid foods due to ear problems. Carewest refused on the ground that there was no indication of ill health for either mother or child and despite the fact that another employee was willing to work full time to cover for DeGagne's absence. At best, Carewest would only allow DeGagne to pump breast milk during her breaks. When DeGagne failed to return to work at the end of her maternity leave, Carewest terminated her employment.

The Labour Arbitrator found that Carewest failed to discharge the burden of proving that DeGagne has been accommodated to the point of undue hardship and ordered reinstatement and payment of backwages and benefits. The Arbitrator concluded that breastfeeding is a choice only a woman can make at birth but, once made, benefits not only her but more so her child as well as society as a whole. He characterized breastfeeding as intimately connected to childbirth as pregnancy is to childbirth and thus should be safeguarded in the same way. Hence, discrimination on the basis that a woman is breastfeeding is a form of sex discrimination, no less. (Carewest v. Health Sciences Association of Alberta, 2001).

It is evident from the foregoing cases that the duty to accommodate breastfeeding in the

Canadian workplace is much broader in scope than a superficial directive to establish lactation stations. Instead, it includes within its purview the flexibility of allowing extensions of maternity leave and/or adjustment of work schedules and the liberality of bringing infants to the workplace so that they may be breastfed by their working mothers. However, the misplaced benevolence of paid lactation breaks is nowhere indicated for this will certainly step into the bounds of undue hardship that shields an employer from the duty to accommodate.

CONCLUSION

In not so many words, the nature and extent of accommodation of breastfeeding in the workplace has a significant impact on the ability of every working woman to fulfill her family responsibilities without forfeiting her employment opportunities. Keeping it at bare minimum will readily result in reduced options after childbirth. Unguarded generosity, on the other hand, will not do women any better. The key lies in striking a good balance, an elusive quest that deserves to be given much greater thought.

The Convention on the Elimination of All Forms of Discrimination Against Women (1980) contains a very mild and modest directive on lactation services:

> …States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation…(Article 12.2)

The Convention on the Rights of the Child (1989), in recognizing the right of every child to the enjoyment of the highest attainable standard of health, provides a similarly clement mandate for States Parties to take appropriate measures:

> …to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents……(Article 24.2.e)

Both agreements provide a clear and sharp testament to such need for balance.

The Beijing Platform for Action (1995), completely silent on breastfeeding, aptly paraphrased the Convention on the Elimination of All Forms of Discrimination Against Women when it said:

> The upbringing of children requires shared responsibility of parents, women and men and society as a whole. Maternity, motherhood, parenting and the role of women in procreation must not be a basis for discrimination nor restrict the full participation of women in society. (par. 29)

So should it be in the Philippines.

REFERENCES

Alberta Human Rights Commission. (2010). *Rights and responsibilities related to pregnancy, childbirth and adoption.* Retrieved from http://www.albertahumanrights.ab.ca/Bull_pregnancy.pdf

Beijing platform for action. (1995). Beijing: United Nations Fourth World Conference on Women.

British Columbia Ministry of Attorney General. (2008). *Human rights in British Columbia.* Retrieved from http://www.ag.gov.bc.ca/human-rights-protection/pdfs/Employer Info.pdf

Brooks v. Canada Safeway, 1 S.C.R. 1219 (1989)

Canadian Charter of Rights and Freedoms (1982).

Carewest v. Health Sciences Association of Alberta, 93 L.A.C. 4th 129 (Alta. Arb. Bd.) (Moreau) (2001)

Cole v. Bell Canada, C.H.R.T. 7 (2007)

Constitution of the Republic of the Philippines (1987).

Convention on the elimination of all forms of discrimination against women. (1980). Copenhagen: United Nations General Assembly.

Convention on the rights of the child. (1989). New York: United Nations General Assembly.

Eviota, E. U. (1992). *The political economy of gender: Women and the sexual division of labour in the Philippines*. New Jersey: Zed Books.

Hochschild, A. (1989). *The second shift: Working parents and the revolution at home*. New York: Viking Penguin.

L'Heureux-Dubé, C. (2002). It takes a vision: The constitutionalization of equality in Canada. *Yale Journal of Law & Feminism, 14*, 363-375.

Manitoba Human Rights Commission. (2010). *Guidelines on protections from discrimination on the basis of pregnancy and marital and/or family status in employment, housing and services.* Retrieved from http://manitobahumanrights.ca/publications/guidelines/parents_and_pregnant_women.html

National Conference of State Legislatures. (2011). *Breastfeeding laws.* Retrieved from http://www. ncsl.org/issues-research/health/breastfeeding-state-laws.aspx

New Brunswick Human Rights Commission. (2011). *Guideline on pregnancy discrimination.* Retrieved from http://www.gnb.ca/hrc-cdp/e/g/Guideline-Pregnancy-Discrimination-New-Brunswick.pdf

Nova Scotia Human Rights Commission. (2011). *Breastfeeding policy.* Retrieved from http://humanrights.gov.ns.ca/sites/default/files/files/breastfeeding%20revised%20policy (1).pdf

Ontario Human Rights Commission. (2008). *Policy on discrimination because of pregnancy and breastfeeding.* Retrieved from http://www.ohrc.on.ca/sites/default/ files/ attachments/Policy_ on_discrimination_because_of_pregnancy_and_breastfeeding.pdf

Patient Protection and Affordable Care Act (2010).

Philippine Commission on Human Rights. (1999). *Position paper on legalization of abortion*. Retrieved from http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/position%20papers/abthr_pos009-010.htm#abortion

Philippine Commission on Human Rights. (2000). *Position paper on lesbian and gay rights.* Retrieved from http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/position%20papers/abthr_pos005-006.htm#lesbian

Philippine Commission on Human Rights. (2001). *Position paper on legalization of divorce*. Retrieved from http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/position%20papers/abthr_pos001-002.htm#legaldiv1

Poirier v. British Columbia (Ministry of Municipal Affairs, Recreation and Housing), 29 C.H.R.R. D/87 (BCHRT) (1997)

Republic Act No. 3815, Revised Penal Code (1930)

Republic Act No. 7600 (1992). Rooming-In and Breastfeeding Act.

Republic Act No. 9710 (2009). Magna Carta of Women.

Republic Act No. 10028 (2009). Expanded Breastfeeding Promotion Act.