



Nathan Woodliff-Stanley, Executive Director  
Mark Silverstein, Legal Director

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**SENT VIA U.S.P.S.**

Joseph P. Clayton  
President and CEO  
DISH Network – Corporate Headquarters  
9601 S. Meridian Blvd.  
Englewood, CO 80112

Dear Mr. Clayton,

I am writing to inform you that the American Civil Liberties Union of Colorado (ACLU) has received several complaints from DISH Network (DISH) employees regarding DISH's persistent failure to comply with state and federal laws requiring accommodation of nursing mothers in the workplace. Several of your employees have reported that the arrangements for nursing mothers at DISH have forced them to pump in a bathroom, expose their breasts to pump in front of co-workers and even supervisors, and/or pump in areas where employees passing by were able to see into the lactation room. These conditions violate the rights of nursing employees under state and federal law, as outlined in the Colorado Workplace Accommodations for Nursing Mothers Act (WANMA) and the Fair Labor Standards Act (FLSA). As a large national corporation with approximately 35,000 employees, DISH has the resources to comply with these laws and should have the will to do so. By this letter, the ACLU demands that DISH come into immediate compliance with all aspects of WANMA and FLSA as they relate to nursing mothers.

***Federal and State Laws Require DISH to Accommodate Nursing Mothers***

While a broad consensus exists among medical and public health experts that breastfeeding is optimal for babies up to one year (or longer), many women who return to work after having a child and wish to continue breastfeeding are faced with logistical difficulties created by their employers' failure to accommodate them. In 2008, "to encourage the removal of boundaries placed on nursing mothers in the workplace," the Colorado General Assembly enacted the Workplace Accommodations for Nursing Mothers Act. C.R.S. § 8-13.5-102(2). WANMA mandates that Colorado employers make "reasonable efforts to accommodate an employee who chooses to express breast milk in the workplace," *id.*, § 8-13.5-104(3), including by "provid[ing] a room, other than a toilet stall, where an employee can express breast milk in privacy," *id.*, § 8-13.5-104(2). In promulgating WANMA, the Colorado legislature specifically found there are substantial benefits to employers who accommodate nursing employees:

In addition to individual health benefits [to nursing mothers], providing opportunities for breastfeeding results in substantial benefits to employers, including reduced health

care costs, reduced employee absenteeism for care attributable to infant illness, improved employee productivity, higher morale and greater loyalty, improved ability to attract and retain valuable employees, and a family-friendly image in the community.

*Id.*, § 8-13.5-102(1)(e).

The United States government has adopted a strong, multi-pronged public policy encouraging breastfeeding. As part of that effort, in 2010, the Affordable Care Act amended the FLSA to require an employer to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public” to be used by female employees to express breast milk. 29 U.S.C. § 207(r)(1)(B).

Both federal and state law, then, emphasize that it is not enough to have a designated pumping space, but also that employee must have a space – other than a bathroom – to pump out of view of co-workers. This letter details the violations of WANMA and FLSA at two of the six DISH offices located in Colorado: Riverfront and Meridian.<sup>1</sup>

### ***Riverfront Office Lactation Room***

DISH Network’s Riverfront call center, located in Littleton, Colorado has designated a single bathroom as the lactation room for the many female employees who are at the facility on a daily basis. However, federal and state law prohibit employers such as DISH from designating a “bathroom”<sup>2</sup> or a “toilet stall”<sup>3</sup> as the room wherein nursing mothers are to pump. In addition to health and sanitation concerns that arise for mothers expected to pump breast milk in a bathroom, requiring women to express their milk in spaces that are otherwise considered unsuitable for employees’ work activities poses harm to women’s basic human dignity.

Not only is the Riverfront lactation room a bathroom, but the room is accessible and used by other co-workers, particularly male employees. While the bathroom is to be accessed only by a key or badge, we have received reports from some DISH employees that, while they were pumping breast milk in the bathroom, male maintenance staff entered the bathroom with a badge. It should go without saying that such exposure to any co-worker, especially a male co-worker, can be humiliating and discourage some mothers from future breast milk expression in the workplace.

