

IN THE OHIO SUPREME COURT
COLUMBUS, OHIO

08-0845

LaNISA ALLEN, : Case No. _____
: :
Plaintiff-Appellant, : On appeal from the Butler Co.
: Court of Appeals, 12th Appel-
vs. : late District
: :
TOTES/ISOTONER CORP., :
: :
Defendant-Appellee. :
: :

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT LaNISA ALLEN**

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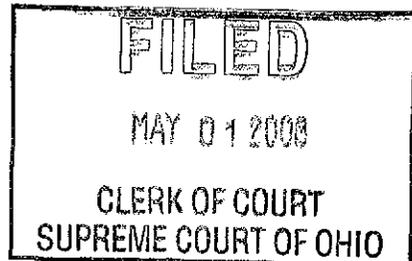


TABLE OF CONTENTS

EXPLANATION OF PUBLIC OR GREAT GENERAL INTEREST IN THIS
CASE 1

STATEMENT OF THE FACTS AND CASE 3

LAW AND ARGUMENT 6

PROPOSITION OF LAW No. 1:
*Lactation is a Physical Condition Associated with Pregnancy and Childbirth,
Hence the FEPA, as Amended by the Ohio PDA, Prohibits Discrimination
Against Females Because they are Lactating* 6

PROPOSITION OF LAW No. 2:
*An Employer Must Take Reasonable Measures to Accommodate a Lactating
Employee's Need to use a Breast Pump* 8

PROPOSITION OF LAW No. 3:
*Ohio, as a Matter of Public Policy, Prohibits Discrimination Against Women
who Choose to Work While Still Breastfeeding their Infant Child* 11

CONCLUSION 13

CERTIFICATE OF SERVICE 13

APPENDICES;

Opinion of the Twelfth District Court of Appeals
(April 7, 2008) 14

Judgment Entry of the Twelfth District Court of Appeals
(April 7, 2008) 17

“Changes in women’s labor force participation in the 20th century,”
Monthly Labor Review (U.S. Dept. of Labor, February 16, 2000) 18

“3 of 4 babies now get mother’s milk,” *Cincinnati Enquirer*,
(May 1, 2008) at A8 19

**EXPLANATION OF PUBLIC OR GREAT
GENERAL INTEREST IN THIS CASE**

This case presents an issue of public or great general interest concerning the convergence of two social trends: First, the growing numbers of working women, and more particularly, working mothers, in the Ohio workforce; and second, medical recognition of the health benefits of breastfeeding to both mother and child. These trends overlap where a woman has given birth, returned from maternity leave, but is still nursing her infant child. Ohio law protects these women from discrimination during their pregnancy and guarantees their continued employment upon return from maternity leave. The question of whether Ohio law continues to protect such women during the period in which she nurses her child is one of first impression.

This case arises from the circumstances surrounding the termination of plaintiff LaNisa Allen's ("Allen") employment with defendant Totes/Isotoner Corp. ("Totes" or "Company"). Between July 27, 2005, and August 14, 2005, Totes employed Allen in a general labor position at its facility in West Chester, Ohio. At the time of her initial hire, Allen was still breastfeeding her infant child and needed to use a breast pump during work hours to remove her milk.

Totes was aware of Allen's condition, but refused to provide any location where she could privately use her pump when her breasts became full. Instead, she was to use her breast pump in the women's restroom during her lunch break. Allen began work at 6:00 am, and broke for lunch at 11:00 am. She soon discovered, however, that she could not go that long without pumping, and so she began to take a break when her breasts began to ache, usually around 10:00 am, to use her breast pump. On August 17, 2005, Karen Kidder ("Kidder"), a supervisor for Totes, discovered Allen pumping her milk, leading to Allen's termination later that same day.

On March 16, 2006, Allen initiated the present action against Totes alleging that the company discriminated against her because of her gender in violation of the Ohio Fair Employment Practices Act ("FEPA"), R.C. §§4112.02 and 41122.99 [Count One]; or alternatively, that her termination violated public policy in violation of Ohio common law [Count Two. (See Transcript of docket ("T.d.") 2, Complaint at ¶¶12-20.) Totes countered these assertions by arguing, that Ohio law, as analyzed by the federal Sixth Circuit in Derungs v. Wal-Mart Stores, Inc. (6th Cir. 2004), 374 F.3d 428, did not recognize a cause of action for discrimination against a "breastfeeding" woman.

