

No. 1-22-1092

**IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT**

LARA STACHLER,)	
Appellant,)	On appeal from a final order of the
)	Circuit Court of Cook County
v.)	
)	Cir. Ct. Case No. 2021 L 10663
BOARD OF EDUCATION)	
OF THE CITY OF CHICAGO)	Trial Judge Daniel J. Kubasiak
Appellee.)	

**BRIEF OF *AMICI CURIAE*
AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, CENTER FOR
WORKLIFE LAW, *ET AL.*, IN SUPPORT OF THE APPELLANT**

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INTEREST OF *AMICI CURIAE*

Amici are organizations committed to achieving equal rights for women in employment, supporting pregnant and breastfeeding workers, and protecting against pregnancy and lactation discrimination in the workplace. *Amici* have a vital interest in ensuring the Illinois Human Rights Act and Nursing Mothers in the Workplace Act are correctly interpreted to fulfill the promise of equal employment opportunity for individuals affected by pregnancy, childbirth, and related conditions.

The American Civil Liberties Union of Illinois (“ACLU of Illinois”) is a statewide, nonprofit, nonpartisan organization with more than 60,000 members dedicated to the protection and defense of the civil rights and civil liberties of all Illinoisans. The ACLU of Illinois has a long-standing interest in protecting the rights of and ensuring fair treatment for pregnant and lactating parents in the workplace. In 2014, the ACLU of Illinois was one of the proponents of the bill in the General Assembly that ultimately became Public Act 098-1050, adding the requirement of reasonable accommodations for pregnancy, childbirth, and related conditions to the Illinois Human Rights Act.

The Center for WorkLife Law at the University of California College of the Law, San Francisco is a national research and advocacy organization widely recognized as a thought leader on issues of work-family conflict, work accommodations for pregnant and breastfeeding employees, and family responsibilities discrimination. WorkLife Law collaborates with employers, employees, and lawyers to ensure equal workplace treatment for pregnant women, nursing mothers, and other caregivers nationwide, including in Illinois.

The Chicago Region Breastfeeding Task Force (CRBTF) supports breastfeeding and human milk as the norm for infant and young child feeding. CRBTF networks with

local hospitals, community partners, and families to promote breastfeeding as the preferred form of nutrition for infants. CRBTF advocates for better breastfeeding services and policies statewide and nationally and helps to positively influence legislators, media, and consumers. CRBTF strongly supports the rights of lactating workers to access break time, space, and other accommodations that facilitate ongoing lactation and provision of mother's milk for optimal health and well-being of both mother and child, as the longer a child receives breastmilk, the more health benefits accrue for both.

NELA/Illinois is the Illinois affiliate of the National Employment Lawyers Association ("NELA"), the largest organization of lawyers who primarily represent employees in labor, employment, and civil rights disputes in the country. With approximately sixty-nine state and local affiliates and a membership of over 4,000 attorneys, NELA is the nation's leading advocate for employee rights. Founded in 1986, NELA/Illinois is dedicated to advocating for employee rights and advocating for justice in the workplace for Illinoisans. NELA/Illinois has a current membership of approximately 174 individuals—attorneys primarily from Illinois and the surrounding states who solely or primarily represent individuals in employment-related matters. NELA/Illinois provides education programs, technical support, and networking benefits to its membership, which also includes law students and ally members.

The Shriver Center on Poverty Law (Shriver Center) has a vision of a nation free from poverty with justice, equity, and opportunity for all. The Shriver Center provides national leadership to promote justice and improve the lives and opportunities of people with low income, by advancing laws and policies, through litigation and legislative and administrative advocacy. The Shriver Center is committed to economic, racial, and gender

justice, which includes advancing laws and policies that improve opportunities for pregnant and breastfeeding workers, and protect against pregnancy and lactation discrimination in the workplace.

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, Women Employed has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed supports workplace protections for pregnant and nursing workers and was a supporter of Public Act 098-1050, which provided pregnant workers with reasonable accommodations in their workplaces.

BACKGROUND

Lara Stachler has been a speech-language pathologist in the Chicago Public Schools ("CPS") school district for over five years. A001 ¶ 4. In March 2020, the Board of Education of the City of Chicago ("Board") suspended in-person CPS classes in response to the COVID-19 pandemic. A002 ¶ 7. Five months later, Stachler gave birth to a child, and she started the 2020-2021 school year on maternity leave. A003 ¶ 12. Stachler breastfed her child. A004 ¶ 13.

By the time Stachler's maternity leave ended, CPS elementary schools had recently returned to in-person instruction. *Id.* ¶¶ 15-16. CPS assigned Stachler to a schedule working at two elementary schools and one high school. A005 ¶ 23. In anticipation of returning to in-person work, Stachler first requested an accommodation seeking to telework from home on days when she lacked confirmation of access to a private space for

expressing breast milk at her assigned school. A006 ¶ 25.¹ That request tracked the Board’s policy permitting other employees to telework, including those unable to work in person for other medical reasons and those unable to receive a COVID-19 vaccination for medical or religious reasons. A002 ¶ 7, A018 ¶ 80. After a couple of weeks back at work, Stachler requested flexible hours to meet her need to express breast milk several times a day, and to telework on days when she was assigned to a school where her students would be receiving remote instruction. A006-07 ¶¶ 29-30. By her fifth week back at work, Stachler concluded that working specific hours in person each day was impossible to reconcile with her need for breaks to express breast milk. A008 ¶ 33. Stachler then requested an accommodation of fully remote work. *Id.*

The Board never responded to Stachler’s request for flexible work hours and rejected her telework requests. A008 ¶ 34. At no point did the Board request medical documentation to assess Stachler’s need for the requested accommodations. Nor did it invite discussion to understand her lactation-related needs or to identify ways to accommodate them. A008 ¶¶ 34-35, A009-10 ¶ 41. Instead, Stachler’s supervisor insisted the Board had already offered adequate accommodations and demanded she report in person every day with no exceptions. A009-10 ¶ 41, A010 ¶ 46.

