

Committee Report

CONSENT CALENDAR

February 17, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Labor, Industrial and Rehabilitative Services to which was referred HB 231,

AN ACT relative to workplace lactation rights. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Michael Cahill

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Labor, Industrial and Rehabilitative Services
Bill Number:	HB 231
Title:	relative to workplace lactation rights.
Date:	February 17, 2021
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The committee appreciates the efforts of the sponsor who brought this issue to our attention. She has also worked with other stakeholders on a Senate bill. We understand that there is strong support for SB 69 and feel that is the better bill.

Vote 20-0.

Rep. Michael Cahill
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Labor, Industrial and Rehabilitative Services

HB 231, relative to workplace lactation rights. **INEXPEDIENT TO LEGISLATE.**

Rep. Michael Cahill for Labor, Industrial and Rehabilitative Services. The committee appreciates the efforts of the sponsor who brought this issue to our attention. She has also worked with other stakeholders on a Senate bill. We understand that there is strong support for SB 69 and feel that is the better bill. **Vote 20-0.**

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on

BILL TITLE: HB 231 workplace lactation rights

DATE: 2/11/21

LOB ROOM:

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. Cahill Secoded by Rep. Seaworth Vote: 20-0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. _____ Secoded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. _____ Secoded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
- Interim Study (2nd year) (if offered)

Moved by Rep. _____ Secoded by Rep. _____ Vote: _____

CONSENT CALENDAR: X YES _____ NO

Minority Report? _____ Yes _____ No If yes, author, Rep: _____ Motion _____

Respectfully submitted: [Signature] Rep Jonathan Mackie, Clerk



2021 SESSION

Labor, Industrial and Rehabilitative Services

Bill # HB231 Motion: JTL AM #: _____ Exec Session Date: 2/11/21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Infantine, William J. Chairman	20		
Seaworth, Brian Vice Chairman	1		
Avellani, Lino M. <u>Melvin</u>	9		
Callum, John M.	2		
Mackie, Jonathan D. Clerk	3		
Nunez, Hershel	4		
Warden, Mark	5		
Turcotte, Leonard P.	6		
Prout, Andrew J. <u>Torosian</u>	10		
Boyd, Stephen E.	7		
Hough, Gregg	8		
Sullivan, Brian M.	11		
Soucy, Timothy A.	12		
Baroody, Benjamin C.	13		
Cahill, Michael D.	14		
DiSilvestro, Linda A.	15		
Schmidt, Janice E.	16		
Toomey, Dan	17		
Bouchard, Donald J.	18		
Adjutant, Joshua	19		
TOTAL VOTE:	20	0	

Public Hearing

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON

BILL TITLE: HB 231 relative to workplace lactation rights

DATE: 1/28/21

ROOM: **Time Public Hearing Called to Order: 3:02**

Time Adjourned: 3:48

(members high-lighted in red were absent)

Committee Members: Reps. Infantine, Seaworth, Mackie, Avellani, Callum, **Nunez**, Warden, Turcotte, Prout, Boyd, Hough, Sullivan, Soucy, Baroody, Cahill, DiSilvestro, J. Schmidt, Toomey, Bouchard and Adjutant

Bill Sponsors: Rep. Abel, Rep. Bartlett, Rep. Fargo, Rep. Stavis

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Brian Seaworth Introduced the bill as no sponsor was present or online.

Ahni Malachi from the NH Commission for Human Rights testified that the commission is neutral on the bill, but that SB 69 is probably the better bill to address the issues.

Q Rep. Infantine- Is this bill identical to SB 69?

A Some differences. HB 231 is a draft of what became SB 69.

Q Is there anything in HB 231 that should be added to SB 69?

A No. SB 69 is a better bill.

Q Should we just ITL this bill?

A That is your decision.

Rudy Ogden deputy commissioner of labor testified that the department is neutral on the bill and that SB 69 is the better bill.

Q Rep. Infantine- Are there 14 sponsors on SB 69 and did it come out of the senate committee with an OTP recommendation?

A Yes

*Kate Frederick testified in favor of the bill. This is a bill similar to a SB from last year. This expands lactation rights to workers at smaller businesses not covered under federal law. HB 231 actually gives some protections that SB 69 does not.

Q Rep. Sullivan- Does it make sense to amend SB 69 to include aspects of HB 231.

A I think the bills should be combined. Presently, I think as written, SB 69 might be unconstitutional.

Ahni Malachi from the NH Commission for Human rights continued her testimony. I think it is important to clarify and compare apples and oranges. HB 231 is not a completed work. SB 69 is the completed bill.

Q Rep Sullivan- Is SB ready to go as it is or could it be amended?

A Yes, ready as is, but amendments are possible.

*Rep. Abel (Bill sponsor) testified that the best way forward would be to table HB 231 in case SB 69 doesn't make it.

*Brian Moran of NECSEMA submitted written testimony opposing the bill as written.

House Remote Testify

Labor, Industrial and Rehabilitative Services Committee Testify List for Bill HB231 on 2021-01-28

Support: 28 Oppose: 1 Neutral: 2 Total to Testify: 3

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Ogden, Rudolph	rudolph.w.ogden@dol.nh.gov	State Agency Staff	New Hampshire Department of Labor	Neutral	Yes (0m)	No	1/28/2021 7:58 AM
Frederick, Kate	KateFrederickNHBRC@RustikEvents.com	A Lobbyist	NH Breastfeeding Rights Coalition	Support	Yes (0m)	No	1/28/2021 11:14 AM
Malachi, Ahni	Ahni.N.Malachi@hrc.nh.gov	State Agency Staff	NH Commission for Human Rights	Neutral	Yes (0m)	No	1/22/2021 1:25 PM
McWilliams, Rebecca	Rebecca.McWilliams@leg.state.nh.us	An Elected Official	Merrimack 27	Support	No	No	1/22/2021 3:44 PM
Fordey, Nicole	nikkif610@gmail.com	A Member of the Public	Myself	Support	No	No	1/23/2021 1:45 PM
Frost, Sherry	sherry.frost@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/28/2021 11:25 AM
Cornwell, Brendan	brendancornwell@gmail.com	A Member of the Public	Myself	Support	No	No	1/28/2021 11:30 AM
Perencevich, Ruth	rperence@comcast.net	A Member of the Public	Myself	Support	No	No	1/28/2021 11:46 AM
Ellermann, Maureen	ellermannf@aol.com	A Member of the Public	Myself	Support	No	No	1/28/2021 8:06 AM
Smith, MD, MPH, J. J.	jaycmd7699@gmail.com	A Member of the Public	Myself	Support	No	No	1/28/2021 8:14 AM
Newton, Jay	Jjnewt@gmail.com	A Member of the Public	Myself	Support	No	No	1/28/2021 8:19 AM
Platt, Elizabeth-Anne	lizanneplatt09@gmail.com	A Member of the Public	Myself	Support	No	No	1/28/2021 8:23 AM
Groetzinger, Tonda	groetzinger6@aol.com	A Member of the Public	Myself	Support	No	No	1/28/2021 8:26 AM
Rettew, Annie	abrettew@gmail.com	A Member of the Public	Myself	Support	No	No	1/28/2021 8:32 AM
Corell, Elizabeth	Elizabeth.j.corell@gmail.com	A Member of the Public	Myself	Support	No	No	1/28/2021 8:35 AM
Anderson, Eric	ericanderson@global.t-bird.edu	A Member of the Public	Myself	Support	No	No	1/28/2021 9:13 AM
Lindpaintner, Lyn	Lynlin@bluewin.ch	A Member of the	Myself	Support	No	No	1/28/2021 9:38 AM

