

Taxation, Lactation, and Validation: The Symbolic Power of Tax Law to Legitimize Breast Milk Expression

Elizabeth A. Hoffmann

In 2011, the Internal Revenue Service reversed a previous regulation that excluded lactation supplies, including breast pumps, from medical care tax benefits. This policy change was met with joy by some working mothers. Often torn between family needs and workplace duties, these lactating employees struggled with trying to be a “good worker” and a “good mother.” They saw the new tax law as validation of their efforts to express milk at work and legitimation for the accommodations they required. They felt that even an area of law as technical and complex as tax law could recognize their commitment to combining breastfeeding and employment. However, the women recognized that the law only facilitated greater ability to lactate but not more time with their babies, which they greatly wanted. Indeed, this article asks if breast pumps and supplies would even be an issue for many women if the United States provided women with the more extensive maternity leave that workers in other developed countries receive.

INTRODUCTION

In 2011, the Internal Revenue Service (IRS) announced that it would allow milk expression equipment and supplies to qualify as deductible medical expenses or non-income reimbursements under health reimbursement or flexible spending arrangements (FSAs).¹ Milk expression pumps make it possible for mothers to be separated from their children for hours, days, or even weeks at a time and maintain lactation while also avoiding discomfort and infection. If lactating women do not express milk regularly, not only will their milk production stop, but their breasts will also become swollen, uncomfortable, hard, and possibly infected. The pumps enable milk expression almost anywhere—women are able to pump milk at work, in airports, or even while driving. However, most milk expression apparatus is expensive, and bags with refrigerant, nipple shields, and other parts usually have to be purchased as well. I interviewed breastfeeding employees who expressed milk at work to learn what these women thought about tax

Elizabeth A. Hoffmann is a Professor of Sociology, Purdue University, West Lafayette, USA.
Email: hoffmanne@purdue.edu

This project was supported by the National Science Foundation grant SES-0853534 and Purdue University's College of Liberal Arts Engage Grant. This research benefited from feedback received while on sabbatical at UC Berkeley's Center for the Study of Law and Society and the Department of Management at London School of Economics and Political Science. David Engel, Howard Erlanger, Sandra Levitsky, Anna-Maria Marshall, Jeremy Reynolds, Robin Stryker, and Mark Suchman deserve special gratitude for their insightful comments on this project. Finally, many thanks are owed to the editor and the anonymous reviewers at Law & Social Inquiry for their helpful advice.

1. Internal Revenue Code, Medical and Dental Expenses, 2011, § 162, § 213, § 262.

2 LAW & SOCIAL INQUIRY

law, specifically the new deduction policy regarding milk expression equipment and related supplies. Illustrating the substantial symbolic power of the law, these women discussed how they saw the new tax policy as validation of their often under-supported efforts to combine breastfeeding and full employment. Although they acknowledged the financial benefit they realized from the new tax law, they expressed stronger appreciation for the emotional validation it gave them.

The tax reform affected not only how these mothers felt about their decision to breastfeed and express milk at work but also their relationship with their jobs and with the law more broadly. In conveying legitimacy to workplace milk expression, the law expanded their understanding of what was a “good worker” as well as a “good mother.” They displayed a legal consciousness that did not fit into the tripartite framework offered in Patricia Ewick and Susan Silbey’s (1998) influential formulation—law was not just something to resist (“against the law”), manipulate (“with the law”), or revere (“before the law”). Rather, these mothers understood that law could also *validate* their struggle to balance the demands of work and family.

The experience of lactating women demonstrates tax law’s substantial symbolic powers. Tax law communicates what society values and what it shuns. By establishing what is taxed and what is not, tax law can legitimate or de-legitimate activities. Lactating workers’ expressions of enthusiasm toward the shift in tax law to include milk expression equipment as deductible medical expenses presents an excellent window for understanding the law’s—even tax law’s—symbolic power.

Breastfeeding, Law, and Taxes

Health, medical, and parenting experts strongly encourage breastfeeding, yet many women find combining breastfeeding with full-time employment extremely difficult. Workplace milk expression enables lactating employees’ balancing of their nurslings’ need for milk with their employers’ need for labor. To facilitate working women’s continued breastfeeding, recent laws have been passed including the IRS’s decision to include a breast pump—the apparatus necessary for expressing breast milk at work—as a qualifying medical expense. This tax change reflects a growing appreciation for breastfeeding and some mothers’ struggles to continue after returning to work.

The science supporting the physical and psychological benefits of breastfeeding as well as widespread popular support for breastfeeding strongly encourages mothers to breastfeed. Yet combining breastfeeding and employment is often so difficult that many women stop breastfeeding soon after they return to work. Lactating bodies need to release breast milk, either expressed into a container or nursed by a child. Otherwise, breasts become uncomfortable, engorged, and possibly infected; furthermore, the quantity of breast milk can quickly diminish if not regularly consumed or pumped (Abdulloeva 2013; Shortall 2015; Kim, Shin, and Donovan 2019). To address this issue, many lactating workers rely on expressing milk at work. Although milk expression can be done by hand or using manual pumps, most lactating women prefer electric pumps. Hand expression can be difficult, and manual pumps demand more time than electric pumps. However, the costs of renting or purchasing electric pumps and

the supplies needed for them are expensive, ranging from \$550 to \$2,000 over a year (Kim, Shin and Donovan 2019; Patel, Johnson and Meier 2021).