Although Stachler tried to comply, she ultimately realized it would be impossible to meet her lactation-related needs without any of her requested accommodations at work. A008 ¶ 36, A010-11 ¶ 47. Stachler thus took a leave of absence beginning on May 10, 2021. A010-11 ¶ 47. After exhausting her administrative remedies, Stachler filed a

¹The space provided for lactation at the assigned high school was on a different floor from her work area. A006 ¶ 27.

complaint against the Board, alleging violations of the Illinois Human Rights Act and the Illinois Nursing Mothers in the Workplace Act. A012 ¶ 57, A013 ¶¶ 60, 63, A014 ¶¶ 64-111. The lower court dismissed Stachler’s complaint. A106. Stachler then filed a notice of appeal.

SUMMARY OF THE ARGUMENT

Two Illinois statutes protect lactating parents who need workplace accommodations for breastfeeding. The Illinois Human Rights Act (“IHRA”) requires employers to make reasonable accommodations for an employee’s medical or common conditions related to pregnancy or childbirth, including lactation. 775 ILCS 5/2-102(J)(1); Ill. Admin. Code tit. 56, § 2535.20. The Illinois Nursing Mothers in the Workplace Act (“INMWA”) requires employers to provide lactating employees with reasonable, as-needed break time and a private, non-bathroom location in close proximity to the employee’s work area for expressing breast milk. 820 ILCS 260/10, 15. These protections matter for the health of the parents and their babies, as well as the economic security of families: breastfeeding provides long-lasting health benefits, and failing to provide appropriate lactation accommodations often causes negative health consequences, lost wages, or job loss.

The court below failed to uphold Stachler’s statutory rights to receive not only adequate break time as needed and private, non-bathroom space near her work area for expressing breast milk, but also other reasonable accommodations for her lactation-related needs. Rather than accept Stachler’s well-pled allegations as true and allow the case to proceed to discovery, the lower court resolved issues of fact against Stachler by ignoring or glossing over allegations about the inadequacy of Stachler’s break time for pumping, Stachler’s need for and the reasonableness of other requested accommodations, and the

proximity of lactation space to Stachler's work area. The lower court incorrectly concluded that merely identifying a space for Stachler to express breast milk somewhere within the school building sufficiently complied with the Board's statutory obligations, overlooking the requirements to provide both adequate break time and a proximate space for lactation. The lower court thus undermined the legislature's purpose in enacting these statutes—to ensure working parents can earn an income and protect their health during pregnancy and after childbirth. *See* Pub. Act 098-1050, §§ 5, 10 (effective January 1, 2015).

In support of Stachler's arguments that this Court should reverse the lower court's dismissal, this brief: (1) provides information about the importance of breastfeeding, the health needs of lactating workers and complications that can occur when a breastfeeding parent cannot express breast milk as needed, and the workplace accommodations that lactating employees may need; (2) discusses how the lower court's misapplication of the Illinois statutes requiring break time, space, and other reasonable accommodations for employees expressing breast milk at work undermined the very purpose of those statutes; and (3) explains how the physical, mental, and emotional toll of denying lactation accommodations can constitute harassment, retaliation, and forced leave in violation of Illinois law.

ARGUMENT

Breastfeeding provides unmatched health benefits for parents and children. For many parents returning to work after giving birth, consistent breastfeeding can be difficult. Employment policies that facilitate expressing breast milk at work are necessary to sustain the health benefits from breastfeeding and to prevent negative consequences that arise when adequate break time and space for lactation are not provided. Illinois laws thus require employers to provide these, and other reasonable accommodations, to lactating

employees. The lower court misinterpreted those laws in dismissing Stachler’s complaint, and that decision should be reversed.

A. Employment Policies That Anticipate and Accommodate Lactating Parents’ Needs Benefit the Public Interest

The American Academy of Pediatrics considers breastfeeding a public health imperative, in part because of its “short- and long-term medical and neurodevelopmental advantages.”² According to the U.S. Surgeon General, breastfeeding lowers babies’ risk of illnesses like ear, skin, and respiratory infections, diarrhea, and vomiting, as well as longer-term conditions such as obesity, type 1 and 2 diabetes, and asthma.³ Parents who breastfeed for the recommended term also benefit from lower risks of breast and ovarian cancer, heart disease, hypertension, and diabetes.⁴ Additionally, because breastfeeding produces the hormone oxytocin, it helps the uterus contract after delivery and thus facilitates a quicker post-childbirth recovery.⁵ Breastfeeding may also lower the risk of postpartum depression,⁶ which is important for the entire family, as symptoms can affect

²Joan Younger Meek & Lawrence Noble, *Policy Statement: Breastfeeding and the Use of Human Milk*, 150 PEDIATRICS 1 (Jul. 2022), <https://doi.org/10.1542/peds.2022-057988>.