Roy, Terry	Terry.roy@leg.state.nh.us	Public An Elected Official	Myself	Oppose	No	No	1/21/2021 8:34 PM
Brackett, Glenn	communications@nhaficio.org	A Lobbyist	The working people of the NH AFL-CIO	Support	No	No	1/26/2021 3:03 PM
Parshall, Lucius	lucius.parshall@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/27/2021 1:33 PM
Anderson, Keryn	kerynlanderson@gmail.com	A Member of the Public	Myself	Support	No	No	1/27/2021 6:14 PM
Spencer, Louise	kentstusa@aol.com	A Member of the Public	Myself	Support	No	No	1/27/2021 7:28 PM
Hruska, Jeanne	Jeanne@aclu-nh.org	A Lobbyist	ACLU-NH	Support	No	No	1/27/2021 7:43 PM
Torpey, Jeanne	jtorp51@comcast.net	A Member of the Public	Myself	Support	No	No	1/27/2021 8:03 PM
Garen, June	jzanesgaren@gmail.com	A Member of the Public	Myself	Support	No	No	1/27/2021 8:08 PM
Hinebauch, Mel	melhinebauch@gmail.com	A Member of the Public	Myself	Support	No	No	1/27/2021 8:32 PM
Richman, Susan	susan7richman@gmail.com	A Member of the Public	Myself	Support	No	No	1/27/2021 8:50 PM
Willing, Maura	Maura.Willing@Comcast.net	A Member of the Public	Myself	Support	No	No	1/27/2021 9:36 PM
Spielman, Kathy	jspielman@comcast.net	A Member of the Public	Myself	Support	No	No	1/28/2021 6:09 AM
Spielman, James	jspielman@comcast.net	A Member of the Public	Myself	Support	No	No	1/28/2021 6:12 AM
Rathbun, Eric	ericrathbun@gmail.com	A Member of the Public	Myself	Support	No	No	1/27/2021 9:58 PM

Testimony



In regards to my testimony, HB 431, there was a mention of Road Agent being elected and that I had no problem in letting him go. I would like to explain the reasons. We in Danville are a 5 member Board of Selectmen. (BOS).

An accident occurred while working the Road Agent was running the town's backhoe; he hit our town employee that was in the drench working with him in the head. He did not stop the job or call for help. But instead asked the employee if he was ok, to which he said he thought so. They continued to work the job until a few hours later the employee stated he didn't feel well and was going home. By then it was almost quitting time, and the job was closed for the day. The employee went home, where his wife drove him to the hospital and he had a concussion. It was not till the road agent was told of this did he report it to our town office Administrator. The Road agent was given a verbal warning that no matter how small the incident he was to report it.

A few months later, the Road agent while out snow plowing, hit a telephone pole. The pole was on a dead end street, where there were homes. The pole was left unreported, leaning into the road and splintered. The next morning a resident reported the pole to the Police Dept. , however, the town office Administrator, was not notified. It was 3 days later when the resident called the town hall to inquire about the broken pole, that our office got involved, it was discovered that the Road Agent did not report it. He did not admit to it till he was questioned by the Administrator. It was our Administrator who reported to the PD who hit the pole after her investigation. The Danville PD would not press charges. I have attached the picture of the telephone pole taken 3 days later. The Road Agent was now given a written notice regarding this accident/incident.

Last year, the Road Agent while returning from picking up two purchased trucks for the town, had an accident with one of the trucks. The accident, through no fault of his, was a blown hydraulic fuel line. While he pulled over after being alerted by the employee following him back in another town truck. He failed to report it, to anyone. They stopped the trucks, shut off the line, got back into the trucks and drove to town. Leaving behind a hydraulic fuel spill between a half to three quarter of a mile long, that stretched across the road on a busy 107a road in Fremont. He later went back to the scene of the accident to look at it, still never reported it to anyone. The BOS meant on our usual Monday meeting following the Friday accident. The Road agent came in before us to talk about the trucks, when asked how it went, he stated it went well. All while the BOS knew it had not. Someone on a motorcycle reported it to the Fremont PD, as the person almost dumped his bike. DOT was called out and placed 100 lbs of speedy dry on the road. He did not confess to the BOS until he was called into question by the Fremont Police Dept. a few weeks later. He was charged for the incident/accident by Fremont Police Department. He was let go by BOS for this accident/incident.

January 26, 2021

Testimony of Brian Moran
Director of Government Affairs, New England Convenience Store & Energy Marketers Association

New Hampshire General Court
Labor, Industrial, and Rehabilitative Services Committee

HB 231 – An Act relative to lactation rights.

Dear Chairman Infantine, and Members of the Committee:

The New England Convenience Store & Energy Marketers Association (NECSEMA) represents convenience store and gasoline retailers, independent transportation fuel distributors, and the businesses which supply them. According to the National Association of Convenience Stores, there are almost 900 convenience stores in New Hampshire (655 of which sell motor fuels) that employ over 14,000 people.

As proposed, HB 231 would establish a series of workplace lactation rights for female employees. Chief among these is the requirement for employers to provide a designated, private, and sanitary lactation space. NECSEMA is not opposed to addressing lactation rights in the workplace; however, we believe further consideration and evaluation is necessary on how this requirement will operate, and the necessity to consider additional criteria.

Not all business spaces are created equally. For example, convenience stores and other small retailers, by design, operate within an extremely high retail space utilization floorplan. If enacted, convenience stores and other smaller retail stores would be required at significant cost to undertake new construction including providing the required plumbing and electrical services. Extra unused space, or an extra empty office frankly does not exist in these types of retail settings.

The bill does authorize the Department of Labor, on a case-by-case basis, to exempt an employer with fewer than six (6) employees from this chapter. However, we urge the Committee consider establishing additional criteria to acknowledge that not all places of employment are equal, and establish a minimum building square footage upon which the act is triggered. We would suggest that places of employment 10,000 square feet or less be categorically exempt from the lactation space requirement. This would also reduce the administrative burden placed on the Department of Labor having to review in a timely manner every hardship request.

Thank you for your thoughtful consideration of our positions on this matter.

Respectfully,



Director Government Affairs
brian@necsema.net | 781-297-9600 x5

1044 Central Street, Suite 203
Stoughton, MA 02072
(781) 297 – 9600



NEW HAMPSHIRE
Breastfeeding
Task Force

P.O. Box 3914
Concord, NH 03302

January 29, 2021

Re: HB 231

Chair:
Joyce Kelly
MPH, BSN,
RN

Vice Chair:
Lissa Sirois,
MPH, RD,
IBCLC

Andrea
Ackerson
MPH, RD,
IBCLC

Teri
D'Onfrio RN,
IBCLC

Kerri
Federico,
PharmD

Lisa
Lamadriz
MPH, RN,
IBCLC

Margaret
Furnari RN,
IBCLC

Schellee
Rondeau RN,
IBCLC

Holly
Mielcarz,
RN, IBCLC

Dear Chairman Infantine and House Labor Committee Members:

As the Chair, I am writing on behalf of the Board of Directors of the New Hampshire Breastfeeding Task Force, the recognized state breastfeeding coalition of the United States Breastfeeding Committee.