Federal and state laws have been passed to encourage women employees to pump milk at work. Over half the states have passed laws mandating workplace accommodation for milk expression, such as providing a private area for pumping and break time (Hoffmann 2021). The Affordable Care Act amended the Fair Labor Standards Act (FLSA) to include a similar federal-level mandate.² The US tax law extended tax benefits for breast pumps and apparatus in 2011, following much controversy around its previous decision to deny tax benefits for this equipment. In the fall of 2010, the IRS “ruled that breast-feeding does not have enough health benefits to qualify as a form of medical care,” despite including acne creams and false teeth (Kocieniewski 2010, A1). Parents and breastfeeding advocates expressed exasperation at this because the 2010 health care overhaul had the expressed goal of constraining high medical costs by supporting greater preventative practices and procedures. Critics of the 2010 rules cited much research documenting the benefits of breastfeeding in preventing a range of health issues. Four months later, the IRS reversed its earlier decision and included breast pumps and related supplies (Kocieniewski 2011a, 2011b).³

The IRS’s designations as to what are qualifying medical expenses determine which unreimbursed medical expenses receive a tax benefit. With this designation, breast pumps and supplies may be paid for by FSAs or other tax-exempt health-care savings accounts. Alternatively, this tax benefit could be realized as a direct tax deduction of an itemizing taxpayer’s total unreimbursed medical expenses if exceeding 7.5 percent of adjusted gross income (Kocieniewski 2010, 2011a, 2011b).

The Ideal Worker’s Invisible Family

Employees are expected to provide their labor—the placement of their bodies, the actions of their hands, the focus of their brains—during the time they are at their workplace. Yet milk expression at work requires deviating from these expectations. Lactating employees must remove themselves to private places, break from their usual work to express milk, and monitor their time throughout the day to take sufficient breaktime to express enough milk with enough frequency. This activity can violate what many workers and managers perceive as the “good worker” ideal. A narrow definition of what qualifies as a good worker can stifle employees’ requests for accommodations. In particular, the tension between family obligations and needing to reach out beyond the family for assistance has been well documented, especially for women employees (see Kelly et al. 2010; Albiston and O’Connor 2016). Yet employees’ concerns about deviating from the ideal worker norm are not unfounded. Indeed, employees who depart from the ideal worker norm often do incur many penalties at work (Roth 2004; Beauregard 2014; Perlow and Kelly 2014; Pedulla and Thebaud 2015).

The convention that employees must manage their own family obligations in ways that hide these needs from their employer, lest they risk losing their status as good

2. Affordable Care Act, 2010, 124 Stat. 119; Fair Labor Standards Act, 1938, 52 Stat. 1060.

3. Internal Revenue Code, Medical and Dental Expenses.

4 LAW & SOCIAL INQUIRY

workers, prevents employees from using available policies or resources or from requesting certain adaptations to their workspace or time. Nancy Fraser and Rahel Jaeggi (2018, P. 168) refer to the duties of birthing, raising, and caring for a family and maintaining homes as “social reproduction.” This work is vital for society as well as for employers since without another generation of employees, little work could happen. Yet this labor is often done without pay and with little acknowledgment. Importantly, because much social reproduction work would not only benefit from greater workplace support but also functions under a doctrine that it should be separate and hidden from the employer and the workplace, employees often cannot reach out for assistance at their jobs. In fact, extant research documents that, despite various laws stipulating specific rights, workers often do not assert those rights (see Bumiller 1988; Marshall 2003; Kirkland 2008; Levitsky 2008; Berrey, Hoffman, and Nielsen 2012; Levitsky 2014; Hull 2016; Gallagher and Yang 2017). For example, Catherine Albiston (2005) shows that workers resist pursuing Family and Medical Leave Act accommodations, lest they be seen as bad employees. Marshall’s research on sexual harassment found that only women considered legal remedies when objectionable behavior reached a certain threshold (Marshall 2003). Arlie Hochschild’s (1997, P. 14) study of a large organization discovered that very few employees utilized the company’s generous pro-family policies, often because workers feared being cast as less-committed employees or because their requested accommodations would be accused of lessening the organization’s “total quality.”

Legal Consciousness

Legal consciousness—that is, how people make sense of the law and give meaning to their law-related experiences—provides people with important interpretive frameworks, even outside formal legal institutions (Sarat and Kearns 1995). Instead of focusing on laws and legal actors, legal consciousness research examines how regular people in civil society construct their relationships with the law to make “the meanings, sources of authority, and cultural practices that are commonly recognized as legal” (Ewick and Silbey 1998, 22). In constructing their legal consciousness, people create meaning for themselves: what they feel is their own responsibility and what duties lie with others (Felstiner, Abel, and Sarat 1980–81). People’s knowledge of the law can directly affect their perceptions and normative beliefs regarding legally prescribed or proscribed behavior (Zey 1992; Suchman 1997). Of particular relevance for this study are the “mediating effects” of the normative power of law: “[L]aw’s declaratory impact in proclaiming morality” (Suchman 1997, 490). This theory asserts that the public’s moral beliefs often reflect their understanding of what the law forbids, condones, or encourages (Gusfield 1967b; Suchman 1997). Ewick and Silbey’s (1998, P. 9) analysis of individual experiences with the law described three main narratives that reveal people’s legal consciousness: “Against the law” is an understanding of the law as something arbitrary and powerful against which one resists or fights. “Before the law” is a respect and almost adoration for the law as a remote and benevolent force. “With the law” is a game-playing attitude about the law with which people see interactions with laws as a strategy to hustle for greater advantage in other areas of life.

Symbolic Power of Law

Laws can change what people believe to be morally right. When norms shift and society evolves to value undervalued behavior (or, conversely, to shun previously acceptable behavior), the law communicates these changes. Those who might cling to the earlier norms may be swayed by the new law's presence so that they eventually internalize the new norm because the law "redefin[es] the normative value of old practices" (Suchman and Edelman 1996, 929). Although the law does vie with other frameworks in civil society for constructing frameworks to communicate norms, the law often is substantially powerful in giving legitimacy to activities that might not have been fully accepted (Gusfield 1967a; Suchman and Edelman 1996; Abrego 2011; Lovell 2012; Young 2014; Geisinger and Stein 2016; McAdams 2017; Hoffmann 2019).