### ***Meridian Office Lactation Rooms***

The DISH Network’s corporate headquarters in Littleton, Colorado, called the Meridian Office, has approximately 1,300 employees who work in two buildings on a large campus. Almost 40% of DISH Network’s workforce at the Meridian office are women, many of whom are of childbearing age. The ACLU is aware of at least six women who currently express breast milk in Building One, three women who are expressing breast milk in Building Two, and at least three women who are currently pregnant or who are on maternity leave and will soon be ready to return back to work on the Meridian Campus. These numbers alone reflect that any reasonable accommodation of nursing mothers in the Meridian Campus requires multiple private pumping spaces.

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<sup>1</sup> Given the blatant nature of the violations discovered in these two offices – the only two offices the ACLU has yet investigated – I urge DISH to undertake an investigation of all of its offices to ensure compliance with federal and state laws requiring accommodation of nursing mothers in the workplace.

<sup>2</sup> FLSA, 29 U.S.C. § 207(r)(1)(B).

<sup>3</sup> WANMA, C.R.S. § 8-13.5-104(2)..

Yet, there are only two lactations rooms available on the campus: one room is located off the atrium hallway on Building One's first floor; the other room is located on the second floor of Building Two. Employees determine which lactation room they will use based on whichever one is in close proximity to their work area. In Building One, the lactation room is a small room, approximately 6 feet by 10 feet, outfitted with three chairs and one round table, and a mini refrigerator. The lactation room in Building Two is somewhat larger with a couch and a rocking chair.

DISH employees have raised several concerns about the Meridian office's designated lactation rooms. First, it was truly shocking to the ACLU to learn that nursing employees on the Meridian Campus have been expected to express breast milk in one of two small rooms in front of and with other nursing employees. Neither room is equipped with privacy screens between co-workers, who usually have to unbutton their shirts and expose their breasts in order pump their breast milk. At least one employee has had to expose herself in front of her supervisor, who also uses the lactation room. Several women have reported to the ACLU that they have had to use the lactation room in Building One with up to four other women, leaving at least two women forced to sit on the floor of the tiny room and pump. When one employee requested that the facilities manager provide an additional chair in Building One's lactation room, the response she received was that, due to potential fire code violations for having too many people in the room at one time, a chair would be removed from the room rather than added. These concerns implicate core federal and state law requirements that workers be able to pump "in privacy," "shielded from view," and "free from intrusion." C.R.S. § 8-13.5-102(2), 29 U.S.C. § 207(r)(1)(B).

In response to complaints about Building One employees having to pump breast milk in front of one another, just last week DISH placed a sign on the Building One lactation room restricting use of the room to one employee at a time, without providing any alternate space to pump. Six (and soon more) nursing mothers, however, cannot be expected to share a single private pumping space.

Breastfeeding women who cannot be with their infants at all times need to use a breast pump to express milk on roughly the same schedule as the child's feeding schedule so that there is a supply of milk on hand for the baby when the mother is not present to breastfeed. Pumping is also required in order for a mother to maintain her supply and production of breast milk, and to relieve the sometimes painful physical pressure as her breasts produce milk throughout the day. While the schedule will vary from woman to woman based on a host of factors, a new mother will typically need to pump breast milk every two to four hours for the first year of the baby's life. If a woman does not breastfeed or pump on this schedule, it will cause discomfort, pain, engorgement, and a risk of developing blocked milk ducts and infection. As the Department of Labor's interpretation of the federal law indicates, interruptions in the schedule of expression of milk can lead to decreased milk supply; this in turn, is associated with the discontinuation of breastfeeding.<sup>4</sup>

Nursing mothers who work at DISH, like those who work in most office jobs, generally nurse their children about two hours before the collective beginning of their workday at approximately 9:00 a.m., which inevitably creates a demand to express their breast milk at around the same times throughout the rest of the day. While it may be reasonable to request that employees provide some flexibility in pumping schedule, forcing employees to wait considerable lengths of

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<sup>4</sup> See United States Department of Health and Human Services, Office of the Surgeon General, *The Surgeon General's Call to Action to Support Breastfeeding* at 13 (2011), available at <http://www.surgeongeneral.gov/library/calls/breastfeeding/calltoactiontosupportbreastfeeding.pdf>.

time to use a room to express their milk will likely decrease worker productivity and discourage employees from breastfeeding. First, waiting in queue to use a lactation room interferes with many employees' busy and constantly changing work schedules, which require some employees to attend back to back meetings throughout the day and meet tight project deadlines. The employees with whom the ACLU spoke do not want their lactation needs to get in the way of their productivity at work. Second, the lengthy wait to use the lactation room would likely interfere with the employees' milk production, as expressing milk on a consistent schedule is necessary to maintain sufficient milk. It should come as no surprise, then, that – despite the new DISH sign indicating the Building One lactation room is now single occupancy – nursing employees are still pumping together in Building One, because they have no other choice.<sup>5</sup>