That argument confuses "breastfeeding" with "lactating." "Lactation" is the secretion of milk from the mammary glands. "Breastfeeding," in contrast, is the social act of nursing a baby, and one over which a mother may assert some control. Federal law, as cited in the Derungs opinion, clearly distinguishes the social act of breastfeeding from the physical act of pregnancy, and therefore excludes breastfeeding from protection under the federal Pregnancy Discrimination Act ("PDA"). Allen contends that the physical act of lactating is an aspect of pregnancy and thereby falls within the protection of both the federal PDA and Ohio FEPA, as amended by the Ohio PDA.

This case therefore addresses directly the issue of whether lactation is an aspect of pregnancy, making lactating women a protected class under the FEPA, and indirectly the issue of whether an employer may regulate the time and place a lactating employee may pump her breast milk. This is a case of first impression in this state, and one that this Court must inevitably address. According to the U.S. Department of Labor, Bureau of Labor Statistics, nearly 3 of every five women of working age are employed in the labor force. "Changes in women's labor force participation in the 20th century," *Monthly Labor Review* (U.S. Dept. of Labor, February 16, 2000) [Appendix "C"]. At the same time, in the most recent survey conducted by the federal Center for Disease Control, 77% of

women now breastfeed their newborn infant, the highest rate in the last 20 years. “3 of 4 babies now get mother’s milk,” *Cincinnati Enquirer*, May 1, 2008, at A8 [Appendix “D”]. As a consequence, more women in Ohio are now returning to work from maternity leave while still breastfeeding their newborn child.

Moreover, public interest in this issue can be gauged by the public outcry following the issuance of the Derungs decision, which upheld the right of a retail establishment open to the public to bar women from breastfeeding their infants on store premises. The Ohio General Assembly immediately responded by passing 2005 H.B. 41 (now codified at R.C. §3781.55), which overrode the Sixth Circuit’s interpretation of Ohio’s public accommodation laws by recognizing a mother’s right “to breast-feed her baby in any location of a place of public accommodation ...” This case takes the next logical step, by addressing the rights of mothers who must return to work after maternity leave, but still wish to breastfeed their infants. Accordingly, this Court must grant jurisdiction to determine the interrelation of lactation and pregnancy under the FEPA, as amended by the Ohio PDA, to clarify the rights of lactating women under the FEPA, and to provide guidance to companies employing lactating women.

STATEMENT OF THE FACTS AND CASE

In late July 2005, Allen responded to a notice, placed by Star Personnel Co. (“Star Personnel”), for an opening at Totes as a general laborer. On Monday, July 25, 2005, Allen attended an orientation at Star Personnel’s offices in Fairfield, Ohio. (T.d. 21, Allen Dep. at 33-34.) Angel Gravett (“Gravett”), a manager for Star Personnel, but who was acting on this occasion as an agent of Totes, conducted the meeting. (T.d. 31, Allen Aff. at ¶3.)

At the end of that meeting, Allen explained to Gravett that she was still breast-feeding her infant child and that she would need to take regular breaks to use her breast-pump. She asked that the company provide her with a private area, with an electrical outlet, where she could pump her breast milk. (T.d. 21, Allen Dep. at 34, line 17, to 36, line 16.) Later that day, Gravett contacted Allen at home and told her that she could use the breast pump in the women's restroom. Gravett also told Allen that her hours would be 6:00 am to 2:30 pm, with a lunch scheduled at 11:00 am, and that she could use the breast pump during her lunch break. (T.d. 21, Allen Dep. at 37, lines 11-15.)

On Wednesday, July 27, 2006, Allen reported to work at the West Chester facility, where the company assigned her to a work station where she prepared leather gloves for repackaging. In this position, Allen could work at her own pace, independent of the coworkers in her work area.. (T.d. 31, Allen Aff. at ¶5; T.d. 21, Allen Dep. at 40, lines 2-12.)

Generally, the Company would allow employees of both sexes to leave their workstations to use the restroom whenever they needed to do so. (T.d. 21, Allen Dep. at 55, lines 5-9.) The Company also allowed female employees who were menstruating to use the restroom whenever they became uncomfortable and needed to change a pad or a tampon. (T.d. 31, Allen Aff. at ¶8.)