I am writing in response to the testimony you heard on HB 231 yesterday. The NH Breastfeeding Task Force has worked on developing expanded workplace breastfeeding support in NH for more than four years. We have participated in the Governor's Advisory Council on Lactation which culminated in SB 618 in 2020. As you heard yesterday, SB 618 did not progress due to the pandemic last year. However, the language of SB 618, with revisions from stakeholders, was refiled this year - SB69.

As you heard yesterday, SB 69 is a collaborative effort of many stakeholders including the NH Breastfeeding Task Force, the NH Department of Labor, the NH Department of Health and Human Services, NH Commission on Human Rights, the NH Business and Industry Association, and mothers and families. SB 69 has broad bipartisan support and passed unanimously out of the Senate Commerce committee this week. I look forward to testifying in support of SB 69 and answering any questions you have once the bill is in your committee.

However, I would like to assert the NH Breastfeeding Task Force's concern regarding HB 231. You heard troubling testimony that SB 69 is "unlawful." This is simply not the case. SB 69 closes the gap that currently exists in the Federal law, Break Time for Nursing Mothers under the Fair Labor Standards Act, without adding burden to small business owners. SB 69 provides a floor of support for working mothers in New Hampshire to express milk during the work day. Unlike HB 231, SB 69 is a complete and polished bill that is the result of years of collaboration among stakeholders, including small business owners.

SB 69 is a reasonable New Hampshire solution that will benefit employers with improved recruitment and retention of workers, decreased absenteeism and build healthy families.

The NH Breastfeeding Task Force encourages the Committee to retain HB 231. SB 69 will be sent to your committee in the coming weeks. At that time, the Task Force will testify in support of SB 69 and will be happy to answer any questions.

Respectfully submitted,

Joyce Kelly MPH, BSN, RN Chair, New Hampshire Breastfeeding Task Force

**This document is for informational purposes only.
The original document may be obtained at the Town Hall.**

Town of Danville
Board of Selectmen
Monday, October 26, 2020
7:00 PM

7:00 PM

Meeting is Video-Recorded

Selectmen Present: Shawn O'Neil, Chair; Steve Woitkun, Vice Chair; Sheila Johannesen, Dottie Billbrough, and Joshua Horns

Others Present: Kimberly Burnham, Selectmen Administrator; Gail Turilli, ZBA; Kevin St. James, Rockingham County Commissioner; Brian Groshon, Casella; David Allen, Casella; Dr. Kim Farah, Trustee of the Trust Funds; Kelly Beattie, Trustee of the Trust Funds; Kathy Beattie, Trustee of the Trust Funds; Bruce Caillouette, Road Agent

Shawn called the meeting to order at 7:00PM and opened the meeting with a moment of silence for the troops who put themselves in harm's way. All stood for the Pledge of Allegiance

I. Delegates

Shawn notes the request of Kevin St. James to address the BOS and states that that he will be first to do so.

Rockingham County Commissioners: Kevin St. James introduces himself to the BOS. He is the Town's representative Commissioner. He explains that Rockingham County includes thirty-six (36) towns and one (1) city. There are three Commissioners, each representing a certain "district". He represents seventeen (17) towns including Danville and the Seacoast. He also outlines the areas of representation for the other two Commissioners and explains the three-member board functions as the "Selectmen for Rockingham County". Mr. St. James explains the State representatives set the County budget, and it is up to the Commissioners to expend that budget. He also explains that the Commissioners are responsibly for seven service areas: 1) Long-term care facilities, under NH RSA, the county is responsible for the elderly; 2) Department of Corrections (County Jail); 3) County Attorney's office which prosecutes all felonies in Rockingham County; 4) Sheriff's office, including dispatch, the drug task force, SWAT, education, bench warrants, and transports; 5) Registrar of Deeds, and because Rockingham County has over 400 employees, there is a full 6) HR dept. and Finance Dept. at the complex in Brentwood and 7) Engineer and Maintenance Dept.

Mr. St. James explains the County Budget is July 1-June 30 and he was pleased to announce the County Commissioners had set the budget before COVID and lowered the FY2021 budget by \$1.4M. The operating budget was reduced by \$500,000 and the other \$900,000 savings were made up by the tax rate and unfunded balance. He notes that towns pay into Rockingham County based on the equalized value of property. Danville's equalization rate went down 3.26%, a savings of \$8000. He also notes that COVID also reduced their budget revenues, noting some closures, no new admissions to Long-term Care facilities and added expenses in those facilities. He explains there has been added income through the Registrar of Deeds office due to the amount of house sales and re-financing; and the Commissioners are hopeful that revenue will help balance the budget. Shawn notes the budget went from 49.4M to 50.2M and explains the price of equalization exceeded the increase in the actual budget. He notes this is all good news

Mr. St. James explains the second largest budget after Long-term care is "Categorical Assistance". If any resident in Rockingham goes into any nursing home, whether it be in Rockingham, a private home, or even out-of-state, under State law, Rockingham has to pay a portion of those costs. There is \$19M in that budget. The primary responsibility of the Commissioners is to care for the elderly. He notes they have outsourced the dietary department and saved \$500,000, and have started selling water to a new development of 107 bedrooms at the

Nursing home. This project is for domestic tap water only and charges \$1000 per hook-up. In addition, the water for all the houses is metered.

Mr. St. James also notes that Rockingham has begun medically assisted drug treatment programs at both the jail as well as a current outpatient treatment program. He notes that with this type of treatment, patients have a 76% chance to beat Opioid addiction. Rockingham County Jail is only the second jail in the country allowed to dispense methadone in-house. Shawn notes other innovative changes, including using biomass fuel to cut down on energy costs. Mr. St. James explains the county has just installed an electrostatic reciprocator on the biomass facility to produce clean air. It also allows the plant to generate electricity for revenue. Mr. St. James notes that Rockingham would also love to develop a solar field, but is waiting for the net metering issue to be resolved.

Dr. Farah asks if the County is involved in the class action lawsuit over Opioid addiction against Big Pharma. Mr. St. James explains that the County attorneys from all ten (10) counties in NH got together and hired attorneys to represent the counties in that lawsuit. They have put together the costs of the crisis from each county, but are not sure how the monies will be distributed. He explains that the Counties will see nothing of the awards to the Federal and State governments. He notes it is the counties that absorb most of these costs at their jails and prosecutors' offices and they are hoping to recoup some of those costs.

Road Agent: Shawn requests that Mr. Caillouette approach the BOS. Mr. Caillouette requests the discussion take place in a Non-Public session as it involves his job. Shawn states that it is a public issue and he will personally vote against a Non-Public session. Shawn asks the BOS if they wish to go into Non-Public to discuss the issue with Mr. Caillouette. Sheila confirms that he is looking for a motion. Dr. Farah notes a point of order stating that she "did not think elected officials were afforded that opportunity (of a Non-Public session)". Shawn responds that the BOS is not, but that does not extend to all elected officials. Joshua asks for clarification. Shawn explains the BOS cannot go into Non-Public to talk about any BOS member. Dr. Farah did not think that elected officials were afforded the same opportunities under NH RSA 91-A as non-elected officials. Shawn explains the RSA talks about the "governing body" and this position (Road Agent) is not part of the governing body. Joshua confirms that Dr. Farah is questioning whether the BOS does not have a right to go into Non-Public to discuss their issue with Mr. Caillouette. Shawn states that to the best of his knowledge, it is only the "governing body" (i.e.: the BOS) that cannot go into a Non-Public session for any of the reasons allowed for Non-Public session. Shawn explains that the BOS can agree to go into Non-Public with Mr. Caillouette, but he would need a motion to do that. Joshua motions to go into a Non-Public session to discuss Mr. Caillouette's issue. Second by Steve. Roll Call vote: Shawn- no, Steve- yes, Sheila- no, Dottie- no, Joshua- yes. The motion fails 2-yes, 3-no (2-3). Mr. Caillouette approaches the BOS and confirms that everyone has received his statement and *"that basically is all I have got to say, I guess."*

Shawn: *"The BOS is addressing the accident that occurred on Rte. 107 in Fremont NH on Tuesday, September 29, 2020."* He asks Mr. Caillouette to please explain to the BOS what happened.

