

CHAPTER ONE

INTRODUCTION

When Margie* returned to her job as a sales analyst after her maternity leave in 2006, she was determined to continue breastfeeding her son, Nathan. She was aware that her milk supply would diminish if she didn't create a constant demand for that milk, so she resolved to pump breast milk for him at work. Not only would this maintain her body's production of milk; it would also provide expressed milk for her child-care provider to feed Nathan while Margie worked.

Because she worked in a cubicle, she needed to find a private place to pump. At first, an assistant vice president was away for two weeks, so Margie was allowed to use his office. But, once he returned, the best place she could find was the women's lavatory. "This was food for my son, so doing this [expressing milk] in a bathroom stall was gross," she said. "But it's all there was."

Similarly, Josie wanted to express milk at work when she returned to her position as a receptionist for the corporate office of an insurance company in 2007. However, her managers told her that she needed to spend her break time and lunch hour at the reception desk – as she had before her maternity leave – in case anyone might need her. She tried to negotiate for time away from her desk, or for one of the office secretaries to fill in for her while she was away pumping, but the company concluded that it would be too disruptive. She gave up on the idea of expressing milk during the work day and nursed her infant

* To protect the identities of study participants I use pseudonyms throughout.

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before and after work, supplementing with formula during the day. After a few days, she started wearing thick sweaters and brought extra blouses and bras to work to hide when her milk leaked through the pads she wore. After she had been back at work four weeks, her body no longer produced any milk. This situation may have had a detrimental effect on her infant's health.

The American Academy of Pediatrics recommends that women breastfeed for at least twelve months, and the World Health Organization recommends at least twenty-four months (American Academy of Pediatrics 2015; World Health Organization 2002). Yet, with most US maternity leaves lasting six weeks (eight weeks post Caesarean section births), these goals are nearly impossible to reach without expressing milk during the work day (Mohrbacher 2014). Seventy-five percent of women in the United States begin breastfeeding their infants; yet by six months, only 43 percent of babies are breastfed, and only 13 percent are exclusively breastfed (American Academy of Pediatrics 2015; World Health Organization 2002).

Recognizing the challenge of combining full-time employment and breast-milk production, the Fair Labor Standards Act was amended in 2010 to include a mandate that organizations provide lactating employees with a non-lavatory place to express breast milk, allow break time to do so, and ensure a safe place to store the pumped breast milk. More than half of the states also had their own versions of a Lactation at Work Law at the time when the federal law was passed. This book draws on data from one state that had its own Lactation at Work Law in the 2000s (Indiana) and another state that never had a state-level Lactation at Work Law (Wisconsin). Both states applied the federal law once it was in force. The data are strikingly similar for both states.

The Lactation at Work Law requires that workers must be allowed “reasonable” break time to express milk and that workers who usually were required to take their breaks at their work stations would be allowed to use their breaks to pump milk elsewhere. It required a private room “shielded from view and free from intrusion” for lactating workers (Fair Labor Standards Act 2010). And, symbolically, it declared that breastfeeding was of sufficient societal importance that employers needed to accommodate their employees expressing milk at work in order to breastfeed at home.

This law – like many others – has some ambiguity. The law does not stipulate what “reasonable break time” means, what employers must do if employees’ milk pumping requires more time than is provided by

their break time, nor how convenient the private space must be for the employee. Extant research in the area of law and organizations has found that laws with “broad and ambiguous principles give organizations wide latitude to construct the meaning of compliance” (Edelman 1992: 1532). Even when the law’s directives are unambiguous, organizations may intentionally misinterpret the law to their advantage (Kelly 2003). Structures and procedures, initially created to signal compliance with the law, often transform the legal imperatives into conventional managerial goals in a process that scholars call “managerialization.” Occasionally, these structures and procedures produce real change, such as the placement of ramps in key locations that enable convenient access for wheelchair users. Often, however, the organizational changes created in response to new legislation result in mere symbolic structures that produce few substantive effects, such as new internal procedures purported to further employment equality that actually stifle discrimination rights claims and serve to smooth out employment relations (Edelman et al. 2011; Edelman, Erlanger, and Lande 1993; Krieger, Best, and Edelman 2015; Pedriana, and Stryker 2017; Stryker 2007). This is particularly true when a law is new and organizations are wrestling with how to understand and apply it.

In struggling with how to apply a law, managerial personnel sometimes transform the law’s goals, such as access and fair treatment, into goals conventionally held by management, such as efficiency and morale. As a result, the policies or structures that appear to be complying with the law are symbolic, creating little real improvement for the covered employees (Edelman et al. 2011; Edelman, Erlanger, and Lande 1993; Krieger, Best, and Edelman 2015).