³Off. of Surgeon Gen, Ctrs. for Disease Control & Prevention, & Off. on Women’s Health, *The Importance of Breastfeeding* in the Surgeon General’s Call to Action to Support Breastfeeding (2011), <https://www.ncbi.nlm.nih.gov/books/NBK52687/>.

⁴Alison Stuebe, Prevalence and Risk Factors for Early, Undesired Weaning Attributed to Lactation Dysfunction, 23(5) J. OF WOMEN’S HEALTH (2014).

⁵*Benefits of Breastfeeding*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/articles/15274-benefits-of-breastfeeding> (last visited Nov. 21, 2022).

⁶ABM Clinical Protocol #18: Use of Antidepressants in Breastfeeding Mothers, 10 BREASTFEED. MED. 6, 290-299 (2015), DOI: 10.1089/bfm.2015.29002.

the infant,⁷ partner, and any other children.⁸ In light of overwhelming evidence of health benefits for babies and parents, human milk as a child's first food is universally recommended by all relevant major American medical associations.⁹ But, in order to achieve these significant benefits of breastfeeding, lactating employees' needs must be accommodated in the workplace.

1. Breastfeeding Parents Who Work Have Unique Health Needs

A primary barrier to continued breastfeeding is returning to work.¹⁰ One out of three birthing parents returns to work within just three months of childbirth, and two-thirds

⁷Justine Slomian et al., *Consequences of maternal postpartum depression: A systematic review of maternal and infant outcomes*, WOMENS HEALTH (LOND.), 15(1) (2019), DOI: 10.1177/1745506519844044 (evaluating “the risks to children of untreated depressed mothers (compared to mothers without PPD)” to “include problems such as poor cognitive functioning, behavioral inhibition, emotional maladjustment, violent behavior, externalizing disorders, and psychiatric and medical disorders in adolescence.”).

⁸See Nicole Lyn Letourneau et al., *Postpartum Depression is a Family Affair: Addressing the Impact on Mothers, Fathers, and Children*, 33 ISSUES IN MENTAL HEALTH NURSING 7, 445-457 (2012), DOI: 10.3109/01612840.2012.673054.

⁹Meek & Noble, *supra* note 2; *Breastfeeding, Family Physicians Supporting (Position Paper)*, AM. ACAD. FAM. PHYSICIANS, <https://www.aafp.org/about/policies/all/breastfeeding-position-paper.html> (last visited Jan. 4, 2023); *Optimizing Support for Breastfeeding as Part of Obstetric Practice*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, (Oct. 2018), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2018/10/optimizing-support-for-breastfeeding-as-part-of-obstetric-practice>; *A Call to Action on Breastfeeding: A Fundamental Public Health Issue*, AM. PUB. HEALTH ASS'N. (2007), <https://www.apha.org/policies-and-advocacy/public-health-policystatements/policy-database/2014/07/29/13/23/a-call-to-actionon-breastfeeding-a-fundamental-public-health-issue>. See also *Infant and young child feeding*, WORLD HEALTH ORGANIZATION (Jun. 9, 2021), <http://www.who.int/en/news-room/fact-sheets/detail/infant-andyoung-child-feeding> (recommending breastfeeding for two years).

¹⁰See, e.g., Katy B. Kozhimannil et al., *Access to Workplace Accommodations to Support Breastfeeding after Passage of the Affordable Care Act*, 26 WOMEN'S HEALTH ISSUES, 6 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4690749/pdf/nihms715360.pdf>. See also *Importance of Breastfeeding*, *supra* note 3.

return within six months.¹¹ Often this is a matter of financial necessity, as most mothers are the sole, primary, or co-breadwinner for their families.¹²

When returning to work, breastfeeding parents must use a breast pump regularly to remove milk from their body. This is because nursing parents constantly produce milk when they are away from their child during the workday.¹³ Physicians instruct lactating parents to express milk on the same schedule as they feed their child—typically every two to three hours for young infants—to maintain their milk supply and avoid serious health consequences.¹⁴ It is impossible simply to “hold it” or switch to a schedule with longer intervals. If a nursing parent suddenly changes their pumping schedule or misses pumping sessions, their body will likely respond by beginning to produce less milk (as the body produces breast milk on a demand-and-supply basis).¹⁵ The diminution of milk supply means the nursing parent can no longer produce enough milk to meet their infant’s feeding needs.¹⁶

¹¹*Support for Breastfeeding in the Workplace*, CDC, https://www.cdc.gov/breastfeeding/pdf/BF_guide_2.pdf (last visited Nov. 19, 2022).

¹²Sarah Jane Glynn, *Breadwinning Mothers Continue To Be the U.S. Norm*, CTR. FOR AM. PROGRESS (May 10, 2018), <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/>.

¹³A breast pump is equipment that creates a rhythmic suction mimicking the pace and physical effect of a breastfeeding baby to remove breast milk from the body. Breast pumps typically require access to an electrical outlet. *What to Know When Buying or Using a Breast Pump*, FDA (Aug. 7, 2020), <https://www.fda.gov/consumers/consumer-updates/what-know-when-buying-or-using-breast-pump>.

¹⁴U.S. Dep’t of Labor, Wage & Hour Div., Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80075 (Dec. 21, 2010).