Mr. Caillouette states that *"everything is in his written statement"*.

Shawn confirms that written statement is all he (Mr. Caillouette) wishes to say at this time.

Shawn: *"Are you aware that the BOS has repeatedly asked you to report any and all accidents to us?"*

Mr. Caillouette: *"Yes, I am."*

Shawn: *"And there were numerous verbal affirmations of that statement. There was also one followed up in writing sent to you (Mr. Caillouette) on September 24, 2019 by Ms. Shogren. It reads in part: The Board wants to remind you that you must notify the office immediately of an accident or 'near miss' so measures can be taken to avoid something from re-occurring. The incident should be considered a 'near miss' if corrective action was to be done to prevent the re-occurrence and should be included in the reports."*

Bruce states that he has no excuse for it.

Shawn: *"The spill was coming back from picking up one of our new dump trucks from the State. The acts of what happened was the hydraulics line had blown, 1/2 -3/4 of a mile is the distance of the spillage of the 3'-4' wide swath of hydraulic fluid. Mr. Caillouette had pulled over to the side, ascertained that he had to shut off the valve for the hydraulics and proceeded to drive back to the Town of Danville without notifying anybody of this Board or anybody of an Emergency Response to address such spillage. That act is still being investigated to the best of my knowledge and being pursued by the Fremont Police Dept. and that will take its own course wherever that should be. But I can say that the Town is feeling the ramifications of that because we are now undergoing a Dept. of Labor audit for safety. So I think it's all been dispensed up at the State and it's coming into the dendric tentacles of the State oversight and we are going to be under a fine-toothed comb in the not-too-distant future, which the merits of that will live wherever they will live."*

Shawn addresses Mr. Caillouette: *"Do you understand the gravity of this, not reporting this to us and we have made this very clear multiple times of this to you?"*

Mr. Caillouette: *"Yes, I do."*

Shawn: *"So with that I am going to be recommending to this Board, and I will preface this: this is one of the most hardest decisions I had to make. In accordance with NH RSA Title 20 231:65, I move to remove Mr. Caillouette from his position as the elected Road Agent for the Town of Danville due to his admitted failure to immediately report to the Board a hydraulic oil spill accident that occurred on September 29, 2020; which is an intentional refusal to comply with the Selectmen's lawful instructions. That is going to be my motion to this Board."* Shawn's motion is seconded by Dottie. Shawn asks for comment from the BOS, there is none. Shawn asks Mr. Caillouette for comment.

**NH RSA: TITLE XX:
TRANSPORTATION-CHAPTER 231
CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS
Repair of Highways by Towns Section
231:65**

231:65 Oath; Bond; Supervision. – *Highway agents and expert highway agents shall be sworn to the faithful discharge of their duty, give bonds to the satisfaction of the selectmen for the faithful performance of the duties of the office, and be responsible to them for the expenditure of money and the discharge of their duties generally. The selectmen may supervise the methods and manner of performance of such agents. **If any highway agent shall intentionally or deliberately refuse or neglect to comply with lawful instructions of the selectmen, or shall intentionally or deliberately refuse or neglect to carry out the duties prescribed by law for highway agents after written request by the selectmen, the selectmen may remove such agent from office. The selectmen shall file a copy of any such order of removal, under their hands, with the town clerk.***

Mr. Caillouette: *"Yes, I screwed up. My judgment at the time when it happened was persuaded not to do anything and I went with that, and then it was dropped. Not another word was spoken between Mark and I until about a week and a half later when I got a call from the Fremont Police Dept. Yes, it was my fault. I think Mark should have some ramifications as well, but I'm at the top of the chain so...that's where it lies. I know that I am the only elected official that is under the direction of the BOS. There are other elected officials that have been told to do and not do certain things, but that continues to happen without ramifications. Because of that, I am pleading my case not to. I believe I finally learned my lesson. Like I said, I know I did wrong and I guess that's it. The other one can keep doing what they're not supposed to do and still gets away with it. But like I said, I'm the only one that's under the direction of the BOS."*

Steve: *"I'll echo Shawn's statement, this is a very hard thing to do and if I knew I'd be sitting here tonight, I never would have run. I don't want to do this. What I am going to say to you, I don't know the legalities of it or whatever, but if you're coming up with evidence of other Town officials that are disobeying their superiors, personally I'd like to hear. We've had some sit-downs in the past couple of months; you and I have talked a couple of months and just with society, how it is today, liability wise. I had told you (Mr. Caillouette) you're the department head. I really, in the Fire Dept. next door, I don't care what any of the guys say, it's ultimately my decision, my responsibility, and I'd like to hear of these insinuations you're making to try to validate them, that they're not idle threats."*

Mr. Caillouette: *"I've been here at Selectmen's meetings when the public has told Sheila, different statements and going on calls not taking her van, taking her mother, and all that stuff, continues to keep happening, but that's the only one I'm alleging against. Everything has been done in public. Nothing that hasn't been done on the side. These allegations have been brought up and they continue to keep happening."*

Joshua: *"So I just get an understanding of exactly the situation of the accident. So we know that it's a hydraulic leak, returning back from Concord. It spanned 3/4 of a mile?"*

Mr. Caillouette: *"I guess, I never measured it."*

Shawn: *"It's 1/2 to 3/4 of a mile."*

Joshua: *"And the hydraulic oil went on the road?"*

Mr. Caillouette: *"Yes."*

Joshua: *"And approximately how much?"*

Mr. Caillouette: *"I have no idea."*

Shawn: *"Those tanks hold about fifty (50) gallons."* He asks Mr. Caillouette if that's fair to say.

Mr. Caillouette: *"That's fair to say, but I don't know how much came out. It could have been a gallon, 1/2 gallon, 2 gallons, 3 gallons, 4 gallons."*

Joshua: *"Did it look like the spray was a couple of inches?"*

Mr. Caillouette: *"No, it was about 4'-5' wide, but there's no way of telling how much was spilled."*

Joshua: *"You were obviously in a Town truck."*

Mr. Caillouette: *"Yes"*

Joshua: *"Under Town insurance."*

Mr. Caillouette: *"Yes."*

Joshua: *"And if anybody had gone down that strip on that side of the road, being a car or a motorcycle, they could have gone off that road. Is that fair to say?"*

Mr. Caillouette: *"Yes."*

Joshua: *"And how long was it like that before it was dusted or dried up?"*

Mr. Caillouette: *"I have no idea."*

Joshua: *"Okay, thank you, that's really all I've got."*

Shawn asks if there are any other questions. Joshua responds: *"I just want to say, I don't want to take this on either, but I don't ...I guess we should just take a vote."* Shawn asks for a roll call vote for the record.

Shawn- yes, Steve- yes, Sheila- yes, Dottie- yes, Joshua- yes. Roll call vote is unanimous (5 yes, 0 no). Motion to remove Mr. Caillouette as the elected Road Agent for the Town of Danville passes.