Changes in the law declare that society's norms have shifted. Richard McAdams (2017, 145) refers to this as "attitudinal signaling." In particular, a new law can engender reconsideration of "the greater worth of something or some activity that they had undervalued. The law can provide validation to actions that had been marginalized, ridiculed, or scorned" (Hoffmann 2021, P. 186). These "expressive powers" of the law can empower those whose needs are validated by the law, not only instrumentally if or when these people invoke the law but also symbolically because the law's very presence asserts the new morality or the worthiness of the legally addressed behavior. In this way, the law goes beyond proscribing or prescribing behavior to pronouncing what has become praise worthy (Bernstein, Marshall, and Barclay 2009).

Tax Law as Tool for Social Change

Many laws are clearly grounded in a society's moral framework. Legislators, prosecutors, and civil society often frame their discussions of laws as a public articulation of previously articulated norms, such as the criminalization of incest, serial murder, and animal abuse. The gravity of the focus of these laws gives them obvious emotional resonance throughout civil society. Tax law, however, seldom is seen as bearing this weight of normative discussions. Tax regulations are seen as more about percentages and equations than the pronouncement of moral principles. The violation of tax law is deemed "*malum prohibitum*" rather than "*malum in se*" in classic legal concepts (Smith and Stalans 1994).

Legislators may choose to use tax laws to further policy goals because this route is easier politically. Tax incentives are less often seen as direct government spending (Kaye 1993). Also, tax laws are often more resilient to constitutional and other legal challenges, even for revered concepts such as speech and elections (Kaye 1993). Tax incentives are used to address wide ranges of behaviors, ranging from encouraging solar- and wind-generated sources of energy use to promoting charitable giving (Milot 2008). Nevertheless, the use of the tax code to further policy goals remains attractive to politicians. While critics see its lack of transparency as problematic, the somewhat opaque nature of tax benefits removes them from the higher scrutiny that more direct financial benefits would incur. Since the tax code is often overlooked and misunderstood, tax changes can pass somewhat unseen. Moreover, some tax scholars

assert that the use of the tax code as a tool for social change no longer attracts the criticism that it once did (Surrey 1970; Carruthers 2015).

Moreover, tax consequences may actually incentivize behavior that many in society see as upsetting. For example, early critical tax scholar Grace Blumberg (1971) demonstrated how inadequate income tax deductions for childcare and housework can frame a couple's second income as less financially useful. This can result in the job of the lower-paid spouse being less rationally valued. Due to the norm—not only true in the 1970s when Blumberg first published but also true today—that mothers are more likely to stay home with young children than fathers and the ongoing income disparities by gender such that wives continue to earn less than husbands (see Blair-Loy et al. 2015), the less-valued spousal income often is the woman's (Blumberg 1971). Married women have been making tax-influenced decisions about whether to work outside the home, removing themselves from the workforce despite personal preferences, and, thus, their behavior was being distorted by the tax law (Infanti and Crawford 2021). These early scholars observed that not only could tax laws distort labor choices, but there was also a myriad of ways in which the tax code benefited men, families with stay-at-home moms, and white couples and devalued unpaid domestic care of the home and family. More recently, critical tax and feminist scholars have expanded their analysis even further to understand how a wider range of tax consequences negatively affect women, their bodies, their small businesses, and their finances (Infanti and Crawford 2021).

In addition, the general public may be increasingly aware of tax-based discrimination. For example, “tampon taxes”—which include sales tax on menstrual products instead of exempting these products as essential needs—have generated substantial consumer protests. The taxation of tampons, but not products used mainly by men, such as hair-growth products, has outraged some taxpayers. Mobilization around such issues indicates increased awareness of the disparities perpetuated or exacerbated by tax law (Crawford and Spivack 2017; Scala 2022).

METHODS

My findings are based on interviews with 173 women about their experiences combining breastfeeding and paid employment. The interviewees were drawn from 113 businesses and professional firms in ten industries, including construction, dining/hotel/tourism, education, finance, government, health/medical, manufacturing, media, retail, and transportation. Thus, this study draws on viewpoints and experiences from varied, multi-sited fieldwork across a range of industries for greater validity (Lévi-Strauss 1969; Hind 2007). I began by interviewing women in Indiana with the help of several research assistants. Indiana has a state-level lactation-at-work law, while Wisconsin lacked such provisions until the federal amendment to the FLSA was passed. The interviews were completed from approximately 2009 to 2012 after the Indiana lactation-at-work law was passed in 2008.⁴ Next, I interviewed Wisconsin women for a similar span of time following the Affordable Care Act's amending section 7 of the FLSA in 2010. The interviews ranged from twenty minutes to just under two hours,

4. Indiana Code § 5-10-6-2, § 22-2-14-2.

with most lasting between thirty and ninety minutes. Interviews were recorded and transcribed, which enabled all quotations used in this article to be direct quotes and allowed for the transcribed interviews to be coded using the qualitative data software NVivo.

A key benefit of qualitative research is the high validity possible (Lévi-Strauss 1969; Hind 2007). The researcher does not simply read off a survey but asks initial questions and then probes the responses to understand the fuller, more complete situation. Thus, “the researcher is able to understand the greater context, to obtain a large overview, and can triangulate the accounts of differently situated interviewees with various bases of knowledge” (Hoffmann 2008, 274). It is due to this in-depth style of interviewing that this article was possible: discussion of tax law emerged from interviewees’ comments rather than from direct responses to tax-specific questions. The interview protocol included open-ended questions so that interviewees were able to share insights, experiences, and opinions that were not specifically solicited. When a new topic emerged, I or one of my research assistants would ask follow-up questions to elicit further discussion and greater understanding of the interviewee-raised topic. One of the topics that emerged in some interviews was the then new tax benefit for milk expression equipment. Of the 173 women interviewed, thirty-seven mentioned the tax benefit, which probably reflects that some of the interviews were conducted exactly at the time of the IRS’s decision.