¹⁵*How Breast Milk is Made*, WIC BREASTFEED. SUPPORT—U.S. DEPT. OF AGRIC., <https://wicbreastfeeding.fns.usda.gov/how-breast-milk-made> (last visited Jan. 4, 2023).

¹⁶Susan Reslewic Keatley, *How to Deal with Low Breastmilk Supply*, N.Y. TIMES (Apr. 17, 2020), <https://www.nytimes.com/article/increase-breastmilk-supply.html>.

Additionally, inability to pump breast milk on schedule can cause considerable discomfort for the nursing parent, including breast engorgement.¹⁷ Moderate to severe engorgement leads to hard, full, tense, warm, and tender breasts, often accompanied by throbbing and aching pain.¹⁸ The swelling can extend into the armpit and across the breast bone.¹⁹ One woman described the pain from engorgement as “in some ways more painful than birth itself.”²⁰ Further complications can arise as well.

For example, ducts can become plugged, causing a “milk log jam” that can lead to breast inflammation or infections.²¹ One of those infections—mastitis—causes hard sore lumps and reddish patches on the breast(s), flu-like aches and pains, and fever. Mastitis can reduce milk production, requiring even more frequent nursing and pumping sessions to rebuild supply.²² Complications from mastitis can also lead to serious medical issues

¹⁷Breast engorgement is swelling and tightness caused by congestion of fluid and blood in the breast. Fullness in the breast from milk production can prevent draining of fluids, causing painful swelling. *Breast Engorgement*, CHILD.’S HOSP. OF PHILA., <https://www.chop.edu/pages/breast-engorgement#:~:text=Breast%20engorgement%20is%20swelling%2C%20tightness,with%20throbbing%20and%20aching%20pain> (last visited Nov. 21, 2022); *see also Engorgement*, WIC BREASTFEED. SUPPORT—U.S. DEPT. OF AGRIC., <https://wicbreastfeeding.fns.usda.gov/engorgement> (last visited Nov. 21, 2022).

¹⁸*Engorgement*, *supra* note 17.

¹⁹*Breast Engorgement*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/symptoms/24306-breast-engorgement> (last visited Jan. 4, 2023).

²⁰Carina Hsieh, *11 Mothers on What Breastfeeding Really Feels Like*, COSMOPOLITAN (Feb. 16, 2018), <https://www.cosmopolitan.com/sex-love/a18195755/breastfeeding-feels-like/>.

²¹*Engorgement*, LA LECHE LEAGUE INT’L, <https://www.llli.org/breastfeeding-info/engorgement/> (last visited Nov. 21, 2022).

²²*Id.* (explaining that one of the most effective ways to rebuild or increase milk supply is to nurse or pump as often as possible).

like a breast abscess: a painful lump in the affected breast that is swollen and tender.²³ A breast abscess can also cause fever and enlarged lymph nodes²⁴ and require heavy antibiotics, IV fluids, and even surgery.²⁵ A lactating parent faces a long recovery after an abscess and may have a harder time breastfeeding or may discontinue breastfeeding altogether.²⁶

But none of these complications is inevitable. When a parent is away from their breastfeeding child, active emptying of the breasts during *as-needed* pumping breaks—which may be every two to three hours—can maintain supply and prevent engorgement and mastitis.²⁷

2. Reasonable Accommodations Are Essential to Ensure Lactating Parents Can Continue Breastfeeding After Returning to Work

Reasonable accommodations at work are necessary to facilitate pumping and promote the benefits that breastfeeding provides. At a minimum, lactating employees who are away from their child during the workday generally require sufficient break time and a private, non-bathroom space to express milk on an as-needed basis. Laws like the INMWA require employers to provide this basic accommodation.²⁸

²³Olga Pustotina, *Management of mastitis and breast engorgement in breastfeeding women*, 29 J. OF MATERNAL-FETAL & NEONATAL MED. 19, 3121-3125 (2016), DOI: 10.3109/14767058.2015.1114092.

²⁴Kamal Kataria et al., *Management of lactational mastitis and breast abscesses: review of current knowledge and practice*, 76 INDIAN J. SURG. 6:430-5 (2013), DOI: 10.1007/s12262-012-0776-1.

²⁵*Id.*

²⁶*Id.*

²⁷Pustotina, *supra* note 23.

²⁸For example, the federal Fair Labor Standards Act requires reasonable break time for expressing breast milk as needed and a private place other than a bathroom for expressing

The length of break time is critical. According to the U.S. Department of Health and Human Services, a pumping break should allow fifteen to twenty minutes for expressing milk, plus time for (i) set up, (ii) clean up, and (iii) the walk back and forth between the work area and the pumping space, if any.²⁹ In some cases, employees may need a longer break if they have to spend time locating co-workers to cover their work while they pump, waiting for a co-worker to finish using a shared lactation space, or hunting down keys to locked spaces.³⁰

The pumping space is also crucial.³¹ It cannot be a bathroom; pumping requires a sanitary environment to reduce the risk of contaminating the breast milk, which is food for

breast milk. See 29 U.S.C. § 207(r). And the new Providing Urgent Maternal Protections for Nursing Mothers Act expands these protections to all salaried employees, including teachers. See Madeline Will, *Teachers to Get Breastfeeding Accommodations Under New Law. It's About Time, They Say*, EDUC. WEEK (Dec. 29, 2022), <https://www.edweek.org/teaching-learning/teachers-to-get-breastfeeding-accommodations-under-new-law-its-about-time-they-say/2022/12>.