Shawn: *"Now that this motion has passed, Mr. Caillouette you are hereby removed from your position as the elected Road Agent for the Town of Danville. You have the right to appeal this decision to the Select board by filling out a written notice with the Town Administrator and the basis of your appeal for fifteen (15) calendar days. You will receive written notice of this decision. We will be generating that within the next twenty-four (24) hours. I am sorry that it had to come to this, but unfortunately this Board had to act and that's all we have on this."*

Mr. Caillouette: *"How much time do I have to remove my stuff from the Highway Garage?"*

Shawn: *"We will be reasonable. We know you have some stuff up there and we'll make accommodations to address all that stuff and we will work it out with us."*

Mr. Caillouette: *"I'm hoping to have it out by Friday."*

Shawn: *"Okay, thank you Bruce."*

Mr. Caillouette: *"I apologize to the public and it falls on me and good luck."*

Shawn: *"Thank you Bruce."*

Casella Bulk Pick-Up Update: Brian Groshon reviews the recent Bulk Pick-Up with the BOS. He reminds the BOS they did not have the Spring Bulk Pick-Up due to COVID, so this is the first Bulk Pick-Up since Fall 2019. For this Fall Bulk Pick-Up they had just under 700 registered for pick-up. He notes that all the numbers are not in, but the preliminary estimates are that 110-120 tons of material was picked up. The trucks were done around 1:00PM. Casella sent thirteen (13) trucks. Mr. Groshon notes that some residents who were not registered had material curbside. He was hopeful that this being the third time around with the program, this time people would understand how the program works. Casella did not collect anything that was not registered. Mr. Groshon states that he would like to improve on this, that he does not want to leave materials still sitting on the curb. He would like to discuss ways to avoid this issue the next time (they do Bulk Pick-Up). He notes the new members on the BOS and explains that earlier Bulk Pick-Ups collected 200 tons of materials. The registration process helped to control those costs, and the Town has seen significant success with about one-half of the amount of materials being pick-up, as well as less potential for abuse. He notes that he used to see out-of-state plates dropping materials off in front of residents' houses. Mr. Groshon notes that this time there was a residence that took over forty (40) minutes to pick up. Mr. Groshon notes that they are still seeing a significant volume of "non-bulky" items and remnants of household "projects", and they (Casella) just want to inform the BOS of what they see. He states that the Bulk Pick-Up is a "superior level of service that the BOS provides to the Town. But if the BOS is looking for ways to enact some control measures, Casella would like to continue the conversation regarding what he observed".

Shawn states that the BOS is open minded to new ideas and notes that "we've (the BOS) brought a lot of issues to ballot to let the Town have a say and it's overwhelmingly support....the Town wants this." Shawn notes his concern with the excessive amount of materials and that it is uncalled for. He states the BOS would want to address that issue and by-pass those stops. He notes the agreement outlines the size of the piles, and while he would not ask Casella to make those judgments, he suggests putting a member of the BOS on staff that the drivers could call with questions and the BOS member could go out there and assess the situation and bring the issue back to the BOS. He states that if the drivers are seeing large piles it is in violation of even the "spirit" of what Bulk Pick-Up is. Mr. Allen notes the Town has some successes to celebrate. The Town has reduced the material collected from 200 tons to 110 tons as well as out of town abuse without a giant effort. He feels that, with a little more focus, the Town could reduce that even further. Shawn agrees, but notes there could be a "point of diminishing returns" if the Townspeople become frustrated with the process. Sheila states that she feels the amount picked up was good considering everyone has been stuck at home for months. Mr. Groshon states that Casella is happy to provide the service and just notice things at the curb that they wanted to pass along to the BOS. He notes the sign-up sheet allows Casella to deploy their trucks efficiently. Shawn states it is a good update to have.

Casella Budget Update: Shawn states that Casella has provided their cost proposals and increases for the FY2021 budget and that the costs are in line with his expectations. He notes that the two Bulk Pick-Ups are currently budgeted for \$45,000 and Casella, based on the tonnage of the last bulk pick-up, is recommending they budget \$52,893 for FY2021. Mr. Allen notes that is the hardest cost for Casella to calculate.

Shawn asks about the recycling program. Mr. Groshon explains to the new members of the BOS that in 2017 China implemented new laws that changed the entire commodities market. Currently Casella is moving a lot of their recycling domestically, so it does have use, and while the value is not where they want it, it has improved. He states that this month the value has improved to an average of \$17/ton, noting that eighteen (18) months ago the value was -\$10/ton. He notes that in 2019, Casella invested \$10M in new equipment to improve the processes. Mr.

Groshon explains that Casella has to produce a better end product; the acceptable contamination rate has decreased from 3% to about ½%. He notes it is difficult to achieve that ratio with mechanical separation. They have had to slow the process and add laborers. He explains that in Boston, Casella has inserted a new piece of equipment that picks out newspapers as they have greater value, removing them from other mixed fibers which have low value. He also notes that COVID changed the variables, such as has the demand for cardboard. The situation is still volatile, but the values of the commodities have come up and the market is more stable now.

Shawn asks about glass recycling, noting it is the biggest weight component in recycling. Mr. Groshon explains there is no facility in New England that recycles crushed glass. He notes that in the recycling process all glass is crushed. However, there is construction around Boston that is using crushed glass as an “aggregate” in several construction materials. Glass is being used in landfills for road base and cover as well. So, while not being used to make new glass bottles, glass is still being utilized and reused in other ways. Joshua asks if the aluminum shortage is impacting the recycling economy. Mr. Allen explains that the values are changing rapidly in the last three months and they cannot predict prices. He does note that aluminum has the highest value of the recycled commodities, but there is still a lot to learn about the value of commodities. Mr. Groshon states there are a lot of “myths and truths about recycling, and Casella has created information packets to address these. They have provided this information to Gail as well as a discussion of where the markets are so the Town can see where their recycles are going. Shawn asks if the BOS could get updates more frequently. Mr. Allen agrees and adds the BOS to the mailing list of the group that does a comprehensive quarterly update. He explains the BOS will get more detail from this group and asks the BOS to send feedback back to Casella so they (Casella) can provide better information to their customers. Shawn notes it is costing the Town and Casella more for recycling, but that environmental and moral obligations keep the program going. Mr. Allen notes those decisions are best made with facts and reiterates that commodities are tough. He asks if the BOS is moving forward with the opportunity to roll the current contract over another year. Shawn confirms this. Mr. Allen will follow up with an acknowledgement letter.

II. Budgets

#4323.10- Waste Disposal & Recycling: Shawn states the budget has all the numbers, but he has not had a chance to review them and requests that the BOS table this budget for further review.

 **#4323.10- Waste Disposal & Recycling is tabled for further review.**

#4150.10- Trustees of the Trust Funds: Kelly and Kathy Beattie present the budget for #4150.10- Trustees of the Trust Funds for \$2966. Kathy Beattie explains this budget is level-funded and includes the 2% COLA increase. She explains that when Kelly Beattie took over as bookkeeper, she did not receive any training from Patty, and was told that if she (Kelly) had any questions to ask her mother (Kathy). Ms. Kathy notes that she has been helping Ms. Kelly with the spreadsheets and the budget. Dr. Farah states that as a Trustee over the past couple of years, Patty had explained everything to her. Ms. Kathy responds that when Patty turned over the books she was “ready to retire”. Shawn explains that Patty had tried “leaving everything in good hands” and notes the person the BOS hired to replace her left suddenly and that she (Patty) was “gracious enough to extend her working for the Town.” He notes that he knows Patty was under a lot of stress and while “not the best outcome for the Trustees, her focus was on ensuring the BOS was taken care of”. He could understand that training was probably not provided.