Like the larger group, this subsample mostly identified as white and mainstream Christian. Within this subsample, one interviewee identified as Hispanic, and one identified as Jewish. This racial skew might be explained by the fact that white-identified women are more likely to breastfeed longer than non-white (Bentley, Dee, and Jensen 2003; McKinney et al. 2016). Nevertheless, this lack of diversity is unfortunate, especially given the considerable efforts by the researcher to expand the racial composition of the interviewee group. Socio-economic status also correlates with breastfeeding rates, with more educated women with higher incomes being more likely to breastfeed longer (Jones et al. 2015). Women in the subsample who discussed the tax law had annual incomes between forty-eight thousand dollars and just over one hundred thousand dollars. This substantial range could be seen to indicate that the tax code’s symbolic power, at least in this instance, cuts across income lines, especially since the designation of milk expression equipment as medical equipment affects women who wish to deduct these expenses and those who simply plan to include them as non-income reimbursements under health reimbursement or FSAs. However, fewer than 5 percent of the women interviewed for this study were truly struggling financially. Since tax deductions as well as FSA-type accounts only benefit those with enough financial security to put money away in FSA-type accounts or who are able to itemize deductions, the perspective of poorer lactating employees is not captured in this article.

It should also be noted that very few participants in this study were likely taking a deduction for lactation expenses because the deduction under Section 213(d) is available only to those who itemize. Moreover, the number of itemizers is now even lower than at the time of this data collection. In December 2017, Congress passed the Tax Cuts and Jobs Act (TCJA) which nearly doubled standard deduction and placed

new limitations on itemized deductions.⁵ Nevertheless, as the data illustrate, even under the post-2017 TCJA, the “law on the books” still matters and holds important symbolic power.

RESULTS

Lactating employees emphasized that expressing milk in the workplace was hard work, both physically and emotionally. They felt that producing enough breast milk at work was yet another component in their struggles to reconcile being a good employee and a good mother—a struggle they often perceived themselves as failing. And they recognized access to electric breast pumps as an important tool for successfully facing this challenge. For these women, the IRS’s decision to include breast pumps and related supplies as qualifying medical expenses was more than just a welcome financial benefit; it validated the very act of milk expression and confirmed the importance of breastfeeding. This validation could even shift respondents’ relationship with the law more generally, demonstrating a radiating effect of the law’s symbolic power. Yet the women I interviewed noted that the law facilitated their ability to lactate, not more time with their babies, which was their ultimate desire.

The Physical, Mental, and Emotional Labor of Milk Pumping

Many women discussed how difficult they found pumping milk at work. From preparing their pumps and supplies each evening to actually producing sufficient breast milk on demand, they found that workplace milk expression required physical, mental, and emotional labor. These two lactating workers—the first a clerical worker, the second a school teacher—addressed this increased workload:

It’s hard. I mean, you haul your pump, which—and I have a great [pump-carrying] bag—but it’s big, what with the [additional nipple shields and tubing] parts, plus the storage [for the expressed milk]. Then you get there and you’re all set up and you’re like, “Okay, [breasts], let’s do it.” And then your body has to step up and perform. (Interviewee W068)

The pumping itself isn’t so bad, but it does take a lot of planning, so in that sense it’s a lot of work. Like, are all the [apparatus] cleaned the night before? Do I have [milk storage] bags left? All that. So, it’s not a lot of physical work, but it’s a lot to think of. . . . And then, of course, sometimes the milk doesn’t start right away, and so your body does have to work hard for that. But that’s a different kind of working hard. (Interviewee W154)

One lactating employee, a lower-level manager, not only struggled with the physical and mental work of expressing milk at work but also discussed the emotional component of missing her child all the more when she stopped to pump milk:

5. Tax Cuts and Jobs Act, 2018, 131 Stat. 2054.

It's hard to schlep everything, and keep it all clean each day, and all that. And making time during my workday, especially if I have a busy day, is hard. I mean, all that is hard. But it's also hard because I'm thinking about what I'm doing and then I really miss my baby. I miss her when I'm at work anyway, but when I gotta break to pump, then I have to think about here and the fact that I'm doing this. . . . Other times, I might miss her, but I can be distracted from that. There's a lot [going on at my work] and so it can be easy to just not think of her, but when I'm pumping I can't not think of her. And then I miss her a ton. (Interviewee 031)

Although other women echoed this sentiment about missing their babies while pumping, some interviewees expressed the opposite emotional reaction, that milk expression at work made them feel closer to their children while they were apart. These contrasting sentiments demonstrate the complexity of emotions around workplace milk expression.

Lactating employees also grappled with how to reconcile the sometimes-conflicting goals of being a good employee and also a good mother. As one office worker said:

People say, "Working mother," you know? Like, my first identity is "mother" and then I'm working. Like, I'm a mother, who happens to be working. I think about that. Am I an employee who pumps milk or a breastfeeding mother with a [paid] job? I'm both, but I feel like I get judged that if I'm not a fully "normal" employee, who acts like every other employee, then I'm a bad employee. Or if I'm a nursing mom, but I'm not actually home nursing my baby, but I'm [here] pumping milk, then I'm a bad mom. (Interviewee W174)

An attorney I interviewed described similar feelings:

You get [criticism] either way, coming or going. Like, there are some people who make you feel bad for being away from your children; for prioritizing your job, your career, so then you're a less-than-perfect mother. And then other people, like [aforementioned unsupportive co-workers] who make you feel like you're a less-than-perfect employee if you have to step away to pump. No matter what, you feel like you're not good enough. Not good enough at anything. (Interviewee W021)

While the tension between being a good-enough worker and a good-enough parent is something that has been documented through several decades of research (Roth 2004; Beauregard 2014; Perlow and Kelly 2014; Pedulla and Thebaud 2015), the lactating employee experiences a particular intensity of this dynamic since an aspect of her parenting is occurring right at the job site.