²⁹*Time for breaks*, OFF. ON WOMEN'S HEALTH—U.S. DEPT. OF HEALTH & HUM. SERV., <https://www.womenshealth.gov/supporting-nursing-moms-work/break-time-and-private-space/time-breaks> (last visited Nov. 22, 2022).

³⁰See, e.g., Daniel Wiessner, *Amazon didn't give breaks to pump breast milk – lawsuit*, REUTERS (Aug. 1, 2022), <https://www.reuters.com/legal/litigation/amazon-didnt-give-workers-breaks-pump-breast-milk-lawsuit-2022-08-01/>; Dave Jamieson, *How Employers Make It Impossible For Working Women To Breastfeed*, HUFFPOST (Sept. 30, 2019), https://www.huffpost.com/entry/how-employers-make-it-impossible-for-working-women-to-breastfeed_n_5d7a45b2e4b0a938a42ef3f5.

³¹Amy Joyce, *Workplaces must give moms space to pump breast milk. Women share what it's really like.*, WASH. POST (Aug. 3, 2017), <https://www.washingtonpost.com/graphics/2017/lifestyle/on-parenting/mothers-experiences-pumping-at-work/>.

a baby.³² Many parents also require a private space because using a pump exposes the breasts.³³

Lactating employees sometimes need accommodations that extend beyond reasonable break time and a private space, either because of personal health needs or the nature of their jobs.³⁴ That is why courts and legislatures—including the Illinois General Assembly through the IHRA—have recognized a lactating employee’s right to receive other reasonable accommodations for lactation. For example, a lactating employee may request time off or remote work for a lactation-related complication such as mastitis.³⁵ They may ask to avoid exposure to certain workplace conditions, like traveling between job sites or exposure to toxic chemicals.³⁶ Or they may request light duty for various reasons.³⁷ At bottom, lactating parents have individualized needs that they must identify in consultation with their healthcare provider; employers are not in a position to judge whether an employee needs the requested accommodation for their health and continued ability to breastfeed. Rather, as reflected in Illinois law, employers should do all they can

³²*What employers need to know*, OFF. ON WOMEN’S HEALTH—U.S. DEPT. OF HEALTH AND HUM. SERV., <https://www.womenshealth.gov/supporting-nursing-moms-work/what-law-says-about-breastfeeding-and-work/what-employers-need-know> (last visited Dec. 14, 2022). *See also* U.S. Dep’t of Labor, Wage & Hour Div., Reasonable Break Time for Nursing Mothers, 75 Fed. Reg. 80073, 80076 (Dec. 21, 2010).

³³*Id.*

³⁴*Exposed: Discrimination Against Breastfeeding Workers*, Ctr. for WorkLife Law (2016) at 31, <https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf> (“Exposed”).

³⁵*Id.* at 9, 43.

³⁶*Id.*

³⁷*Id.* at 9, 38; *see also Hicks v. City of Tuscaloosa*, 870 F.3d 1253, 1256-57 (11th Cir. 2017).

to facilitate the needs of breastfeeding parents for their health and the health of their children.

An employer's failure (or refusal) to address an employee's lactation-related health needs takes a toll. Lactating parents ultimately cannot work without adequate pumping space and breaks—and in some cases, other necessary job modifications to facilitate their health and ability to breastfeed. Discrimination, harassment, stress, pain, and embarrassment add to that toll. Too often, denying reasonable lactation accommodations forces parents to either stop breastfeeding or leave their jobs.³⁸ Neither option is acceptable, and both can have devastating health and economic effects on families.

B. The Lower Court's Misapplication of Illinois Laws Requiring Employers to Make Reasonable Accommodations for Employees' Lactation-Related Needs Undermined the Legislative Purpose

The lower court disregarded Stachler's lactation-related needs for reasonable accommodations and instead dismissed Stachler's complaint simply because the Board identified a lactation space somewhere in her assigned schools. In so doing, the lower court misinterpreted Illinois statutory protections for lactating employees and undermined the legislature's purpose in providing those protections.

The Illinois General Assembly has long recognized that enabling employees to express breast milk at work promotes important public interests. That is why it passed the IHRA and INMWA. The General Assembly first adopted express protections for breastfeeding employees over twenty years ago when it passed the INMWA to require employers to provide lactation break time and space. *See* 820 ILCS 260/1 *et seq.*; *see also* 92nd Ill. Gen. Assem., House Proceedings, April 19, 2001, at 14-15 (statement of Rep.

³⁸*Exposed* at 38; *see also Hicks*, 870 F.3d at 1259.

Erwin) (describing purpose of the new law as “trying to have healthy children in encouraging breast-feeding [by permitting] accommodation for nursing mothers”). Then, in 2014, the General Assembly identified the need for greater protections to ensure that employees who are pregnant or postpartum can remain in the workforce without discrimination. *See* Pub. Act 098-1050, § 10 (effective January 1, 2015); *see also id.* § 5 (discussing various economic, family well-being and maternal health benefits of enabling individuals to continue working through pregnancy). The General Assembly therefore amended the IHRA to add protections for pregnant and lactating individuals, including requiring employers to make reasonable accommodations for those employees. *Id.* § 15; 775 ILCS 5/2-102(J). Finally, in 2018, the General Assembly amended the INMWA to again bolster protections for pregnant and lactating workers by requiring employers to provide lactating employees with reasonable, *as-needed*, and *paid* break time—instead of the unpaid and inflexible break time the statute previously permitted. *See* Pub. Act 100-1003, § 10; 820 ILCS 260/10.