Shawn notes that now the Trustee members need to work as a team to “move forward.” He states that he is aware of issues such as expired Trust funds that need to be reviewed, funds that have expired beyond their “life durations”. The trustees need to ascertain what they need to do and how to correct these things and that could potentially involve petitioning courts or the State to resolve these issues. All of this needs to be transparent.

Dr. Farah states that she takes issue with Shawn’s statement and that Patty did not leave the Trustees of the Trust funds without anything. She states that she sat down with Patty before she (Patty) left and notes that she (Dr. Farah) was a Trustee when Patty was the bookkeeper. Ms. Kelly notes that Patty told her that Dr. Farah could help her. Dr. Farah states that Patty explained the Trust funds to her and she has all the documents. There is animated discussion among the three Trustees and Shawn. Shawn expresses concern that the Trustees cannot work

together, noting that he can clearly see the friction. There is more discussion. Sheila asks how often the Trustees are supposed to meet. Ms. Kathy states technically just once a year. Sheila suggests the Trustees get together more often. Ms. Kathy notes there was a ZOOM meeting earlier this summer and she used last year's budget to do the budget for FY2021. Joshua attempts to clarify if Ms. Kelly has all the information that she needs now. Ms. Kelly responds that she is working on it. Shawn suggests the Trustees put together a "road map of what accounts need to be addressed", and suggests the Trustees "divide and conquer" the various funds. He notes the Trustees need to sit down, work in one direction and "get stuff done." Dr. Farah states that the paid bookkeeper should be the one doing the work. Ms. Kathy notes the Trustees are technically a volunteer position. There is more discussion among the Trustees. Dr. Farah asks Ms. Kelly to take the lead setting up a meeting and she will attend and help them out as much as she can.

Dr. Farah informs the BOS that at the last School Board meeting, the auditors stated that in 2013 the Trustees did not make a payment that should have come out of a Capital Fund and that Danville probably needs to go back into the records. The amount of that payment should have been \$200,000. Shawn explains the Trustees will need to backtrack that. He asks the Trustees to meet with the BOS in thirty (30) days. There is more discussion regarding the documents, who has them, where they are, etc. and the process to resolve the issues.

Steve asks if the impact fees for new construction go to the Trustees. Ms. Kathy explains those fees go into the Town's escrow accounts. Steve explains that he was made aware there are impact fees for public safety and over the last fifteen (15) years he has not been aware of that. Steve asks if anyone knows the balance and how the money is divided. Ms. Kathy states that she can give him the balances. Steve reiterates he is interested in the public safety balance. Dr. Farah states she remembers a discussion several years ago but was unclear if the impact fees ultimately included public safety. He explains that he was at a Planning Board meeting last week and saw the paperwork that charged both school and public safety impact fees. Dr. Farah suggests checking the BOS files, noting there was a discussion five to six years ago regarding the impact fees. Shawn states he remembers the discussion but not the resolution. Steve and Dr. Farah discuss how long funds may have stayed in that account. Steve expresses concern with the public safety account due to the time limits of holding unspent fees, noting that after seven years they must be returned to the owner with interest.

Shawn requests a motion to approve the #4150.10 Trustees of the Trust Funds budget for \$2966. Steve makes that motion. Second by Dottie. Dr. Farah asks how much time the bookkeeper spends working for the Trustees. There is discussion regarding how much time is involved depending on the time of year. There is some discussion regarding how the stipend came about, what has changed with the transfer of the Timberlane accounts, etc. Shawn requests that Ms. Kelly keep track of her time until the Trustees get into a routine and all the pending issues are resolved, Shawn calls for a vote on the motion. Vote is unanimous (5-0).

 **#4150.10 Trustees of the Trust Funds is approved for \$2966.**

#4241.10- Building Inspector: Shawn presents the #4241.10 Building Inspector budget to the BOS for \$3500. He explains that when permits are issued, the fees include a schedule of different inspections. 75% of those funds go to the different inspectors. He notes that in previous years there were issues of inspectors being paid in advance for inspections and then leaving before completing those inspections. The BOS changed the process and now 100% of the permit fees are put into a Trust fund. The inspectors are paid from that fund only after a physical inspection has been completed. Sheila asks if this is only for the building inspectors. Shawn explains it is for all inspections. However, the Building inspector has "office hours" and is paid a stipend for holding those "office hours" and that is what this budget is for. Shawn continues to explain the inspection process. When the project is completed and all the inspections are done and paid; 25% of the permit fees remain in the Trust fund. The Town will issue a payment warrant for that 25%, which is then transferred into the Town's General Fund. Shawn notes the Building inspector's stipend includes the 2% approved COLA. There is discussion regarding line #bi390 that appears to reflect an additional \$400 stipend. Gail notes that she is unclear what that line is for and simply carried it from the previous year's budget. Shawn asks Kim to find out how the line was expended in FY2020, as he cannot make sense of why it is in the budget. He notes he is fine with the rest of the lines with the exception of #bi390. Shawn asks to table #4241.10 Building Inspector budget until that line can be explained.

 **#4241.10 Building Inspector is tabled for further review.**

#4316.10- Street Lighting: Kim has provided the BOS with #4316.10- Street Lighting budget for \$8500. She notes that she has additional information for the BOS. Shawn notes the FY2020 expenditures are already over the budget for FY2021 and there are still two more months in FY2020. He estimates the BOS should be budgeting at least \$800/month. Joshua asks if the increase is due to more lighting or simply a rate increase. Shawn explains the Town is billed a fixed rate for each light and for the technology on that light. Shawn states the Town has either 21 or 24 streetlights, noting the Town did a physical audit a few years ago. He asks Kim to contact NH Co-Op to get their rates for 2021 and any other information that the BOS can use for budgeting. Shawn notes that he expects that budget to increase to \$10,000. Sheila asks if the new light for the Salt Shed should be included in the budget. Shawn explains that will be on the building's meter. He suggests that when the BOS sees the new rates, it could lead to a discussion of upgrading the technology on all the streetlights and the return of investment if they do so. Shawn confirms the current expenditures of \$8539 includes October and notes that with only two months to go the budget would already be at \$10,000 for FY2020.

✚ **#4316.10 –Street Lighting is tabled until more information is obtained.**

III. Old/New Business

Police Dept. Vehicle Purchase: Chief Parsons has submitted a proposal and request for approval for the purchase of a new vehicle to replace the 2008 F150 the Police Dept. currently owns. The proposed purchase would be made with funds from the Police Detail Revolving Account. The proposed vehicle is a 2021 Dodge Durango AWD. The base price is \$33,324 and the complete price after outfitting the vehicle for the Police Dept. is \$40,181.40. The Police Detail Revolving Account balance is \$53,484.31, more than enough to cover this purchase. There is a brief discussion of the difference between AWD and 4-wheel drive. Shawn notes that he has no problem with the request. Sheila motions to authorize Chief Parsons to pursue this purchase for \$40,181.40. Second by Dottie. Vote is unanimous (5-0).

Paid Time Off (PTO) Policy Update: The BOS has received an updated correction to the previously approved PTO policy change. The change is as follows: *“Employees who separate from employment for any reason mid-year will be paid for any unused, accrued, PTO”*. Steve motions to approve the change to the PTO policy for the Town as indicated. Second by Joshua. Vote is unanimous. (5-0).