The Importance of Breast Pumps

The availability of electric breast pumps was widely acknowledged as a vital improvement to the situation of lactating employees, as one mother of three explained:

I can't imagine trying to express milk without [a milk expression machine]. Actually, I can imagine it because I had a friend who is all hippy-dippy, and organic and earthy and stuff. And she was going to express milk on her own, [that is] by hand without any machine or anything. And she tried a couple of times. She had her husband take their kids somewhere away from the house and she had this warm bath with essential oils, and whatever, and she tried a couple of times, and got very little. (Interviewee W024)

Like other lactating employees, an electric breast pump was essential for this woman. A government employee and mom to a one-year-old boy tried to express milk without an electric breast pump when she occasionally faced instances with no electrical connections:

I had bought a hand-pump—a breast pump, but with no motor. And it was much harder to get it attached, and then, once I did [get the machine attached to the areola], it took forever. I got much less milk, and it was stupid slow! It took me, I swear it really did, about an hour. With my [electric breast pump], I take only about ten minutes. (Interviewee W049)

Indeed, for many lactating employees, the question of workplace milk expression was never whether to use an electric breast pump or not but only which brand, style, and accessories.

Validation by the New Tax Law

Lactating workers understood the tax change for milk expression equipment as validation of their commitment to continuing to breastfeed.

Yeah, I was really excited when I heard about [the new tax benefit]. I was like, yeah, this is right. This should get a tax break because it's important. This is the kind of thing we should be encouraging. [Interviewer: You were happy to get that tax break.] I was! I was really happy but not just because of the tax, like, savings but because it was the right thing to do and [the tax law] said that what I was doing was the right thing to do. (Interviewee W068)

Two white-collar lactating workers compared the tax benefit for milk expression equipment to corporate tax advantages:

You always hear about big corporations getting tax breaks. And that's okay; we give tax breaks to them so they relocate [here] to bring more jobs here and help the economy and all that. Okay, that's a good thing. But what I'm doing is a good thing, too. And the tax law has to realize that. And now it does. (Interviewee W043)

The big multi-national businesses and big corporations get all these tax incentives so they don't leave, or they don't pollute. Well, here I am, I'm

doing something that is actually healthy, that's good enough [to be rewarded] too. That's what this IRS law says to me. What I'm doing is good, too. (Interviewee W040)

Some women noted the significance of the fact that this benefit came from the IRS:

It's hard. It's hard because I have to do all this: make time in my day, and bring my equipment, get [to the lactation room], and then try to relax and produce milk, and just the other day I was thinking that the IRS, who—and, I don't really know who make up the IRS, but I think of them as a bunch of white men with starched shirts, horned-rimmed glasses—and they, *even they* realized that what I'm doing is important. Beyond the money [of the tax break], that's how I feel it. (Interviewee W063)

I know it's a tax law thing, so it's about money and that seems like “the bottom line” sort of thing. But it's really about saying that this is important. It's saying that what I'm doing is valuable. It's worth [the effort]. So, I do appreciate the tax break, but it's not just the money. It's what the money means. (Interviewee W091)

I love that now there's a tax break for the pumps and stuff. Even numbers-nerdy tax guys—my tax guy!—has to know [now] that pumping is a real thing. (Interviewee W154)

Although the women quoted above subscribed to the view of tax officials as cold-hearted individuals with minimal emotional connections to the people that the tax law addresses, this stereotype heightened the symbolic power of the tax law.

The Law's Broader Impacts

Some interviewees indicated that the emotional component of the tax change could have effects on an employee's attitude with the law more generally. A mother of twins said:

It made me think about the law just a little bit differently. I think of the law sorta as a force out there. Sometimes—well, often times—it's there to protect me and other times it's something I have to work around or navigate. But it's something *out there*. The law is this thing a bunch of white men made, and I have to figure it out. But this [tax break for lactation supplies] made me feel like the law was on my side. (Interviewee W035)

This validation of this emotionally laden activity impacted her broader legal consciousness.

Yet, in their praise and gratitude for the tax change, some women also acknowledged that the law did little to give them the mothering experience that they actually preferred—namely, being with their babies and nursing them personally:

Sometimes I'd cry when I'd pump. Not gallons [of tears], but it would really affect me. . . . Like, that I was here, and my baby wasn't. . . . I know I'm doing this great thing for him and I'm glad to do it and I love my job and all, but I'd rather just be with him, you know? It's like, I'm working so hard to get him this milk, and I don't *really* want to be doing it. I'd rather just nurse him on my body and rock him and hold him. (Interviewee W009)

While facilitating and validating pumping breast milk at work enables employed women to continue to lactate, arguably it does not actually give them more breast-feeding time with their children.

DISCUSSION

Social Reproduction, Good Workers/Good Mothers, and Legal Consciousness

Social reproduction—the creation and care of the next generation of workers—is necessary for any society. However, social reproduction generally receives little support, maintaining the burden of family welfare squarely with the individual worker. Of all the aspects of social reproduction, lactation, generally, might be the most unacknowledged since milk production occurs unnoticed within women's bodies, unlike the growing pregnant body of the soon-to-be-on-maternity-leave gestating worker (Smith 2004). Without adequate support, parents often question the trade-offs they make in trying to achieve a work-family balance. Doubts can plague any decision, with the inevitable prioritizing one goal over another creating tension as each goal might lack substantial validation. Public acknowledgment of the struggles over a work-family balance and the efforts parents, especially mothers, undertake can be both rare and vital.