Allen's own practice was to breastfeed her baby just before she left work, usually around 5:30 am. (T.d. 21, Allen Dep. at 20, lines 1-6.) over the course of the morning, however, Allen's breasts would engorge themselves, sometimes to the point where her back would begin to hurt and her breasts would leak milk. (T.d. 31, Allen Aff. at ¶6; T.d.21, Allen Dep. at 22, lines 7-12.) Despite the pain, Allen was still able to perform her work to satisfaction. (*Id.* at 23, lines 5-14.) Normally, Allen's breasts would refill 3-4 hours after each feeding. (*Id.* at 28, lines 1-19.) This placed Allen in a bind: the 8:00 am break lasted only ten minutes, too short to pump her breasts, but if she waited

until the 11:00 lunch her back would begin to hurt and she might leak. (T.d. 21, Allen Dep. at 49, lines 5-12.)

Initially, Allen tried waiting until her 11:00 am lunch break to pump her breast milk. (T.d. 31, Allen Aff. at ¶7; T.d. 21, Allen Dep. at 44, lines 6-12.) The pain, however, was too great and after a week or so, she began to take a short break at 10:00 am to pump her milk, before the pressure on her breasts became too great. (T.d. 21, Allen Dep. at 45, lines 6-22.) For the next two weeks, Allen continued to pump her breasts at this time without incident. (T.d. 31, Allen Aff. at ¶9.)

On August 16, 2005, while Allen was pumping her breasts, both Karen Kidder (“Kidder”), her Supervisor, and Gravett came into the women’s restroom, one after the other. (*Id.* at ¶10.) Afterwards, Allen asked to speak with Kidder directly. She met with Kidder in her office. (T.d. 21, Allen Dep. at 52, line 19, to 53, line 19.) Allen specifically asked Kidder whether she might extend her morning break from 10 to 15 minutes so that she could pump her breast milk earlier in the day. Kidder said she would get back to Allen. (*Id.* at 49, lines 13-18, and 53, lines 12-19.)

At 2:45 pm, at the end of the workday, Kidder called Allen into her office and told her that the Company no longer needed her services. When Allen asked Kidder if she was being terminated for using her breast pump, Kidder would not reply. (T.d. 31, Allen Aff. at ¶12; T.d. 21, Allen Dep. at 53, line 22, to 54, line 22.)

LAW AND ARGUMENT

PROPOSITION OF LAW No. 1:

Lactation is a Physical Condition Associated with Pregnancy and Childbirth, Hence the FEPA, as Amended by the Ohio PDA, Prohibits Discrimination Against Females Because they are Lactating.

As her primary claim, Allen alleges that Totes has discriminated against her because she was lactating, a condition of pregnancy and an aspect of her gender. The trial court, however, wrongly rejected this argument on the grounds that lactation is a condition of breastfeeding, but not of pregnancy. (T.34, Decision at 7, lines 4-5.)

The Ohio FEPA prohibits

... any employer, because of ... sex ... of any person ... to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

R.C. §4112.02(A). Subsequently, the General Assembly passed the Ohio Pregnancy Discrimination Act (“PDA”), expanding those prohibitions to include

... [f]or the purpose of divisions (A) to (F) of section 4112.02 of the Revised Code, the terms “because of sex” and “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, any illness arising out of and occurring out of and occurring during the course of pregnancy, childbirth or related medical conditions ...

R.C. §4112.01(B). Allen asserts that lactation is an aspect of pregnancy and/or childbirth and that lactating women are therefore a protected class under §4112.02(A), as amended by the Ohio PDA.

Totes counterargued that Ohio law, as set forth in the Derungs opinion, did not extend the protections of §4112.02(A) to breastfeeding mothers. That argument confuses “lactation” with “breastfeeding.” “Lactation” is the production and secretion of milk from the mammary glands. Scientific studies demonstrate that from the fourth month of pregnancy, a woman’s body begins producing hormones that stimulate the growth of the milk duct system in her breasts. *See*

Mohrbacher, Nancy, The Breastfeeding Answer Book (3d ed., 2003), LaLeche League International.

The subsequent production and secretion of breast milk is a physical process, triggered by hormonal changes occurring during pregnancy, that continues after giving birth. "Breastfeeding" is the social act of nursing a baby.