Minutes: After many hours of work, the amended minutes for the September 9, 2020 for the BOS public meeting have been completed. Sheila motions to accept the minutes as amended. Second by Dottie. Vote is unanimous (5-0). Shawn thanks everyone who worked on resolving the audio issues with the minutes, noting there was a great amount of time involved.

The BOS reviews the minutes for the October 19, 2020 BOS public meeting. Sheila motions to accept the minutes as written. Second by Dottie. Vote is unanimous (5-0).

The BOS reviews the minutes for the October 19, 2020 BOS Non-Public session. They agree there are several amendments that need to be made. The BOS will make those corrections in tonight's Non-Public session.

GOFERR Grant: Sheila read the following statement into the minutes:

“I am pleased to announce that the GOFERR Grant (Governor’s Office for Emergency Relief and Recovery) final round has been completed. Examples of requested monies that were submitted were PPE (Personal Protection Equipment), Fire Dept. trainings and PPE, increased welfare costs for food, shelter, and utilities, increased election costs, municipal building modifications including more frequent cleaning/disinfecting, and installations necessary for social distancing and public safety, etc. All eligible expenses had to be COVID-19 related. I want to thank all the departments who worked hard to make this grant happen for our town.

✚ *The Total Grant Amount: \$106,622*

✚ *The Amount of monies submitted and granted: \$52,395 (this includes \$9110.18 that was submitted today)*

✚ *Amount of Monies remaining in the grant (unspent): \$54,226.21*

✚ *Round #1- \$14,413.88- Received*

✚ *Round #2- \$13,093.46- Received*

✚ *Round #3- \$15,778.27- Received*

✚ *Round #4- \$9,110.18- Submitted on Oct. 26, 2020. This is the final round”.*

Dottie, Shawn, and Steve thanks Sheila for all her hard work getting these grant monies.

Shawn reads the Town Announcements listed below.

New Fire Truck: Steve states that the Fire Dept has taken the delivery of the new fire truck ordered in 2019. It will take approximately 2-3 weeks to finish outfitting the truck for service and then will be ready to respond to calls. Shawn notes it is nice to see modern things done for the Town with services for the community. He notes that while it was a long wait, it was worth it. Steve notes that he is happy that this truck is safe for his responders.

IV. Town Announcements

Calendar

✚ November 2- BOS Meeting at 7:00 at the Town Hall

✚ November 3- General Election 7:00AM-8:00PM at the Community Center


There being no further items to discuss, Shawn motions for a Non-Public session under NH RSA91-A 3: II (c) and (e). Second by Steve. Roll call vote: Shawn-yes, Steve-yes, Sheila-yes, Dottie-yes, Joshua-yes. Non-Public session is entered at 8:35PM.

Minutes derived by video provided on the Town of Danville website.

Respectfully Submitted
Deborah A. Christie

DRAFT –
Guide for NH Legislators
Workplace Pregnancy and Lactation Laws
During the COVID 19 Pandemic
Legislative Recommendations January 2021
Submitted by the NH Breastfeeding Rights Coalition



 Kate and Devon Frederick, Intervale, NH /Rustik Events/ Zac Romasco

Author – Kate Frederick, MLS, MARJ, JD '23

NH Advisory Council on Lactation Member

NH Breastfeeding Rights Coalition Founder

Vermont Law School – MA Restorative Justice, '20, Juris Doctor '23

The Dartmouth Institute of Health Policy and Clinical Practice at Geisel School of Medicine-Special Student



TO BE Edited by Molly Smith, Harvard University Teaching Fellow,
Vermont Law School Program Coordinator

Healthy Infants-Healthy Workers-Successful Businesses



Whitefield, NH  Rustik Events

Keeping your job when life happens, should not require the strategy of a chess master. Employers and employees often don't know what their rights and obligations are, which is why NH needs clear policy, backed by statute.

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Smoker’s Rights v. Lactating Employee’s Rights

The right to smoke during the workday is protected, while the right to breastfeed is not.



Section 275:37-a

275:37-a Discrimination on Basis of Using Tobacco Products Prohibited.

– No employer shall require as a condition of employment that any employee or applicant for employment abstain from using tobacco products outside the course of employment, as long as the employee complies with any workplace policy, pursuant to RSA 155:51-53 and, when applicable, RSA 155:64-77.

Source. 1991, 274:2, eff. Jan. 1, 1992.



“No breastfeeding allowed in the lactation room. Pumping only.”
 State of NH DHHS Attorney Jennifer Jones

Letter to General Court of New Hampshire

January 2021

Dear Governor Sununu,
Senate President Morse,
House Speaker Packard,
House Committee on Labor and Industrial and Rehabilitative Services:

We all want Healthy Infants, Healthy Workers & Successful Businesses, not just one of these at the other's expense. Now, it is pandemically urgent to pass protective legislation. This report has been written primarily with the legislator in mind, providing a road map to future pregnancy, lactation and caregiver rights bills for workplace protections. We hope you will find this report informative, useful and find answers to previously asked questions raised by legislators and business owners in past committee hearings. Workers seeking pregnancy and lactation accommodations, (see Resources page) as well as those with other caregiving responsibilities, such as those with an elderly parent, ill spouse or adult child, etc. may also find this report informative and a resource to keep on hand. It is our hope that new bills will address the issues outlined in this report.

Sununu Solutions! - Sununu Takes Action on Pregnancy and Breastfeeding Rights with (1) EXECUTIVE ORDER 2019-08 AND (2) SB 68 - 2021, FORMERLY SB 759 -2020.



PRAISE FOR GOVERNOR SUNUNU!!

GOVERNOR SUNUNU HAS PROCLAIMED THAT DISCRIMINATION IN ANY FORM - IS
UNACCEPTABLE AND "RUNS CONTRARY TO NEW HAMPSHIRE'S
'LIVE FREE OR DIE' SPIRIT."ⁱⁱ

Sununu's first solution was the Executive Order, he signed pictured above. It is only for Executive Branch State employees, whose departments opt in. Employees must meet specific requirements to participate. **Of course, not all businesses can accommodate babies in the workplace. We are suggesting *workday* accommodations, not always *workplace* accommodations.** Safety and health of all is paramount. OSHA, CDC and State Health Department guidelines should be followed.

Thank you Governor Sununu for taking action. Governor's Hassan and Lynch both chose to stay silent after the issues were brought to their attention. We ask that the legislature follow the Governor's lead by enacting statute. On December 16, 2019 the Governor issued Executive Order 2019-08, *An Order Promulgating an Infants in the Workplace Policy for Executive Branch.*ⁱⁱ "This initiative provides parents an option to remain in the workforce, improves employee retention, optimizes parent-infant bonding and breastfeeding, improves the health of both the parent and baby, helps our employees save on child care costs, and increases job satisfaction and a positive work-life balance."ⁱⁱⁱ This key policy benefits families and employers. ...Supervisors must allow lactating mothers flexible schedules to breastfeed and/or express milk: Parents participating in the program who are breastfeeding their infants will be provided with reasonable time to breastfeed their infants and with a reasonable accommodation to provide appropriate private space for breastfeeding, consistent with applicable state and federal laws.ⁱⁱⁱ

The Executive Order can be repealed by a successor, is a voluntary opt-in from employers and does not come with anti-discrimination protections or enforcement. NH does not consider respecting basic human rights a voluntary choice and this needs to be made explicit as it is in other states. New Hampshire has no statute which expressly requires employers to provide reasonable accommodations such as break time and a private space for lactating employees to breastfeed or pump.