Although tax law is often stereotyped as the dry area of legislation, rarely creating the emotional reactions that de/criminalizing an activity might have, this study demonstrates how the change in the tax status of lactation equipment has substantial effects. It has validated lactating employees' efforts to express milk at work and has shifted their relationship with the law. This single legal change has made some women in the study shift how they feel about the law generally. Their legal consciousness has evolved from perceiving the law as something to resist ("against the law"), something to manipulate ("with the law"), or something to revere ("before the law"), and these women have experienced the law being on their side as conveying legitimacy, perhaps a legal consciousness of "validation by the law" (Ewick and Silbey 1998). These women have seen the law less as a force to struggle against, an ideal to revere, or a tool to yield and more as an ally. By confirming the legitimacy of workplace milk expression, the law also has helped redefine what a "good worker" and "good mother" is. It has addressed the work-family balance and the tensions around it by validating the choice made by lactating employees. It has confirmed that breastfeeding is "a good thing" (Interviewee W043) and that workplace milk expression is "important [and] valuable" (Interviewee W091).

Tax Man as Breastfeeding Worker's Ally

According to the IRS, the general principle of income tax deductions is that taxpayers are allowed to deduct those costs that they incurred in order to generate that income on which they are being taxed.⁶ Other expenses, those considered personal expenses, are still subject to tax. Section 262 of the Internal Revenue Code states that “no deduction shall be allowed for personal, living, or family expenses” (as otherwise provided elsewhere). Yet, clearly, sustenance, shelter, and other basics of life are necessary to continue to be able to generate income. The costs of continuing to be a productive worker fall on the individual, without direct tax relief. Although, classically, basic costs of living were seldom tax deductible, many exceptions have been carved out from income tax to further public policy initiatives, including tax advantages that further the social reproductive activities of the family. Just as social reproduction theory emphasizes the importance of the labor people do to create the next generations of workers, so, too, does tax law create exceptions in which costs that do not go directly toward generating more income but, rather, toward caring for self and family may also be deducted, such as mortgage interest, medical expenses, and professional childcare.

This article demonstrates the gravity of the tax law's inclusion of these additional expenses. The interviewees in this study felt the weight of their “off-hours” labor. Feelings of validation from the tax change to include milk expression apparatus is poignantly illustrated in the statements of the lactating employees. Other scholars have noted that the tax code can connect with a high level of emotionality. For example, Marjorie Kornhauser (2009, 825) writes that the connection between patriotism and minimal tax-and-spend policies is able to strike such an emotional chord that it “inhibits rational discussion and limits the range of political solutions.” Similarly, the IRS's decision to allow lactation supplies as deductible medical expenses has had a profoundly emotional effect on the women interviewed in this study. Inclusion of lactation supplies communicated a validation of their efforts to breastfeed their children, even validation “by the taxman.”

Privilege and Tax Deductions

Many have argued that more equitable distributions through tax law involves tax credits rather than tax deductions. A tax credit “offsets actual taxes due, providing a one-to-one return to a taxpayer” so long as the taxpayer owes in taxes at least that amount of the credit (Milot 2008, 76). In contrast, a deduction's worth depends on the taxpayer's marginal tax rate. Thus, tax deductions are worth more to the taxpayer whose marginal tax rate is a higher bracket. Moreover, many deductions are only available to those taxpayers who itemize their deductions. A similar difference in benefit is also true for health reimbursement or FSAs: inclusion in these accounts, such as the IRS's decision in 2011 for lactation supplies, only benefits those employees who have sufficient income that they can set aside some income into these accounts (Cohen

6. Internal Revenue Code, Medical and Dental Expenses, § 162.

2021). Indeed, very few of these study participants were likely taking a deduction for lactation expenses because the deduction under Section 213(d) is available only to those who itemize.

CONCLUSIONS

The IRS's tax benefit for milk expression apparatus not only provides financial relief for lactating workers but also, as this article has demonstrated, a substantial non-monetary benefit. It validates these workers' efforts. It legitimates that milk expression at work is a positive activity. Yet emotional validation does not address the physical compromises these women still had to make. Milk expression pumps were valuable tools in meeting both their work duties and their parenting goals. But, in doing so, these women forfeited their breacktime to express breast milk, exemplifying the social reproduction of workers in its most basic way: denying their own respite from labor in order to use their bodies to feed the next generation of workers.

Despite the financial and legitimacy benefits this tax benefit brings to breastfeeding moms, it might also have a downside. Policies that make it easier for women to express milk at work are designed to keep the worker's body in the workplace. They do not result in greater time to actually breastfeed. They provide neither additional time to nurse nor longer maternity leaves to remain home. While the law addresses the conflict between milk production and paid labor, workplace milk expression as a solution to this work-family tension results in placing additional burdens on the lactating worker and emphasizes the employer's economic perspective. Facilitating milk expression at work enables employers to continue to use lactating employees' skills and labor rather than enabling those workers to remain with their nurslings. Although this may be a useful option for business, it may be only a second-best solution for many lactating employees and their families. Expressing breast milk at work thus perpetuates the neoliberal capitalist inclination to shift the responsibility for social reproduction to women and their families. Laws that encourage higher proportions of women in the paid labor force are typically considered pro-woman since more women working for pay means that those women are enjoying greater personal and financial power. Yet, rather than being exclusively pro-mother or pro-worker, this tax benefit might better be characterized as pro-capital or pro-employer. Benefits to enable workplace milk expression might reinforce the subjugation of the child's and mother's needs to the needs of the employer by communicating that the lactating employee's physical presence at her job is their most important duty. Indeed, some scholars have emphasized that regulations and rights that protect milk expression might not truly be advancing women's interests at all. According to Julie Stephens (2010, 78) lactation pumps might "appear personal but their purpose is profoundly industrial: increasing productivity in the workplace."