The trial court tacitly recognized this distinction. Nonetheless, the trial judge concluded that because Allen gave birth five months prior to her employment by Totes, she could have chosen to control her lactation:

... Pregnant women who give birth and chose not to breastfeed or pump their breasts do not continue to lactate for five months. Thus, Allen's condition of lactating was not a condition related to pregnancy but rather a condition related to breastfeeding.

(T.d. 34, Decision at 7, lines 2-6.) The trial court consequently granted a summary judgment against Allen because she had deliberately chosen to breastfeed her child and needed to pump her milk during work hours.

The logic underlying this conclusion is misplaced. The voluntariness of the act of breastfeeding does not determine whether lactation is an aspect of pregnancy protected under the FEPA. A woman may voluntarily abort her fetus once she becomes pregnant, but the fact that she may possess such an option has no bearing on whether she falls within a protected class of pregnant women. Rather, the touchstone is whether lactation is physically related to pregnancy. Every woman who endures a long-term pregnancy will begin to lactate, and she cannot regulate the flow of her milk once she begins lactating. In stark contrast, a woman can choose when and where she will breastfeed her infant. A woman's decision to breast feed, just like her decision not to abort her fetus, has no bearing on the interrelation of lactation and pregnancy.

On appeal, the Twelfth District Court of Appeals sidestepped this issue altogether, holding ... appellant was not terminated because she was lactating, pumping breast milk, or needed to take a break to pump breast milk. Rather, she was simply and plainly terminated as an employee at will for taking an unauthorized, extra break (unlike the restroom breaks which were authorized and available to all of the employees, appellant included)

Allen v. Totes/Isotoner Corp. (Butler Co.), slip opinion at 2-3, Case No. CA07-08-0196 [Appendix “A”]. The appellate court is blind to its own logic. The workrule that Allen allegedly violated was that restricting the time she could pump her breast milk to her lunch break. Totes placed no such restrictions on any other employee who needed to leave his or her workstation to tend to a bodily function or bodily discomfort, only upon lactating women. That workrule was itself discriminatory, since it placed extra restrictions on women experiencing a physical act of pregnancy.

In short, the physical nature of lactation makes it a part or aspect of a women’s pregnancy, and distinguishes it from the social act of breastfeeding. The FEPA offers no protection to women engaging in the act of breastfeeding, because a mother can determine when and where such act occurs. She cannot, however, assert such control over the physical act of producing and secreting her milk. Lactation is therefore an aspect of pregnancy protected under the FEPA, and amended by the Ohio PDA.

PROPOSITION OF LAW No. 2:

An Employer Must Take Reasonable Measures to Accommodate a Lactating Employee’s Need to use a Breast Pump.

Under Ohio law, a plaintiff may establish a *prima facie* case of discrimination where she can establish: (i) that she is a member of a protected class; (ii) that she was qualified for the position she held; (iii) that she suffered an adverse employment action; and (iv) that comparable persons outside

the protected class were treated more favorably. Hollingsworth v. Time-Warner Cable (Hamilton 2004), 157 Ohio App.3d 539, 812 N.E.2d 976, 2004-Ohio-3130; Priest v. TFH-EB, Inc. (Franklin 1998), 127 Ohio App.3d 159, 711 N.E.2d 1070. Allen can establish each of these necessary elements.

The trial court has simply assumed that discrimination against a lactating women is not actionable and so has ignored this aspect of the case. Proof of the first three elements set forth above is not at issue: Allen was still breastfeeding; she was qualified for the laborer position; and she was abruptly terminated. (*See generally* T.d. 21, Allen Dep. at 16-18 and 52-53.) As lactation is an aspect of pregnancy, Ohio law also requires employers to provide reasonable accommodation to a lactating woman, if the company provides similar accommodation to non-lactating employees.

... To treat pregnant employees the same as similarly-situated nonpregnant employees ... [Ohio law] does not require an employer to make accommodations for its pregnant employees unless it has made accommodation to similarly-situated nonpregnant employees.

Priest v. TFH-EB, Inc., *supra*, 127 Ohio App.3d at 165, 711 N.E.2d at 1075 [citations omitted]. This the Company failed to do.

