

*Jeffrey A. Merkley*

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To amend the Fair Labor Standards Act of 1938 to expand access to breastfeeding accommodations in the workplace, and for other purposes.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

**H R 2617**

**AMENDMENT N<sup>o</sup> 6595**

By Merkley

To: Amor No 6552

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Page(s)

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GPO: 2008 45-603 (mac)

MERKLEY (for himself and Ms. MURKOWSKI) to the amendment (No. 6552) proposed by Mr. LEAHY

Viz:

1 At the end of the bill, add the following:

2 **DIVISION KK—PUMP FOR**  
3 **NURSING MOTHERS ACT**

4 **SEC. 101. SHORT TITLE.**

5 This division may be cited as the “Providing Urgent  
6 Maternal Protections for Nursing Mothers Act” or the  
7 “PUMP for Nursing Mothers Act”.

1 **SEC. 102. BREASTFEEDING ACCOMMODATIONS IN THE**  
2 **WORKPLACE.**

3 (a) **EXPANDING EMPLOYEE ACCESS TO BREAK TIME**  
4 **AND SPACE.**—The Fair Labor Standards Act of 1938 (29  
5 U.S.C. 201 et seq.) is amended—

6 (1) in section 7 (29 U.S.C. 207), by striking  
7 subsection (r); and

8 (2) by inserting after section 18C (29 U.S.C.  
9 218c) the following:

10 **“SEC. 18D. BREASTFEEDING ACCOMMODATIONS IN THE**  
11 **WORKPLACE.**

12 “(a) **IN GENERAL.**—An employer shall provide—

13 “(1) a reasonable break time for an employee to  
14 express breast milk for such employee’s nursing  
15 child for 1 year after the child’s birth each time  
16 such employee has need to express the milk; and

17 “(2) a place, other than a bathroom, that is  
18 shielded from view and free from intrusion from co-  
19 workers and the public, which may be used by an  
20 employee to express breast milk.

21 “(b) **COMPENSATION.**—

22 “(1) **IN GENERAL.**—Subject to paragraph (2),  
23 an employer shall not be required to compensate an  
24 employee receiving reasonable break time under sub-  
25 section (a)(1) for any time spent during the workday

1 for such purpose unless otherwise required by Fed-  
2 eral or State law or municipal ordinance.

3 “(2) RELIEF FROM DUTIES.—Break time pro-  
4 vided under subsection (a)(1) shall be considered  
5 hours worked if the employee is not completely re-  
6 lieved from duty during the entirety of such break.

7 “(c) EXEMPTION FOR SMALL EMPLOYERS.—An em-  
8 ployer that employs less than 50 employees shall not be  
9 subject to the requirements of this section, if such require-  
10 ments would impose an undue hardship by causing the  
11 employer significant difficulty or expense when considered  
12 in relation to the size, financial resources, nature, or struc-  
13 ture of the employer’s business.

14 “(d) EXEMPTION FOR CREWMEMBERS OF AIR CAR-  
15 RIERS.—

16 “(1) IN GENERAL.—An employer that is an air  
17 carrier shall not be subject to the requirements of  
18 this section with respect to an employee of such air  
19 carrier who is a crewmember

20 “(2) DEFINITIONS.—In this subsection:

21 “(A) AIR CARRIER.—The term ‘air carrier’  
22 has the meaning given such term in section  
23 40102 of title 49, United States Code.

24 “(B) CREWMEMBER.—The term ‘crew-  
25 member’ has the meaning given such term in

1 section 1.1 of title 14, Code of Federal Regula-  
2 tions (or successor regulations).

3 “(e) APPLICABILITY TO RAIL CARRIERS.—

4 “(1) IN GENERAL.—Except as provided in para-  
5 graph (2), an employer that is a rail carrier shall be  
6 subject to the requirements of this section.

7 “(2) CERTAIN EMPLOYEES.—An employer that  
8 is a rail carrier shall be subject to the requirements  
9 of this section with respect to an employee of such  
10 rail carrier who is a member of a train crew involved  
11 in the movement of a locomotive or rolling stock or  
12 who is an employee who maintains the right of way,  
13 provided that compliance with the requirements of  
14 this section does not—

15 “(A) require the employer to incur signifi-  
16 cant expense, such as through the addition of  
17 such a member of a train crew in response to  
18 providing a break described in subsection (a)(1)  
19 to another such member of a train crew, re-  
20 moval or retrofitting of seats, or the modifica-  
21 tion or retrofitting of a locomotive or rolling  
22 stock; or

23 “(B) result in unsafe conditions for an in-  
24 dividual who is an employee who maintains the  
25 right of way.