Moreover, by enabling lactating employees to remain in the workplace, laws supporting milk expression might make more parenting-supportive laws less likely—for example, mandatory on-site childcare, extended maternity leave, and lactation breaks long enough to drive to the child and breastfeed in person. Facilitating milk expression at work might inhibit more substantial legal changes and pro-family reforms because workplace pumping could be "good enough" that greater improvements can be

dismissed as no longer necessary. Making it easier for lactating employees to pump milk at work might reduce pressure to bring maternity-leave policy in the United States closer to the more family-friendly policies of other industrialized countries. A truly pro-women or pro-employee tax reform would acknowledge that workplace milk expression is substantial labor—time-consuming, emotionally challenging, and physically demanding. Public policy, including tax benefits, would encourage a wider range of options for how to combine lactation and employment, such as enough time to travel from work to nurse babies elsewhere, on-site childcare for more frequent in-person breastfeeding, and family leave of adequate length that nursing mothers could remain at home until breastfeeding is sufficiently infrequent that workplace milk expression is not a concern.

REFERENCES

- Abdulloeva, Safina. 2013. "Policies on Worksite Lactation Support within States and Organizations." *Journal of Women's Health* 22, no. 9: 769–44.
- Abrego, Leisy J. 2011. "Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants." *Law & Society Review* 45, no. 2: 337–70.
- Albiston, Catherine R. 2005. "Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights." *Law & Society Review* 39, no. 1: 11–49.
- Albiston, Catherine, and Lindsey Trimble O'Connor. 2016. "Just Leave." *Harvard Journal of Law & Gender* 39, no. 1: 1–65.
- Beauregard, Alexandra. 2014. "Fairness Perceptions of Work–Life Balance Initiative: Effects on Counterproductive Work Behaviour." *British Journal of Management* 25, no. 4: 772–89.
- Bentley, Margaret E., Deborah L. Dee, and Joan L. Jensen. 2003. "Breastfeeding among Low Income, African American Women: Power, Beliefs and Decision Making." *Journal of Nutrition* 133: 305–9.
- Bernstein, Mary, Marshall Anna Maria, and Scott Barclay 2009. *The challenge of law: Sexual orientation, gender identity, and social movements. Queer Mobilizations: LBGT Activists Confront the Law*. S. Barclay, M. Bernstein and A.-M. Marshall. New York: NYU Press.
- Berrey, Ellen, Steve G. Hoffman, and Laura Beth Nielsen. 2012. "Situated Justice: A Contextual Analysis of Fairness and Inequality in Employment Discrimination Litigation." *Law & Society Review* 46, no. 1: 1–36.
- Blair-Loy, Mary, Arlie Hochschild, Allison J. Pugh, Joan C. Williams, and Heidi Hartmann. 2015. "Stability and Transformation in Gender, Work, and Family: Insights from the Second Shift for the Next Quarter Century." *Community, Work & Family* 18, no. 4: 435–54.
- Blumberg, Grace. 1971. "Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers." *Buffalo Law Review* 21: 49–92.
- Bumiller, Kristin. 1988. *The Civil Rights Society: The Social Construction of Victims*. Baltimore: John Hopkins University Press.
- Carruthers, Bruce G. 2015. "Semantics of Sin Tax: Politics, Morality, and Fiscal Imposition." *Fordham Law Review* 84: 2565–613.
- Cohen, Mathilde. 2021. "The Right to Express Milk." *Yale Journal of Law & Feminism* 33: 47–118.
- Crawford, Bridget J., and Carla Spivack. 2017. "Tampon Taxes, Discrimination, and Human Rights." *Wisconsin Law Review* 2017, no. 3: 491–549.
- Ewick, Patricia, and Susan S. Silbey. 1998. *The Common Place of Law*. Chicago: University of Chicago Press.

- Felstiner, William L. F., Richard L. Abel, and Austin Sarat. 1980–81. “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming.” *Law and Society Review* 15, nos. 3–4: 631–54.
- Fraser, Nancy, and Rahel Jaeggi. 2018. *Capitalism: A Conversation in Critical Theory*. New York: Polity.
- Gallagher, Mary, and Yujeong Yang. 2017. “Getting Schooled: Legal Mobilization as an Educative Process.” *Law & Social Inquiry* 42, no. 1: 163–94.
- Geisinger, Alex C., and Michael Ashley Stein. 2016. “Expressive Law and the Americans with Disabilities Act.” *Michigan Law Review* 114, no. 3: 1061–79.
- Gusfield, Joseph. 1967a. “Moral Passage: The Symbolic Process in Public Designations of Deviance.” *Social Problems* 15, no. 2: 175–88.
- . 1967b. “Moral Passage: The Symbolic Process in Public Designations of Deviance.” *Social Problems* 15: 175–88.
- Hind, Christine. 2007. “Multi-Sited Ethnography as a Middle Range Methodology for Contemporary Sts.” *Science, Technology & Human Values* 32, no. 6: 652–71.
- Hochschild, Arlie Russell. 1997. *The Time Bind: When Work Becomes Home and Home Becomes Work*. New York: Metropolitan Books.
- Hoffmann, Elizabeth A. 2008. “‘Revenge’ and ‘Rescue’: Workplace Deviance in the Taxicab Industry.” *Sociological Inquiry* 78, no. 3: 270–89.
- . 2019. “Allies Already Poised to Comply: How Social Proximity Affects Lactation-at-Work Law Compliance.” *Law & Society Review* 53, no. 3: 791–822.
- . 2021. *Lactation at Work: Expressed Milk, Expressing Beliefs, and the Expressive Value of Law*. New York: Cambridge University Press.
- Hull, Kathleen E. 2016. “Legal Consciousness in Marginalized Groups: The Case of Lgbt People.” *Law & Social Inquiry* 41, no. 3: 551–72.
- Infanti, Anthony C., and Bridget J. Crawford. 2021. “A Taxing Feminism.” In *The Oxford Handbook of Feminism and Law in the United States*, edited by D. Brake, M. Chamallas, and V. Williams. Oxford: Oxford Academic.
- Jones, Katherine M., Michael L. Power, John T. Queenan, and Jay Schulkin. 2015. “Racial and Ethnic Disparities in Breastfeeding.” *Breastfeeding Medicine* 10, no. 4: 186–96.
- Kaye, Tracy A. 1993. “Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit.” *Villanova Law Review* 38, no. 4: 871–932.
- Kelly, Erin L., Samantha K. Ammons, Kelly Chermack, and Phyllis Moen. 2010. “Gendered Challenge, Gendered Response: Confronting the Ideal Worker Norm in a White-Collar Organization.” *Gender & Society* 24, no. 3: 281–303.
- Kim, Julia H., Jong C. Shin, and Sharon M. Donovan. 2019. “Effectiveness of Workplace Lactation Interventions on Breastfeeding Outcomes in the United States: An Updated Systematic Review.” *Journal of Human Lactation* 35, no. 1: 100–13.
- Kirkland, Anna. 2008. “Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement.” *Law & Society Review* 43, no. 2: 397–431.
- Kocieniewski, David. 2010. “Acne Cream? Tax-Sheltered. Breast Pump? No.” *New York Times*.
- . 2011a. “In a Reversal, Breast-Feeding Supplies Win I.R.S. Tax Break.” *New York Times*.
- . 2011b. “Breast-Feeding Supplies Win Tax Breaks from I.R.S.” *New York Times*.
- Kornhauser, Marjorie E. 2009. “The Consistency of Conservative Tax Policy.” *Northwestern University Law Review* 108, no. 3: 825–58.
- Lévi-Strauss, Claude. 1969. *The Elementary Structures of Kinship*. New York: Beacon Press.
- Levitsky, Sandra R. 2008. “‘What Rights?’ The Construction of Political Claims to American Health Care Entitlements.” *Law & Society Review* 42, no. 3: 551–90.
- . 2014. *Caring for Our Own: Why There Is No Political Demand for New American Social Welfare Rights*. New York: Oxford University Press.
- Lovell, George I. 2012. *This Is Not Civil Rights: Discovering Rights Talk in 1939 America*. Chicago: University of Chicago Press.
- Marshall, Anna Maria. 2003. “Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment.” *Law & Social Inquiry* 28, no. 3: 659–89.