Under the workrules implemented by Totes, non-pregnant employees were permitted to leave their workstations to relieve their bodily functions — such as using the restroom facilities or attending to menstrual problems — whenever necessary. (*See generally* T.d. 31, Allen Aff. at ¶8; T.d. 21, Allen Dep. at 5, lines 5-9.) Those non-pregnant employees were treated more favorably than Allen. In fact, her condition is directly analogous to that of a menstruating woman. During her period, a menstruating woman has no control over the amount of blood that may discharge and so may, from time-to-time, have to change her tampon or pad. In the same manner, Allen had no control over the flow of milk into her breasts and had to regularly use her breast pump to prevent them from

becoming engorged, aching and leaking. Totes, however, placed absolutely no restrictions on menstruating women leaving their workstations. Only Allen, a lactating woman, was required to remain at her workstation and suffer.

When Allen specifically asked that her morning break be extended by five minutes so that she could use her breast pump, the Company refused. (See T.d. 30 at Appendix "C", Memorandum, Karen Kidder to Vickie Fightmaster, Document requests at doc. 00034; T.d. 30 at Appendix "B", Admission No. 29, Request for Admissions.) Totes thereby has refused to extend the same accommodation accorded to non-pregnant employees to Allen; only she was not permitted to take a short break to attend to her particular condition. In this manner, Totes has extended the accommodation of allowing *impromptu* breaks to attend to bodily needs to non-lactating employees, but not to lactating employees.

Moreover, the reason given by Kidder for terminating Allen, that Allen took unauthorized breaks, is a pretext for unlawful discrimination. Totes has asserted that it "granted permission to Plaintiff to use her breast pump even though it was under no obligation to do so." (T.d. 22, Motion for Summary Judgment at 8-9, *esp.* 9, lines 1-2.) Yet such a rule is itself discriminatory. Once again, other, non-lactating Totes employees were permitted to take breaks as needed to attend to their bodily functions; only lactating women were denied such breaks. Thus, the very workrule that Totes points to in an attempt to absolve itself of any wrongdoing actually reinforces Allen's claim because the rule specifically singled out lactating women. In short, Totes unabashedly terminated Allen because she was lactating, a situation which the Company was too uptight to deal with.

PROPOSITION OF LAW No. 3:

Ohio, as a Matter of Public Policy, Prohibits Discrimination Against Women who Choose to Work While Still Breastfeeding their Infant Child.

Allen has also raised a Greeley claim, asserting that her termination violated Ohio public policy, as embedded in R.C. §§4112.01(B) and 4112.02(A). (T.d. 2, Complaint at ¶¶16-19.) Totes, and the trial court below, citing only to the Derungs decision, argued that “breastfeeding discrimination does not constitute gender discrimination.” (See, T.d. 34, Decision at 7, lines 6-7.) The trial court relies upon one case — Derungs v. Wal-Mart Stores, Inc. (6th Cir. 2004), 374 F.3d 428 — for that assertion. The reliance on the holding of that case belies a complete misunderstanding of the rationale utilized by the Derungs court, which actually reached just the opposite conclusion.

In Derungs, the three female customers sued a retail store because it prohibited breastfeeding on the store premises. The women brought suit under Ohio’s Public Accommodation Act, R.C. §4112.02(G). Derungs v. Wal-Mart Stores, Inc., *supra*, 374 F.3d at 430-31. The Sixth Circuit, after reviewing the legislative history of the PDA, determined that the General Assembly specifically intended the prohibition against pregnancy discrimination to apply to matters in the workplace, but not to matters of public accommodation

.... The Legislature made a conscious choice to extend the definition of discrimination to include pregnancy even though there cannot be a class of similarly situated males. In making this choice, however, the Legislature extended the definition of discrimination in the employment context only. Because of the timing and language of §4112.01(B), it appears that the Ohio Legislature purposely chose to limit the scope of protection of “pregnancy, childbirth and related medical conditions” to the employment context and not to extend that protection to places of public accommodation ...

374 F.3d at 436-37. The Sixth Circuit thereupon affirmed the District Court’s dismissal of plaintiffs’ claims. *Id.* at 437.