The set-up of the lactation room in Building One raises an additional privacy concern – passersby are able to see into the room when the door opens. Since the lactation room in Building One is located off from the main atrium hallway, there is a large volume of people passing by the lactation room throughout the day. When the door to the lactation room is open for nursing mothers to enter and exit, those who are passing by can see inside the room where other mothers are expressing breast milk. The room in Building Two appropriately has a screen to protect the privacy of the nursing mothers from being viewed by passing co-workers.

These facts make clear that DISH Network's accommodations for nursing employees in the Meridian Office have fallen far short of what is required by state and federal law. The "Break Time for Nursing Mothers" provision of the FLSA mandates that employers provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public" to be used by female employees to express breast milk. *Id.*, § 207(r)(1)(B). The U.S. Department of Labor interprets this requirement to mean that nursing employees are entitled to pump in a space private from any co-worker, including nursing co-workers. *Reasonable Break Time for Nursing Mothers*, 75 Fed. Reg. 80073, 80075. If necessary, to ensure privacy, the employer may provide a "large room with privacy screens so that the room may be used simultaneously by several nursing mothers." *Id.* at 80075. A "functional" lactation space "at a minimum, . . . must contain a place for the nursing mother to sit, and a flat surface, other than the floor, on which to place the pump," ideally with access to electricity. *Id.* at 80076.

The Department of Labor further instructs that "each time [a nursing] employee has need to express the milk," employers should consider the number of nursing mothers employed and their work schedules to determine the appropriate number of spaces necessary to accommodate them. *Id.*. Importantly:

[W]here the number of nursing employees needing to use the space either prevents an employee from taking breaks to express milk or necessitates prolonged waiting time, the Department will not consider the employer to be in compliance with the requirement to provide reasonable break time.

*Id.*

Colorado law mandates similar accommodations for nursing employees. Under the WANMA, "the employer shall make reasonable efforts to provide a room or other location

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<sup>5</sup> This new accommodation will become even more problematic as the at least three additional employees who are either pregnant or on maternity leave return to work and will likely require use of the lactation rooms.

in close proximity to the work area, other than a toilet stall, where an employee can express breast milk in privacy.” C.R.S. § 8-13.5-104(2).

### ***Conclusion***

Based on the facts detailed in this letter, it is clear that DISH has failed to provide its nursing employees with the accommodations mandated by state and federal law. In order to stop violating the law, DISH must take the following immediate proactive measures to accommodate its significant and growing number of nursing employees:

- Provide sufficient pumping facilities in all DISH locations to accommodate all nursing employees pumping privately at the same time or in a reasonable temporal proximity (currently, this includes at least six employees in Building One and three in Building Two). Privacy areas can be created by placing adjustable screens, curtains, or cubicle walls that can be formatted and changed with the demand of space for employees to express their breast milk.
- In each private pumping area, ensure there is sufficient seating, sufficient privacy screening from the view of others both outside and within the room, a flat surface for each employee to place their pumping equipment, and sufficient electric outlets to accommodate the appropriate number of pumping employees for whom the room is designated.
- Continue to make a refrigerator available to nursing mothers to store their breast milk.
- Provide training to DISH Network supervisors and facilities managers about accommodations the law requires be given to nursing employees.
- Place a notice in each lactation room detailing the rights of nursing mothers and the method by which a nursing mother may complain about inadequate accommodations by the employer.

I am hopeful that we can resolve this matter promptly and that DISH will immediately come into compliance with federal and state law. I ask that you respond to this letter no later than **Wednesday March 19, 2014**. If I do not hear from you by this date, the ACLU will assume that DISH Network’s failure to comply with the FLSA and WANMA is ongoing, and will consider appropriate next steps, including filing a complaint with the U.S. Department of Labor’s Wage and Hour Division.

Sincerely,



Rebecca Wallace  
Staff Attorney, ACLU OF COLORADO

cc. Mike McClaskey - [mike.mcclaskey@dish.com](mailto:mike.mcclaskey@dish.com)  
Executive Vice President, Chief Human Resources Officer  
DISH Network – Corporate Headquarters