- McAdams, Richard H. 2017. *The Expressive Powers of Law: Theories and Limits*. Cambridge, MA: Harvard University Press.
- McKinney, Chelsea O., Jennifer Hahn-Holbrook, P. Lindsay Chase-Lansdale, Sharon L. Ramey, Julie Krohn, Maxine Reed-Vance, Tonse N. K. Raju, and Madeleine U. Shalowitz. 2016. "Racial and Ethnic Differences in Breastfeeding." *Pediatrics: Official Journal of the American Academy of Pediatrics* 138, no. 2: 1–11.
- Milot, Lisa. 2008. "The Case against Tax Incentives for Organ Transfers." *Willamette Law Review* 45: 67–83.
- Patel, Aloka L., Tricia J. Johnson, and Paula P. Meier. 2021. "Racial and Socioeconomic Disparities in Breast Milk Feedings in Us Neonatal Intensive Care Units." *Pediatric Research* 89, no. 2: 344–52.
- Pedulla, David S., and Sarah Thebaud. 2015. "Can We Finish the Revolution? Gender, Work-Family Ideals, and Institutional Constraint." *American Sociological Review* 80, no. 1: 116–39.
- Perlow, Leslie A., and Erin L. Kelly. 2014. "Toward a Model of Work Redesign for Better Work and Better Life." *Work and Occupations* 41, no. 1: 111–34.
- Roth, Louise Marie. 2004. "Engendering Inequality: Processes of Sex-Segregation on Wall Street." *Sociological Forum* 19, no. 2: 203–28.
- Sarat, Austin, and Thomas R. Kearns. 1995. "Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life." In *Law in Everyday Life*, edited by A. S. and T. R. Kearns. Ann Arbor: University of Michigan Press.
- Scala, Francesca. 2022. "Menstrual Activism, Insider-Outsider Alliances and Agenda-Setting: An Analysis of the Campaign to End the 'Tampon Tax' in Canada." *Journal of Women and Politics and Policy* (June): 135–55.
- Shortall, Jessica. 2015. *Work. Pump. Repeat.: The New Mom's Survival Guide to Breastfeeding and Going Back to Work*. New York: Harry N. Abrams.
- Smith, Julie P. 2004. "The Syntax of Sin Taxes." In *Taxing Popularity: The Story of Taxation in Australia*, edited by J. P. Smith, 126–46. Canberra, Australia: Australian Tax Research Foundation.
- Smith, Kent W., and Loretta J. Stalans. 1994. "Negotiating Strategies for Tax Disputes: Preferences of Taxpayers and Auditors." *Law & Social Inquiry* 19, no. 2: 337–68.
- Stephens, Julie. 2010. "The Industrialised Breast." *Overland* 2010 (Summer): 77–98.
- Suchman, Mark C. 1997. "On Beyond Interest: Rational, Normative and Cognitive Perspectives in the Social Scientific Study of Law." *Wisconsin Law Review* 1997, no. 3: 475–501.
- Suchman, Mark C., and Lauren B. Edelman. 1996. "Legal Rational Myths: The New Institutionalism and the Law and Society Tradition." *Law & Social Inquiry* 21, no. 4: 903–41.
- Surrey, Stanley S. 1970. "Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures." *Harvard Law Review* 83, no. 4: 705–38.
- Young, Kathryn M. 2014. "Everyone Knows the Game: Legitimacy and Legal Consciousness in the Hawaiian Cockfight." *Law & Society Review* 48, no. 4: 499–530.
- Zey, Mary. 1992. *Decision Making: Alternatives to Rational Choice Models*. Newbury Park, CA: Sage Publications.