As the quoted language makes clear, the holding that discrimination against “breastfeeding” women does not constitute gender discrimination is based upon statutory construction, not on the substance of plaintiffs’ claims. Consequently, the trial court’s reliance upon the holding of the Derungs case is entirely misplaced. In fact, Derungs actually supports Allen’s claim that lactation is an aspect of pregnancy and childbirth, and by extension, that Ohio public policy necessarily prohibits discrimination against lactating women.

Even more to the point, since the issuance of the Derungs decision, the Ohio legislature has enacted 2005 Senate Bill 41, which states that:

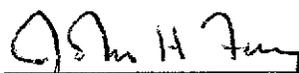
A mother is entitled to breast-feed her baby in any location of a place of public accommodation wherein the mother is otherwise permitted.

R.C. §3781.55. The intent of Senate 41 was to overrule Derungs. That decision specifically held that the legislature, when enacting its prohibition against “pregnancy discrimination” in the workplace, had declined to impose the same restrictions on places of public accommodation. Derungs v. Wal-Mart Stores, Inc., *supra*, 374 F.3d at 436-37. Senate Bill 41 rectified that omission. In doing so, the Ohio legislature has made a *de facto* acknowledgment that “breast-feeding discrimination” is a form of “pregnancy discrimination.” Accordingly, this public policy prohibiting discrimination against pregnant women includes workplace discrimination against lactating women.

CONCLUSION

For the reasons set forth above, this case involves matters of public and great general interest. Appellant therefore requests that this Court grant jurisdiction and allow this case so that the important issues presented here may be reviewed on their merits.

Respectfully submitted,

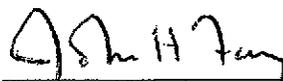


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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Support of Jurisdiction was served upon Lawrence Barty, Taft, Stettinius & Hollister, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, attorney for appellee, by regular U.S. Mail, on this 1st day of May, 2008.



John H. Forg (0041972)

Attorney for Appellant
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FILED

IN THE COURT OF APPEALS

2008 APR -7 AM 8:46

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

LaNISA ALLEN,

Plaintiff-Appellant,

- vs -

TOTES / ISOTONER CORP.,

Defendant-Appellee.

CASE NO. CA2007-08-196
(Accelerated Calendar)

JUDGMENT ENTRY

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV06-03-0917

{11} This cause is an accelerated appeal in which plaintiff-appellant, LaNisa Allen, appeals the decision of the Butler County Court of Common Pleas granting summary judgment in favor of defendant-appellant, totes/Isotoner Corp. ("totes"), in a pregnancy-based gender discrimination action.¹

{12} Appellant started working for totes on July 27, 2006 as a temporary employee. Her shift was from 6 a.m. to 2:30 p.m., with a ten-minute break at 8 a.m. and 1 p.m., and a 30-minute lunch break at 11 a.m. The parties agreed that appellant, who was breastfeeding her five-month-old son, would pump breast milk during her 11 a.m. lunch break. After a week of working at totes, appellant decided she could no longer

1. Pursuant to Loc.R. 6(A), we have sua sponte assigned this case to the accelerated calendar.

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

LaNISA ALLEN, :
 :
 Plaintiff-Appellant, : CASE NO. CA2007-08-196
 : (Accelerated Calendar)
 :
 - vs - : JUDGMENT ENTRY
 :
 :
 TOTES / ISOTONER CORP., :
 :
 Defendant-Appellee. :

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV06-03-0917

{¶1} This cause is an accelerated appeal in which plaintiff-appellant, LaNisa Allen, appeals the decision of the Butler County Court of Common Pleas granting summary judgment in favor of defendant-appellant, totes/Isotoner Corp. ("totes"), in a pregnancy-based gender discrimination action.¹

{¶2} Appellant started working for totes on July 27, 2006 as a temporary employee. Her shift was from 6 a.m. to 2:30 p.m., with a ten-minute break at 8 a.m. and 1 p.m., and a 30-minute lunch break at 11 a.m. The parties agreed that appellant, who was breastfeeding her five-month-old son, would pump breast milk during her 11 a.m. lunch break. After a week of working at totes, appellant decided she could no longer

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wait until 11 a.m. to pump breast milk and that she needed to do it around 10 a.m. instead. Appellant never asked permission to take this 10 a.m. break, never discussed it with any totes representatives, and never asked for different accommodations.² Appellant simply started taking an additional break around 10 a.m. to pump breast milk while continuing to take her other breaks. She was terminated on August 16, 2006 for not following directions after she was observed pumping breast milk at a time she should have been on the work floor.³ Appellant filed a complaint against totes alleging gender discrimination, disability discrimination, and violation of Ohio public policy under R.C. Chapter 4112. The trial court granted summary judgment in favor of totes.