The lower court should have construed these “broad remedial civil rights statute[s] . . . liberally in order to effectuate the intent of the General Assembly.” *Bowne of Chicago Inc. v. Ill. Hum. Rts. Comm’n*, 301 Ill. App. 3d 116, 120 (1st Dist. 1998). Further, in considering the Board’s motion to dismiss, the lower court should have assessed only whether the facts in the complaint, viewed in the light most favorable to Stachler, and accepting all well-pleaded facts and reasonable inferences as true, stated a claim on which relief could be granted. *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429 (2006). But the lower court did not follow these standards.

1. The IHRA Requires Employers to Follow an Interactive Process to Identify Reasonable Accommodations for a Lactating Employee’s Need for Break Time

The IHRA requires the Board to make reasonable accommodations for employees with medical and common conditions related to pregnancy and childbirth, including lactation. 775 ILCS 5/2-102(J)(1)-(4); *see also* Ill. Admin. Code tit. 56, § 2535.20 (listing lactation as an example of a common condition which must be accommodated under the statute); *Hicks*, 870 F.3d at 1256-57, 1259 (holding that lactation is a physiological process caused by hormonal changes associated with pregnancy and childbirth, and thus protected under Title VII as amended by the Pregnancy Discrimination Act).³⁹ The statute also prohibits the Board from taking adverse action against an employee like Stachler because she needs a reasonable accommodation. 775 ILCS 5/2-102(J)(1)-(4).

Under the IHRA, a “reasonable accommodation” is a reasonable adjustment or modification to the work environment that enables the lactating employee to perform the essential functions of their job. 775 ILCS 5/2-102(J). The statute provides a non-exhaustive list of possible reasonable accommodations, including those Stachler requested, such as more frequent or longer breaks, “private, non-bathroom, space for expressing breast milk and breastfeeding”; “light duty”; “job restructuring”; and “a part-time or modified

³⁹In analyzing employment discrimination claims under the IHRA, the Illinois Supreme Court has “adopted the analytical framework set forth in United States Supreme Court decisions addressing claims brought under Title VII of the Civil Rights Act of 1964.” *Zaderaka v. Ill. Hum. Rts. Comm’n*, 131 Ill.2d 172, 178 (1989); *see also Robinson v. Vill. of Oak Park*, 2013 IL App (1st) 121220, ¶ 19 (“The Illinois Human Rights Act . . . and the federal Title VII law . . . are similar in intent and therefore our supreme court has approved all Illinois courts to look to and rely upon federal Title VII law in interpreting and determining whether unlawful employment discrimination has occurred.”).

work-schedule.” *Id.* (noting reasonable accommodations “may include, but [are] not limited to”); *see also* A006 ¶¶ 24-25, A007 ¶ 30.⁴⁰

Although the appropriate modifications can be flexible, the statute is firm on the steps an employer must take after receiving an employee’s accommodation request. It must “engage in a timely, good faith, and meaningful exchange to determine effective reasonable accommodations.” 775 ILCS 5/2-102(J)(1). And if an employer doubts the need for a requested accommodation, the statute is just as clear on what it may do: “request documentation from the employee’s healthcare provider concerning the need for the requested reasonable accommodation.” *Id.* This is a sensible framework for determining accommodations for an employee’s pregnancy-related conditions, given that employees have unique needs, and thus employers should defer to the judgment of healthcare providers in assessing them. This framework is particularly important in the context of lactation because many employers are unfamiliar with lactation-related health needs.

But the lower court contravened this statutory backdrop in dismissing Stachler’s IHRA claims on the grounds that her requested accommodations “were not needed as a result of [her] medical condition related to pregnancy or childbirth.” A104. Stachler alleged that the Board denied or ignored her multiple requests for accommodations without exploring her needs and without seeking further medical information. A008 ¶ 34. The Board, instead, unilaterally decided that Stachler’s requested accommodations were

⁴⁰An employer can avoid providing a reasonable accommodation only if it can establish that doing so would impose an “undue hardship.” 775 ILCS 5/2-102(J)(1). To meet that standard, an employer must show that the accommodation would be “prohibitively expensive or disruptive” in light of specified business and operational factors. 775 ILCS 5/2-102(J). The Board did not claim when Stachler sought accommodations that any of her requested alternatives would create an undue hardship, and it has not attempted since to make the required demonstration.

“unnecessary,” and the lower court adopted the employer’s conclusion about Stachler’s needs, despite her well-pled allegations to the contrary. *See, e.g.*, A006-07 ¶ 29, A008 ¶¶ 33-34, A009-10 ¶¶ 41, 46.

Additionally, in concluding that the Board met its statutory obligations by providing Stachler with a private space for pumping (A103), the court overlooked a critical element: employees do not just need a place to pump, they also require adequate breaks to pump as needed. That is because, as explained above, disruptions in milk expression can lead to painful engorgement, fever, and infection, as well as a reduction in breast milk supply and early weaning. *See supra* notes 17-26. Stachler alleged that she sought light duty, flexible hours, and/or telework because working specific hours in person every day prevented her from taking as-needed pumping breaks. A006-07 ¶ 29, A008 ¶¶ 33-34, A009-10 ¶¶ 41, 46. All three requested accommodations may be an appropriate modification to enable an employee to express breast milk while working. With light duty, an employee can better manage their duties while also carving out the necessary time to express breast milk. A flexible work schedule can help an employee take pumping breaks as needed. And telework may allow an employee to perform their duties while taking breaks to pump from home. In all, all three fit within the IHRA’s non-exhaustive list of potential reasonable accommodations. 775 ILCS 5/2-102(J).