1           “(3) SIGNIFICANT EXPENSE.—For purposes of  
2 paragraph (2)(A), it shall not be considered a sig-  
3 nificant expense to modify or retrofit a locomotive or  
4 rolling stock by installing a curtain or other screen-  
5 ing protection.

6           “(4) DEFINITIONS.—In this subsection:

7           “(A) EMPLOYEE WHO MAINTAINS THE  
8 RIGHT OF WAY.—The term ‘employee who  
9 maintains the right of way’ means an employee  
10 who is a safety-related railroad employee de-  
11 scribed in section 20102(4)(C) of title 49,  
12 United States Code.

13           “(B) RAIL CARRIER.—The term ‘rail car-  
14 rier’ means an employer described in section  
15 13(b)(2).

16           “(C) TRAIN CREW.—The term ‘train crew’  
17 has the meaning given such term as used in  
18 chapter II of subtitle B of title 49, Code of  
19 Federal Regulations (or successor regulations).

20           “(f) APPLICABILITY TO MOTORCOACH SERVICES OP-  
21 ERATORS.—

22           “(1) IN GENERAL.—Except as provided in para-  
23 graph (2), an employer that is a motorcoach services  
24 operator shall be subject to the requirements of this  
25 section.

1           “(2) EMPLOYEES WHO ARE INVOLVED IN THE  
2 MOVEMENT OF A MOTORCOACH.—An employer that  
3 is a motorcoach services operator shall be subject to  
4 the requirements of this section with respect to an  
5 employee of such motorcoach services operator who  
6 is involved in the movement of a motorcoach pro-  
7 vided that compliance with the requirements of this  
8 section does not—

9           “(A) require the employer to incur signifi-  
10 cant expense, such as through the removal or  
11 retrofitting of seats, the modification or retro-  
12 fitting of a motorcoach, or unscheduled stops;  
13 or

14           “(B) result in unsafe conditions for an em-  
15 ployee of a motorcoach services operator or a  
16 passenger of a motorcoach.

17           “(3) SIGNIFICANT EXPENSE.—For purposes of  
18 paragraph (2)(A), it shall not be considered a sig-  
19 nificant expense—

20           “(A) to modify or retrofit a motorcoach by  
21 installing a curtain or other screening protec-  
22 tion if an employee requests such a curtain or  
23 other screening protection; or

24           “(B) for an employee to use scheduled stop  
25 time to express breast milk.

1 “(4) DEFINITIONS.—In this subsection:

2 “(A) MOTORCOACH; MOTORCOACH SERV-  
3 ICES.—The terms ‘motorcoach’ and ‘motor-  
4 coach services’ have the meanings given the  
5 terms in section 32702 of the Motorcoach En-  
6 hanced Safety Act of 2012 (49 U.S.C. 31136  
7 note).

8 “(B) MOTORCOACH SERVICES OPER-  
9 ATOR.—The term ‘motorcoach services oper-  
10 ator’ means an entity that offers motorcoach  
11 services.

12 “(g) NOTIFICATION PRIOR TO COMMENCEMENT OF  
13 ACTION.—

14 “(1) IN GENERAL.—Except as provided in para-  
15 graph (2), before commencing an action under sec-  
16 tion 16(b) for a violation of subsection (a)(2), an  
17 employee shall—

18 “(A) notify the employer of such employee  
19 of the failure to provide the place described in  
20 such subsection; and

21 “(B) provide the employer with 10 days  
22 after such notification to come into compliance  
23 with such subsection with respect to the em-  
24 ployee.

1           “(2) EXCEPTIONS.—Paragraph (1) shall not  
2 apply in a case in which—

3           “(A) the employee has been discharged be-  
4 cause the employee—

5           “(i) has made a request for the break  
6 time or place described in subsection (a);  
7 or

8           “(ii) has opposed any employer con-  
9 duct related to this section; or

10           “(B) the employer has indicated that the  
11 employer has no intention of providing the place  
12 described in subsection (a)(2).

13           “(h) INTERACTION WITH STATE AND FEDERAL  
14 LAW.—

15           “(1) LAWS PROVIDING GREATER PROTEC-  
16 TION.—Nothing in this section shall preempt a State  
17 law or municipal ordinance that provides greater  
18 protections to employees than the protections pro-  
19 vided for under this section.

20           “(2) NO EFFECT ON TITLE 49 PREEMPTION.—  
21 This section shall have no effect on the preemption  
22 of a State law or municipal ordinance that is pre-  
23 empted under subtitle IV, V, or VII of title 49,  
24 United States Code.”.



1 (b) CLARIFYING REMEDIES.—The Fair Labor Stand-  
2 ards Act of 1938 (29 U.S.C. 201 et seq.) is amended—

3 (1) in section 15(a) (29 U.S.C. 215(a))—

4 (A) by striking the period at the end of  
5 paragraph (5) and inserting “; and”; and

6 (B) by adding at the end the following:

7 “(6) to violate any of the provisions of section  
8 18D.”; and

9 (2) in section 16(b) (29 U.S.C. 216(b)), by  
10 striking “15(a)(3)” each place the term appears and  
11 inserting “15(a)(3) or 18D”.