{¶3} Appellant's assignment of error challenging the grant of summary judgment in favor of totes is overruled on the ground that appellant fails to establish a prima facie case of gender discrimination on the basis of pregnancy. Further, appellant's termination does not violate Ohio public policy against discrimination on the basis of pregnancy. See R.C. 4112.01(B) and 4112.02(A); *Derungs v. Wal-Mart Stores, Inc.* (C.A.6, 2004), 374 F.3d 428, citing *Martinez v. N.B.C. Inc.* (S.D.N.Y.1999), 49 F.Supp.2d 305, and *Wallace v. Pyro Mining Co.* (W.D.Ky.1990), 789 F.Supp. 867. Notwithstanding appellant's claims of pregnancy discrimination and violation of public policy, appellant was not terminated because she was lactating, pumping breast milk, or needed to take a break to pump breast milk. Rather, she was simply and plainly terminated as an employee at will for taking an unauthorized, extra break (unlike the

2. For example, appellant could have asked that the 8 a.m. break be extended by five minutes so that she could pump breast milk then (she testified that the entire process takes 15 minutes); that her 8 a.m. break be delayed until 10 a.m.; or that she be allowed to switch her 11 a.m. break, or part of it, with a 10 a.m. break.

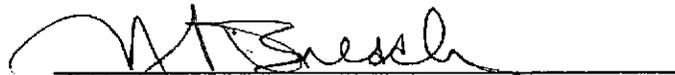
3. Only after she was discovered pumping breast milk at an unauthorized time did appellant ask for a different accommodation. Totes declined to grant her request and terminated her.

restroom breaks which were authorized and available to all of the employees, appellant included). See *Popp v. Integrated Elec. Serv., Inc.*, Butler App. No. CA2005-03-058, 2005-Ohio-5367.

{14} Judgment affirmed.

{15} Pursuant to App.R. 11.1(E), this entry shall not be relied upon as authority and will not be published in any form. A certified copy of this judgment entry shall constitute the mandate pursuant to App.R. 27.

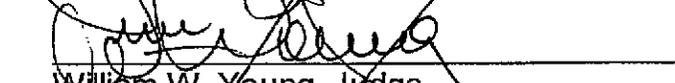
{16} Costs to be taxed in compliance with App.R. 24.



R.J. Bressler, Presiding Judge



William W. Young, Judge



Stephen W. Powell, Judge



[Accessibility Information](#)

Originally published February 16, 2000



Changes in women's labor force participation in the 20th century

DESK BLOTTER

► [Producer prices in January](#)

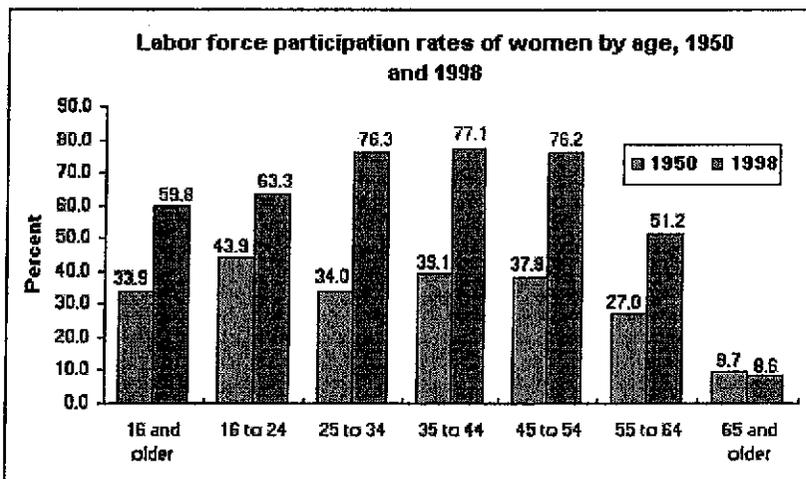
► [Rises in import prices by locality of origin in January](#)

► [Changes in women's labor force participation in the 20th century](#)

► [Wages, occupations, and job duties](#)

► [Women's share of labor force to edge higher by 2008](#)

In 1950 about one in three women participated in the labor force. By 1998, nearly three of every five women of working age were in the labor force. Among women age 16 and over, the labor force participation rate was 33.9 percent in 1950, compared with 59.8 percent in 1998.