By providing none of these reasonable accommodations, the Board forced Stachler out of the workforce and, in so doing, took the very action the IHRA sought to prevent. *See* Pub. Act 098-1050, § 10(3) (describing purpose of 2014 amendments to the IHRA as “ensur[ing] full and equal participation for women in the labor force by requiring employers to provide reasonable accommodations to employees with conditions related to

pregnancy or childbirth.” Because the lower court narrowly focused on the provision of a room—ignoring Stachler’s need for break time to express milk—its holding undermined the IHRA’s protections for lactating employees. *See Bowne of Chicago Inc. v. Ill. Hum. Rts. Comm’n*, 301 Ill. App. 3d at 121 (“The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature.”).

2. The INMWA Requires Provision of a Space for Expressing Breast Milk in Close Proximity to the Work Area and is Enforceable Through a Private Right of Action

The INMWA requires employers to make “reasonable efforts to provide a room or other location, in close proximity to the work area, other than a toilet stall” where an employee can express milk in privacy. *See* 820 ILCS 260/15 (2001). It also requires employers to provide paid break time to a lactating employee “each time the employee has the need to express milk, for one year after the child’s birth.” 820 ILCS 260/10. Rather than honor INMWA’s protections for lactating employees, the lower court dismissed Stachler’s INMWA claims because: (1) the “plain language of the [statute] does not provide for a private cause of action,” and (2) the Board provided Stachler with a private room. Order at 3. The lower court was wrong on both accounts.

a. There Is an Implied Private Right of Action Under the INMWA

The lower court erred in concluding that there is no private right of action under the INMWA. Order at 3. Illinois courts imply a private right of action if: (1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff’s injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute. *Rodgers v. St. Mary’s Hosp.*

of Decatur, 149 Ill.2d 302, 308 (1992). All these factors support a private right of action under the INMWA.⁴¹

First, Stachler is a member of the class for whose benefit the INMWA was enacted: she is an employee “who needs to express breast milk for her nursing infant child.” 820 ILCS 260/10, 15.

Second, Stachler’s injury is exactly the type the INMWA is designed to prevent: she alleged that the Board refused to provide her a place to express milk privately in close proximity to her work area. A006 ¶ 27, A016 ¶¶ 71-72.

Third, a private right of action aligns with the statute’s purpose. The General Assembly passed the INMWA to promote breastfeeding among working parents. *See* 92nd Ill. Gen. Assem., House Proceedings, April 19, 2001, at 14-15 (statement of Rep. Erwin) (“We know from medical and science research that women who breast-feed are healthier themselves and have healthier children. . . . [We are] trying to have healthy children in encouraging breast-feeding”). Studies show that statutes with private enforcement mechanisms can increase breastfeeding: “[c]hildren in states that passed enforceable laws were over [three] times more likely to ever breastfeed and over [two] times more likely to breastfeed for at least six months[.]” *Exposed* at 46 (citing Smith-Gagen et al., *The Association of State Law to Breastfeeding Practices in the U.S.*, MATERN. CHILD HEALTH J 18(9):2034-43 (Nov. 2014)).

⁴¹In fact, at least one federal district court interpreting Illinois law has found such a private right of action. *See Spriesch v. City of Chicago*, 2017 WL 4864913, at *5 (N.D. Ill. Oct. 26, 2017) (rejecting argument that plaintiff did not have private right of action and permitting plaintiff to “proceed with her INMWA claim”).

Fourth, a private right of action is necessary to provide an adequate remedy for statutory violations. The INMWA contains no remedies, penalties, or other mechanism for enforcement, so an implied right of action is necessary to carry out the legislative purpose and enforce the law. *See Rodgers*, 149 Ill.2d at 308.

b. Whether the Lactation Space Complied With the INMWA Presents a Factual Question

Stachler alleged that the Board violated the INMWA by denying her a private location *in close proximity to her work area*—explaining that the room was on a different floor. A006 ¶ 27, A015 ¶ 69, A016 ¶ 72. The lower court disagreed, concluding that “no court has ever found” the statute to require “an employer to provide a private space on the same floor as the employee’s work location.” A103. This holding misses the point.

Merely designating any lactation room is not enough to comply with the INMWA. The location of the space matters, not only because it is a statutory mandate, but because requiring employees to travel long distances to access a pumping space can be burdensome and interfere with the ability to take pumping breaks as needed. For example, long travel to and from a pumping room can eat into the break time an employee gets for pumping, delaying pumping or leaving them unable to fully express breast milk. This is particularly true in a situation, like Stachler’s, where the break time is inadequate. Additionally, if an employee must still work the same number of total hours to accomplish their assigned tasks, more time spent travelling to and from a lactation space can mean more time at work away from their nursing baby.

Stachler alleged the Board did not provide her a space within the requisite proximity. A006 ¶ 27. Whether the space complied with the statute is a factual question that should not have been resolved at the motion-to-dismiss stage.