12 (c) AUTHORIZING EMPLOYEES TO TEMPORARILY OB-  
13 SCURE THE FIELD OF VIEW OF AN IMAGE RECORDING  
14 DEVICE ON A LOCOMOTIVE OR ROLLING STOCK WHILE  
15 EXPRESSING BREAST MILK.—Section 20168(f) of title  
16 49, United States Code, is amended—

17 (1) by striking “A railroad carrier” and insert-  
18 ing the following:

19 “(1) IN GENERAL.—Except as provided in para-  
20 graph (2), a railroad carrier”; and

21 (2) by adding at the end the following:

22 “(2) TEMPORARILY OBSCURING FIELD OF VIEW  
23 OF AN IMAGE RECORDING DEVICE WHILE EXPRESS-  
24 ING BREAST MILK.—

1           “(A) IN GENERAL.—For purposes of ex-  
2           pressing breast milk, an employee may tempo-  
3           rarily obscure the field of view of an image re-  
4           cording device required under this section if the  
5           passenger train on which such device is in-  
6           stalled is not in motion.

7           “(B) RESUMING OPERATION.—The crew of  
8           a passenger train on which an image recording  
9           device has been obscured pursuant to subpara-  
10          graph (A) shall ensure that such image record-  
11          ing device is no longer obscured immediately  
12          after the employee has finished expressing  
13          breast milk and before resuming operation of  
14          the passenger train.”.

15 **SEC. 103. EFFECTIVE DATE.**

16          (a) EXPANDING ACCESS.—The amendments made by  
17          section 102(a) shall take effect on the date of enactment  
18          of this Act.

19          (b) REMEDIES AND CLARIFICATION.—The amend-  
20          ments made by section 102(b) shall take effect on the date  
21          that is 120 days after the date of enactment of this Act.

22          (c) AUTHORIZING EMPLOYEES TO TEMPORARILY OB-  
23          SCURE THE FIELD OF VIEW OF AN IMAGE RECORDING  
24          DEVICE ON A LOCOMOTIVE OR ROLLING STOCK WHILE  
25          EXPRESSING BREAST MILK.—The amendments made by

1 section 102(c) shall take effect on the date of enactment  
2 of this Act.

3 (d) APPLICATION OF LAW TO EMPLOYEES OF RAIL  
4 CARRIERS.—

5 (1) IN GENERAL.—Section 18D of the Fair  
6 Labor Standards Act of 1938 (as added by section  
7 102(a)) shall not apply to employees who are mem-  
8 bers of a train crew involved in the movement of a  
9 locomotive or rolling stock or who are employees who  
10 maintain the right of way of an employer that is a  
11 rail carrier until the date that is 3 years after the  
12 date of enactment of this Act.

13 (2) DEFINITIONS.—In this subsection:

14 (A) EMPLOYEE; EMPLOYER.—The terms  
15 “employee” and “employer” have the meanings  
16 given such terms in section 3 of the Fair Labor  
17 Standards Act of 1938 (29 U.S.C. 203).

18 (B) EMPLOYEES WHO MAINTAINS THE  
19 RIGHT OF WAY; RAIL CARRIER; TRAIN CREW.—  
20 The terms “employee who maintains the right  
21 of way”, “rail carrier”, and “train crew” have  
22 the meanings given such terms in section  
23 18D(e)(4) of the Fair Labor Standards Act of  
24 1938, as added by section 102(a).

1 (e) APPLICATION OF LAW TO EMPLOYEES OF MO-  
2 TORCOACH SERVICES OPERATORS.—

3 (1) IN GENERAL.—Section 18D of the Fair  
4 Labor Standards Act of 1938 (as added by section  
5 102(a)) shall not apply to employees who are in-  
6 volved in the movement of a motorcoach of an em-  
7 ployer that is a motorcoach services operator until  
8 the date that is 3 years after the date of enactment  
9 of this Act.

10 (2) DEFINITIONS.—In this subsection:

11 (A) EMPLOYEE; EMPLOYER.—The terms  
12 “employee” and “employer” have the meanings  
13 given such terms in section 3 of the Fair Labor  
14 Standards Act of 1938 (29 U.S.C. 203).

15 (B) MOTORCOACH; MOTORCOACH SERVICES  
16 OPERATOR.—The terms “motorcoach” and  
17 “motorcoach services operator” have the mean-  
18 ings given such terms in section 18D(f)(4) of  
19 the Fair Labor Standards Act of 1938, as  
20 added by section 102(a).