[Chart data—TXT]

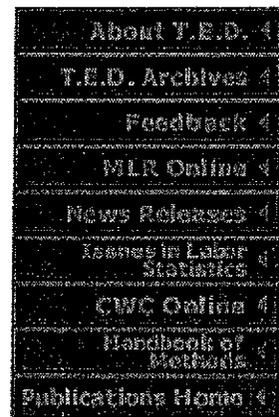
Changes in labor force participation varied by age group. The biggest increase in labor force participation was among those age 25 to 34—their rate more than doubled, from a level of 34.0 percent in 1950 to 76.3 percent in 1998. Also, in 1950 women age 16 to 24 had the highest labor force participation rate (43.9 percent); in 1998 women age 35 to 44 had the highest rate (77.1 percent), followed closely by those age 25 to 34 (76.3 percent) and those age 45 to 54 (76.1 percent).

The only age group to experience a decline in labor force participation between 1950 and 1998 was those age 65 and over. The rate for women in this age group dropped from 9.7 percent to 8.6 percent.

Data on labor force participation are from the [Current Population Survey](#). Find out more in "[Labor force participation: 75 years of change, 1950-98 and 1998-2025](#)," by Howard N Fullerton, Jr., *Monthly Labor Review*, December 1999.

The Bureau of Labor Statistics is an agency within the U.S. Department of Labor.

Other Publications:



3 of 4 babies now get mother's milk

Rise linked to health info, tolerance

By Mike Stobbe
The Associated Press

ATLANTA — More than three out of four new moms now breast-feed their infants, the highest rate in the U.S. in at least 20 years, according to a government report released Wednesday.

About 77 percent of new mothers breast-feed, at least briefly, up from 60 percent in 1993-1994, the Centers for Disease Control and Prevention said.

"It looks like it is an all-time high" based on CDC surveys since the mid-1980s, said Jeff Lancashire, a CDC spokesman.

Experts attributed the rise to education campaigns that emphasize that breast milk is better than formula at protecting babies against disease and childhood obesity. A changing culture that accommodates nursing mothers may also be a factor.

The percentage of black infants who were breast-fed rose most dramatically, to 65 percent. Only 36 percent were ever breast-fed in 1993-1994, the new study found.

For whites, the figure rose to 79 percent, from 62 percent. For Mexican-Americans, it increased to 80 percent, from 67 percent.

Former U.S. Surgeon General Dr. David Satcher celebrated the report's findings, noting that black women have historically had lower breast-feeding rates.

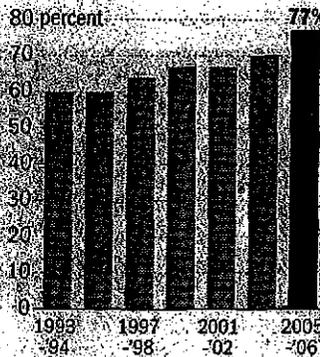
"It was very impressive that when it comes to beginning to breast-feed, African-American women have had the greatest progress," said Satcher, who is now an administrator at Atlanta's Morehouse School of Medicine.

The new report is based on a comprehensive federal survey involving in-person interviews as well as physical examinations. The find-

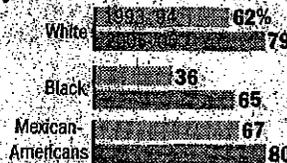
Healthier feedings

Experts attribute the rise in breast-feeding to education campaigns emphasizing that the milk is better at protecting babies against disease and childhood obesity.

U.S. rate of infants who were breast-fed



By race



Source: Centers for Disease Control and Prevention
The Associated Press

ings are based on information for 434 infants from the years 2005 and 2006.

A telephone survey of thousands of families, released last year, found that 74 percent of infants in 2004 had been breast-fed.

At least three types of CDC surveys have shown breast-feeding rates moving upward since the early 1990s, officials said.

The latest CDC report found rates of breast-feeding were also lowest among women who are unmarried, poor, rural, younger than 20, and have a high school education or less.