Although the Lactation at Work Law has some ambiguity, it mandates more specific accommodations than most other civil rights laws do. By specifying that employers provide private, non-lavatory space and adequate break time, the law stipulates exactly how employers should comply with the law, unlike other employment laws that include vague concepts such as “equal opportunity” (Pedriana and Stryker 2017; Stryker 2007). The law’s substantive directives provide a context for discussing how to implement it and, by codifying the needs of lactating employees, the law legitimates those discussions. In this way, the Lactation at Work Law overcomes what is often the most difficult aspect of workplace civil rights laws: initiating change in organizations.

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If Margie and Josie wished to express milk at work today, the Lactation at Work Law should have removed the difficulties they faced. Margie's employer would have been required to provide her access to a private place to pump that wasn't a bathroom stall. Josie would have been allowed to leave the reception desk to express her milk. The law would have mandated these provisions.

EFFECTIVE LEGISLATION AND ORGANIZATIONAL COMPLIANCE

Did the law create the organizational changes that would have helped Margie and Josie? New workplace legislation does not automatically manifest as expanded workers' rights and improved employment conditions. Various actors within organizations must translate these laws into policies and those policies into day-to-day realities. Human resource specialists craft new policies in reaction to civil rights laws, and their supervising managers apply those new policies to their employees' work lives.

Despite legal mandates, organizations enjoy substantial discretion regarding their actual policies and practices, with some organizations' compliance more successfully fulfilling the goals underlying new laws. This book addresses key questions to understanding organizational compliance and effectiveness of legislation, specifically asking: "How did organizations interpret and apply the Lactation at Work Law, and which of those interpretations and applications succeeded?" and "How did the organizational actors' reasons or motivations for complying with the law affect its success in ameliorating the workplace issue and expanding those employment rights?"

I studied the Lactation at Work Law at two times: immediately after it was passed and approximately five years later. By reinterviewing many key personnel over time, this study explores how sometimes formal policies produce substantive change in the organizations, while at other times the changes are purely symbolic (Albiston 2007; Edelman 1992; Edelman, Erlanger, and Lande 1993; Edelman and Suchman 1999; Edelman, Uggen, and Erlanger 1999; Meyer and Rowan 1977). These data indicate multiple frames for understandings of accommodation – frames that affected how well the needs of lactating employees were, in fact, accommodated.

This study finds that the effectiveness of the law in ameliorating barriers for lactating employees is substantially affected by how their

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organizations' human resource specialists and supervising managers understand and apply it. The law is not a monolithic force that asserts its edicts on civil society. Instead, its effects are mediated by the organizations and individuals responsible for interpreting and enacting it. These organizations and individuals can actively produce compliance with the law's original intention, they can skirt the original intention to meet organizational goals, or they can draw on morality frames external to the organization to broaden their understanding of compliance. Moreover, organizations do not act as single entities when it comes to their legal compliance. Rather, individual actors within the organization, particularly at the level of supervising managers, develop their own understandings of the law and its subsequent policies as they interact with the employees they supervise and by drawing on their own personal experiences. These understandings may shift over time.

This study found variation both between organizations and within organizations. Often, human resource specialists and supervising managers reinterpreted the law's dictates into conventional management goals. In doing so, some created policies that complied with the letter of the law, but did not ameliorate the struggles of lactating women employees, creating lactation accommodations that satisfied the law but were purely symbolic. In other cases when employers shifted from legal goals to management goals, human resource personnel and supervising managers created accommodations that were viable solutions for their lactating workers, accommodations that were substantive.

In some organizations, some human resource specialists and supervising managers were supporters of the new law and the subsequent organizational policies without first embracing managerial goals as a way to understand and apply the law. These early supporters tended to have personal or close secondhand experience with expressing breast milk and became allies for the lactating employees. Often, their proximity to the issue of lactation at work meant that they already both understood the practicalities of milk expression and supported the goal of combining breastfeeding and employment.

Over time, the focus of some supervising managers who did engage in managerialization changed even farther. Their understanding of the lactation accommodations shifted away from both the legal directive and the managerial objectives to health-related reasons for supporting the mandated policies. Rather than using legal or managerial goals, these supervising managers drew on a health-focused morality frame from outside the organization, thereby "moralizing the law."

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In many ways, the Lactation at Work Law is a success – a much-needed law that helps a sympathetic group of women workers. However, while activists, scholars, and politicians have all praised the Lactation at Work Law for mandating necessary accommodation for lactating employees, some scholars and activists question whether the Lactation at Work Law truly helps lactating workers. Indeed, some might describe this law as not *family* friendly, but *work* friendly. The presence of this law encourages women to return to work as quickly as possible, while still maintaining the effort of caring for children. From a policy standpoint, this type of law allows employers to shift the discussion away from the lack of effective, paid maternity leave in the United States. Some speculate that if US mothers did have longer paid leave, they might not want or need to pump at work.

