

22 March 2011

The Honorable
Enrique T. Ona
Secretary
Department of Health
San Lazaro Compound, Tayuman, Sta. Cruz,
1003 Manila

Dear Secretary Ona:

We are organizations, agencies and individuals committed to support, promote and protect exclusive breastfeeding and appropriate complementary feeding as key to young child survival and family health. We are expressing our serious concern on the proposed Implementing Rules and Regulations of Republic Act 10028 or the Expanded Breastfeeding Promotion Act of 2009.

While the initial process of drafting the IRR has been extensive and consultative, however, we find the signed draft inconsistent to what has transpired in the consultations for its development and conflicting to a number of international and national policies and principles

During the deliberation of the bill, the provision **setting the minimum number of employed women of reproductive age to at least 100** was struck down due to its discriminatory impact on women. This provision discourages the employment of women of reproductive age and puts them at a discriminated position in the workplace. Moreover, this provision oppresses women of lower socio-economic status who are working in smaller industries or in the informal sector. The contentious provision in Section 10 is not supportive of the entitlement of women for breastfeeding or milk expression breaks stated in Section 12 of the same proposed IRR.

It would also be important to note that, according to WHO recommendations and ILO research, setting up a breastfeeding facility/station would not entail major financial costs. The Maternity Protection Convention, 2000 (No. 183), Paragraph 9, includes a flexibility phrase ("*where practicable*"), which reflects the importance of providing nursing facilities under adequate hygienic conditions was a key issue for employers, who pointed out the financial difficulties of both small/medium-sized enterprises and enterprises in developing countries, as well as the importance of providing such facilities on a voluntary basis, rather than as a legal obligation.

Moreover, a number of governments also clearly indicated that the establishment of these facilities should be dependent on the size of the enterprise or the number of women employed. This is in line with national practice in other countries. A review of the ILO Database of Conditions of Work and Employment Laws¹ shows that legal provisions on nursing facilities often apply if the enterprise employs a minimum number of women. The required minimum number of women employees is generally set at 20 (Bulgaria, Chile, Honduras, Panama, Venezuela), 25 (Madagascar, Niger), 30 (Brazil, Costa Rica, Guatemala, Nicaragua), or 50 female workers (Cameroon; Central Africa Republic; Paraguay, only in industrial and commercial enterprises). In Latvia, Romania, Viet Nam, for instance, the number of women is not specified.²

¹ Available at www.ilo.org/travdatabase

² For example, in Viet Nam, where a high number of female workers are employed, the employer have the responsibility to assist in making arrangements for nurseries and kindergartens, or covering parts of the expenses incurred by female workers who have their children in such places (Labour Code §116).

Also, on Section 11 of the proposed IRR, we would like to emphasize recognition and adherence to the World Health Assembly prescription, the Milk Code (EO 51) and the Department's recommendation on Infant and Young Child Feeding (IYCF) practices which include exclusive breastfeeding for the first six months and the introduction of appropriate complementary food from six months while continuing to breastfeed for two years and beyond. **The Milk Code is clear and explicit on the ban on breastmilk substitutes, milk supplements, bottle-fed complementary foods, and other beverages, foods and milk products for use as partial or total replacement for breastmilk, that are intended for infants from ages 0-24 months.**

Further, the proposed IRR should make clear and explicit declaration of the 200-percent tax rebate to be given to complying establishments, based on the actual cost of putting up the lactation station.

The IRR at its present form and substance is two steps backward from what the Philippines has achieved in terms of pursuing the empowerment of women. Under Republic Act 9710 (Magna Carta of Women), women must be provided with a comprehensive, culture-sensitive and gender-responsive health services and programs (Sec. 20) and decent work standards that involve the creation of jobs of acceptable quality (Sec. 25). The proposed IRR once finalized into law will imperil the unique role of women and jeopardize their employment status because of its discriminatory provision. It curtails the inherent right of women to nurture their infants with the best and most nourishing food, which is breastmilk, even if they have to go back to work.

While the Government is advocating for six months exclusive breastfeeding and continued breastfeeding for two years or beyond as a public health recommendation, maternity leave in the Philippines is only 60 calendar days. Setting up lactation stations in the workplace has important benefits not only to the survival, growth and development of Filipino babies, but to human and economic development as a whole. It is unreasonable to expect women in paid employment to follow this public health recommendation without the suitable facilities in place to enable them to do so.

The ILO Maternity Protection Recommendation (No. 191) also provides that, *"where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace."* (Paragraph 9)

The promotion of breastfeeding is beyond simple arithmetic. It is a life-saving intervention. This has been demonstrated especially during the height of Typhoon Ondoy. The Nutrition Cluster acted with dispatch by providing lactation counselling and setting up breastfeeding tents to help mothers continue breastfeeding even during floods and heavy rains. This simple intervention saved the lives of many infants by providing them with the safest food that is complete in nutrition and anti-bodies that they needed to fight infections. The enactment of the law gives us the opportunity to introduce this life-saving intervention even in the workplace to make a big dent on improving our nutrition status and the life survival of 16,000 babies every year.

But it is indeed sad to note that this accomplishment would be dissolved into a mere Pyrrhic victory especially at a time when the nation is observing the 100 years of International Women's Day. And what is even more alarming is the impact of this proposed IRR on the health and nutrition targets of the Millennium Development Goals (MDGs) of the Philippines.

Hence, we appeal for another table discussion on the subject matter at hand so that contentious issues related to the IRR of the Republic Act 10028 will be resolved with finality and dispatch. Until after the next table discussion, we strongly urge the postponement of the publication of the IRR. We further appeal to you, Secretary Ona, to reconsider this action and re-affirm your commitment to uphold equitable, sustainable and quality health for all Filipinos especially the poorest, which is the *raison d'être* of the health department.

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