C. Denying Reasonable Accommodations Can Constitute Harassment, Retaliation, and Forced Leave in Violation of the IHRA

The lower court also reached conclusions inconsistent with the reality of the significant physical and health impacts of a denial of reasonable accommodations.

First, Stachler alleged that her work environment was hostile and intimidating and interfered with her ability to do her job. *See, e.g.*, A022 ¶¶ 98-99. The lower court dismissed her harassment claim based on its finding that denying her reasonable accommodations requests did not constitute harassment. A105. But denying reasonable lactation accommodations can create a hostile work environment, amounting to actionable harassment, given the negative impacts such a denial can have on the nursing parent and baby. *See Eisemann v. Moody*, 2020 WL 12847070, at *5 (S.D. Ill. Oct. 20, 2020) (harassment exists under the IHRA when conduct creates “an intimidating, hostile, or offensive working environment”) (citing *Trayling v. Bd. of Fire & Police Cmm’rs*, 652 N.E.2d 386, 393 (Ill. App. Ct. 1995)). Refusals to accommodate as-needed pumping breaks can cause significant physical discomfort, heighten the risk of serious infection, risk embarrassment from possible visible milk-leakage, diminish milk supply, and lead to early weaning. *See supra* notes 17, 18, 21, 26, 38. Furthermore, because expressing breast milk at work draws attention to a lactating person’s body, having to repeatedly reiterate requests for pumping accommodations can expose that person to sexual harassment, offensive remarks, and hostility.⁴² The lower court overlooked all of this.

Similar issues plague the lower court’s holding that Stachler’s retaliation claim failed because it “lacks merit.” A105. The lower court did not explain its reasoning, but

⁴²*Exposed* at 18.

if the decision was based on the lower court's conclusion that Stachler did not suffer an adverse employment action, that was mistaken. In the context of a retaliation claim, an adverse action is one that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Hoffelt v. Dep't of Hum. Rts*, 367 Ill. App. 3d 628, 637 (1st Dist. 2006). Stachler alleged the Board denied accommodations to meet her breastfeeding needs, among other retaliatory actions. *See* A023 ¶¶ 103, 105. An employer's denial of reasonable accommodations, and the attendant physical pain and other negative impacts this can cause to a lactating employee, could dissuade a reasonable person from pursuing a discrimination claim, and thus amount to an adverse employment action in the context of retaliation. *Hoffelt*, 367 Ill. App. 3d at 638.

Finally, the lower court dismissed Stachler's forced leave claim because it concluded she "voluntarily" requested leave. A104. But Stachler alleged she was *compelled* to take leave because the Board refused to provide reasonable accommodations. *See* A010-11 ¶ 47, A024 ¶ 108. This refusal is critical because the IHRA explicitly prohibits an employer from requiring an employee to take a leave if there is an available reasonable accommodation for an employee's pregnancy- or childbirth-related condition. 775 ILCS 5/2-102(J)(4). That is what happened here.

By denying her requested accommodations, the Board put Stachler in a position where she could either end breastfeeding early or work under conditions that could lead to extreme physical discomfort, possible infection, and milk supply reductions. Stachler alleged that without her requested accommodations, she could not feasibly keep working while meeting her child's breastfeeding needs; the Board thus forced her to take leave. A010-11 ¶¶ 46-47, A024 ¶ 108. These allegations state a viable IHRA claim. *Cf. Hicks v.*

Tuscaloosa, 870 F.3d 1253, 1260-61 (11th Cir. 2017) (upholding jury verdict that a reasonable person in plaintiff's position would have felt compelled to resign after being denied "alternative duty" to accommodate her lactation-related needs). Characterizing this as a "voluntary" choice disregards Stachler's allegations and the IHRA's plain language and purpose, which sought full and equal participation for parents in the workforce during pregnancy and after childbirth. Pub. Act 098-1050, § 10(3), eff. January 1, 2015.

CONCLUSION

For these reasons, the lower court's decision should be reversed.

Dated: January 19, 2023

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b).

The length of this brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of point and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 24 pages.

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No. 1-22-1092

**IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT**

LARA STACHLER,)	
Appellant,)	On appeal from a final order of the
)	Circuit Court of Cook County
v.)	
)	Cir. Ct. Case No. 2021 L 10663
BOARD OF EDUCATION)	
OF THE CITY OF CHICAGO)	Trial Judge Daniel J. Kubasiak
Appellee.)	

**PETITION FOR REVIEW OF ORDERS IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

NOTICE OF FILING

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Please take note that on January 19, 2023, we filed with the Illinois Appellate Court, First District the attached BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, CENTER FOR WORKLIFE LAW, *ET AL.*, IN SUPPORT OF THE APPELLANT.

Dated: January 19, 2023

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 19, 2023, the MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*, PROPOSED ORDER GRANTING LEAVE TO FILE BRIEF OF *AMICI CURIAE*, together with the attached BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, CENTER FOR WORKLIFE LAW, *ET AL.*, IN SUPPORT OF THE APPELLANT were filed with the Appellate Court of Illinois using the Court's electronic filing system. Copies of the above-listed documents were served by electronic mail upon the following counsel for the parties to all primary and secondary email addresses listed below:

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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters stated to be information and belief and as to such matters the undersigned certifies as aforesaid that he verify believes the same to be true.

Respectfully submitted,

/s/ Nicholas J. Siciliano

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