Thus, while lactating employees may appreciate the Lactation at Work Law and their organization's subsequent policies because they enable milk expression, pumping milk might not be their first choice. To be clear, these women may prefer workplace milk expression to the alternatives of working full time and not pumping, or of not receiving a paycheck. But combining employment and breastfeeding may not be their aspiration.

In capitalist societies, an important marker of competent adulthood is full-time employment, and women who exit full-time employment are penalized in various ways, from diminished career trajectories to denial of welfare assistance from the state. The Lactation at Work Law allows nursing mothers to remain in the workforce; yet, in doing so, it perpetuates inequalities of neoliberal capitalism by compelling greater social reproduction labor from workers while demanding the very resources they require (time, energy, mental health, physical health, money) to sustain that social reproduction.

While feminism and other progressive movements have worked to bring more women into the paid labor force in order to increase women's personal and financial empowerment, the pro-woman or pro-mother benefits of the Lactation at Work Law are only tangential to its capitalist goals. As an outgrowth of neoliberalism, some assert that its main goal is to keep more workers – including lactating employees – in the labor market. By enabling the further separation of family and work, the Lactation at Work Law reinforces a double responsibility for working mothers. In this way, the success of the Lactation at Work Law might be considered an immediate success for lactating employees in some ways; but in other, broader ways, it might actually be more problematic.

METHODOLOGY

When new laws to protect workers' rights are enacted, organizations respond by translating these new laws into new workplace policies and practices. But they have considerable latitude to determine what kinds of policies and practices they create, and some of these may be more effective than others at meeting the law's underlying goals. This study asks, "How did different organizational responses translate the Lactation at Work Law differently, and how did those different translations affect the lactation experiences of the workers whose rights the law was intended to protect?" To answer this question, I selected a law that would allow me to easily observe responsive policies and structures and permit focused discussions with key actors. Previous research in this area has largely focused on managerial responses to legal change (Dobbin and Kelly 2007; Edelman 1992; Edelman, Fuller, and Mara-Dittra 2001; Edelman and Suchman 1997; Fuller, Edelman, and Matusik 2000; Kelly 2003; Kelly et al. 2010). However, because various groups of actors within organizations have different perspectives on how the processes and policies worked, I needed to interview more than management. In particular, I wanted to include the voices of those lactating employees who were affected by the law and the subsequent organizational policies devised by management.

As a qualitative study based on in-depth interviews, this research draws on each group of actors' own words to understand the application of the Lactation at Work Law. While this study has a relatively large number of participants for a qualitative study – 361 total: 188 management + 173 employees – it does not apply to all workers or all management in all organizations. Yet, unlike studies that draw on a large number of statistics, I am able to look more deeply at the data and thereby draw on the thoughts and experiences of the people involved to understand the social processes going on in organizations (what Levi-Strauss calls "mechanical models" [Lévi-Strauss 1969: 254]). Thus, this book draws on rich data and personal narratives to build theory about the processes described across the organizations in this study.

Whose Voices Are Speaking in This Book?

To understand how management and employees actually think about and experience legal compliance, workplace policies, and worker accommodations as they evolve over time, I spoke with people from 113 businesses from 10 industries – construction, dining/hotel/tourism,

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education, finance, government, health/medical, manufacturing, media, retail, and transportation – as well as from professional firms. Thus, this study draws on viewpoints and experiences from varied, multi-sited fieldwork across a range of industries (Hind 2007; Lévi-Strauss 1969). I selected these industries because they provided a mix of businesses to include variation in the types of occupations and purposes of organizations and because characteristics of jobs and worksites could affect the ease with which organizations implemented lactation accommodations (variation in manufacturing and service sectors); in the proportion of female workers, as a higher density of women workers could affect the level of need for lactation accommodations (variation in gender composition); and how easily workers could enter various fields and occupations, because lactating workers might be reluctant to quit if they fear they would not be able to reenter the same or similar jobs (variation in entry costs).

I conducted interviews with supervising managers, human resource specialists, and lactating employees working in each of these industries. Human resource personnel were those working in human resource departments, or similar employee benefit departments, who oversaw their organizations' interpretation and application of new laws. Supervising managers were those who directly oversaw workers and engaged in activities such as performance evaluation, scheduling, and assignments. For example, in hospitals, these manager-supervisors were clinic or division managers; in school systems, these managers-supervisors were principals; in the tourism and finance industries, these were the general managers for a specific hotel or bank, respectively.

I used a two-wave approach to explore how organizational responses to the Lactation at Work Law evolved over time, since previous single-time research theorized that organizational response moved from having less legal focus to having more organizational focus in crafting interpretation and compliance. Beginning in 2009, I interviewed lactating employees, human resource personnel, and supervising managers in Indiana to learn how businesses were interpreting and applying the new state law. In 2011, I expanded the study to include lactating employees, human resource personnel, and supervising managers in Wisconsin. Approximately four to six years after the initial interviews, I reinterviewed many of those same human resource specialists and supervising managers to assess whether their interpretations, practices, or viewpoints had changed. These second-wave interviews produced crucial data about how certain supervising managers changed from

focusing exclusively on how compliance could help the organization (“managerialization”) to how compliance furthered moral goals of community wellness (“moralizing the law”).

Initially, I conducted the Wisconsin interviews in order to explore how organizations responded differently to federal laws than to state-level laws addressing the same goals. Interestingly, I did not find any meaningful differences between the Indiana and Wisconsin interviews. This similarity is very important for this study; the similar reactions to federal and state lactation-at-work laws suggest that the findings are valid beyond the two states I studied.

Why Two Waves of Interviews?

These data were collected in real time, just as the human resource specialists and supervising managers were first encountering the law, and then again once those new organizational policies had been in place for several years. Thus, this study observes, first, how this law was freshly interpreted and then, later, how those understandings evolved over time. I believe this is the first time the interpretation of a new law has been studied longitudinally beginning with its introduction.

What Exactly Is This Law?

This study examines the Lactation at Work Law in two different manifestations: as state-level legislation and as a federal law in the United States. First, I studied this state law when it was passed in Indiana. In 2008, the Indiana legislature passed Ind. Code §5-10-6-2 and §22-2-14-2, which mandated that employers accommodate lactating employees. At that time, twenty-six other states had passed similar legislation.

In 2010, the state-level Lactation at Work laws were mirrored in an amendment to section 7 of the Fair Labor Standards Act (“FLSA”) through the passage of the Patient Protection and Affordable Care Act. The state and federal laws are very similar except for three differences: First, the federal law specifies a cutoff time of one year after the birth of the child, while Indiana’s has no time limit for its applicability (as is true for most the other state Lactation at Work laws). Second, the federal law applies to employers with at least fifty employees, while the Indiana law applies to workplaces with at least twenty-five employees. Third, the state-level law has no enforcement mechanism, although noncompliance sets up a business for a civil suit, enabling a lactating employee to sue. The federal law is enforceable under the Federal

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Department of Labor. Despite these differences in their respective laws, I found no differences in practical application between the two states.

To study the federal Lactation at Work Law, I turned to a state that had not had a state-level lactation-at-work law. In Wisconsin, the federal Lactation at Work Law addressed a new workplace issue, just as the state-level law had been new for Indiana. I chose Wisconsin as the comparison state because, like Indiana, it is a central Midwestern state with some industry and much farming. Both states have similar demographics. Throughout this book, I refer to “the Lactation at Work Law” in the singular, not differentiating between state and federal level.

In many ways, this was an ideal law to study in order to examine various aspects of sociological and socio-legal theory about how organizations apply laws, how organizational understanding of laws shifts over time, and how compliance varies depending on the degree of ambiguity and the resulting variation and breadth of organizational interpretation. In particular, the Lactation at Work Law was ambiguous enough to require interpretation by organizational actors – human resource personnel and supervising managers. Interviewees discussed how they interpreted the law, how they made decisions about new workplace policies to respond to those laws, and how they experienced those new policies. Yet the Lactation at Work Law was not as ambiguous as many other employment civil rights laws because it mandates accommodations that are sufficiently specific so that compliance was more transparent – for example, a private room was accessible for milk expression or it was not. Because the mandated accommodations were more concrete than those of many other civil rights laws, assessing the adequacy of accommodations could facilitate discussion between supervising managers and lactating employees.

How Does This Study Analyze What People Said?

This project uses a longitudinal panel of qualitative, in-depth interviews. A key benefit of qualitative research is the high validity possible; that is, success of actually capturing what the research purports to address (Hind 2007; Lévi-Strauss 1969). The interviews ranged from twenty minutes to about two hours, with most lasting between thirty and ninety minutes. All interviews were recorded and transcribed. Thus, all quotations used in this book are direct quotes.

The transcribed interviews and field notes were coded, using the qualitative data software NVivo, for various themes. Sometimes these themes were responses to specific questions (e.g., “What sort of internal