Supported by Governor Sununu,
Pregnancy Protections Bill
Sponsored by Senator Jeb Bradley, SB 759 in 2020
and Senator Hennessey, SB 68 in 2021



[NH Journal](#)

Senator Jeb Bradley and Governor Sununu have been listening to us. We visited with Senator Jeb Bradley, (pictured below) at his NH State House office on 9/23/19 asking the Senator to be the Prime Sponsor of a bill to protect pregnant and lactating workers in New Hampshire from discrimination. I brought my son Devon with me for a real-life civics lesson. Senator Bradley has worked with us to pass this kind of legislation in NH for Devon's whole lifetime and Senator Bradley has been watching him grow up over the years. Looking through the rough draft of this report, Bradley remarked, "There couldn't be a better time for this," pointing out concerns about NH's economic impact on families. Governor Sununu, pictured above with Senator Bradley, then testified for the bill.

"My Administration is committed to promoting the health and economic security of state's families, including measures that promote the health of infants and mothers. It is for those reasons I worked with Senator Bradley to Sponsor Senate Bill (SB) 759...I ask that you support SB 759 and send it to my desk as quickly as possible."



Photo: RustikEvents.com

The Senate Committee passed the bill with an amendment as Ought to Pass, 5-0 on March 5, 2020. Then the pandemic struck. The bill was put on hold.

Current Legislative Bills

For the 2020-2021 session, we ask you to consider our testimony for:

- (1) [SB 68 - requiring an employer to provide reasonable accommodations for pregnant employees](#). **Vote Ought to Pass with Amendment** - to codify with EEOC Guidance, NH Commission on Human Rights and Federal Laws.
- (2) [HB 231 - relative to workplace lactation rights](#). **Vote Ought to Pass**. This bill is inclusive of lactating employees that breastfeed and/or pump, etc. Breastfeeding is not illegal, even during work hours.

- (3) [SB 69 - requiring employers to provide access to a sufficient space for nursing mothers and reasonable break time](#). **Vote Inexpedient to Legislate and merge with HB 231.** This report details how SB 68 excludes actual breastfeeding and is therefore discriminatory, per Federal statute and EEOC guidances. You simply cannot encourage breastfeeding as a public health policy, by explicitly excluding breastfeeding. Additionally, there are other issues with the bill, such as needing to give 2 week's notice. If an employee comes down with a sudden lactation related illness and needs accommodations, they won't be assured of getting them.

Additional testimony will be provided during hearings.

Firing Someone for Needing Accommodations is not the NH Way

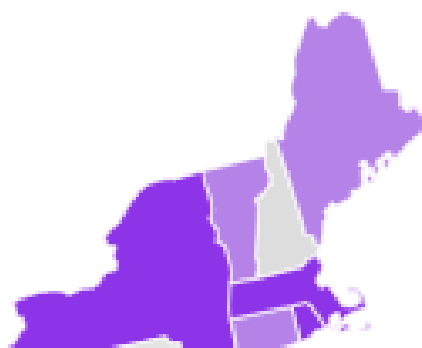
No one wants NH residents to go on public assistance.
instead of remaining gainfully employed when they are willing and able to work,
NH-educated and want to stay in NH.

However, this is what has sometimes occurred when an employee is fired for needing to breastfeed during work hours. Instead of keeping her job, contributing to society and providing for her family, she can receive up to \$427 per week for up to 26 weeks, totaling over \$11,000 for not working if she qualifies. (<https://www.nhes.nh.gov/forms/documents/nhes-0165-ucb-quicktips.pdf>). This is a needless waste of taxpayer's money, increases employers' unemployment taxes paid into the general fund as well as being a waste of an employee's education and skills. Becoming a mother shouldn't result in an employee being forced out of work.

New Hampshire is Behind Every Other New England State



[Pregnant@work's](#) Workplace Lactation LawsSM New England Map



In every other New England state and many states across the country, anti-discrimination legislation has passed to protect lactating individuals in employment. All our neighboring border states and other New England states, **Maine, Vermont, Massachusetts, Connecticut, New York and Rhode Island, have protective legislation for workplace lactation rights.** There are none in New Hampshire.

COLLIDER

The Best Documentaries on Amazon Prime

BY SARAH FIELDING  MARCH 15, 2020

The Milky Way



If you're looking to watch an empowering, female documentary that will touch yoursoul, this is it. The Milky Way dives into the way women are treated as mothers...

Bipartisan Support

Proposed workplace accommodations have bipartisan support. Legislators who have voted for pro-life legislation have also voted in favor ensuring working women have healthy pregnancies, the opportunity to breastfeed and to keep their jobs. Legislators who are pro-choice have also voted in favor of these rights, so that a worker is not forced to choose between her pregnancy or her job. Giving NH families the best possible chance to survive and remain in NH, partially requires supporting breastfeeding by providing reasonable accommodations during work hours. NH legislators on the federal and state levels have shown bi-partisan support for both pregnancy and breastfeeding legislation.

Partial list of Legislators Who Have Voted in Favor of Protective Lactation Accommodations

Republican Support	Democrat Support
Governor Chris Sununu	NH House Rep. Ed Butler-Prime Sponsor
Senate Majority Leader Jeb Bradley-Prime Sponsor	NH Senator Martha Fuller Clark-Prime Sponsor
House Finance Committee Chair Karen Umberger - Sponsor	NH House Rep. Richard Abel-Prime Sponsor
Senator David Boutin- Sponsor	NH House Rep. Tom Buco
House Commerce Committee Chair John Hunt	NH Senator Betty Laske - Sponsor
House Rep. Martin Bove	NH Senator Molly Kelly- Sponsor
US Senator Kelly Ayotte – Sponsor, etc.	US Senator Jeanne Shaheen- Sponsor, etc.
Past House and Senate Committees – Commerce and Consumer Affairs, etc.	

It’s Too Late For Me-

It’s Not Too Late for New Hampshire

Lastly, I’d like to share with you a bit about my personal story. Any new laws are too late to help me and my family. In 2012, I was a valued NH State Child Support Officer, in Conway, NH, who was fired after years of public service, simply for becoming a breastfeeding mother. My son couldn’t yet drink from a bottle, so I had no option to pump upon my attempt to return to work after giving birth.

My employer tried to force me to breastfeed in public at work and refused to let me breastfeed safely in private.

I was told to stay home until I didn’t need any accommodations and then was fired for missing work. There’s nothing that can be done to undo my termination and the devastating affects it has had on my whole family. Since then, more families have revealed their struggles with getting accommodations during work hours and often come to me for help. Some are also NH State employees. Their stories are part of this report as well. See the section on “Accounts of Discrimination Are Minimized and Underreported.”

Breastfeeding saves millions of lives. Studies even suggest that mother’s who’ve had or have COVID-19, produce milk with protective antibodies. The World Health Organization recommends continued direct access breastfeeding for COVID-19 positive mothers (<https://www.who.int/news-room/commentaries/detail/breastfeeding-and-covid-19>). Now, it is pandemically urgent to pass protective legislation. For me, continuing to lactate through a catastrophic illness that caused paralysis and seven weeks in the hospital is what my doctors think probably saved my life and reversed the spinal cord damage. It was too late for me to get the job

protections I needed, to work and also feed my baby during work hours, but it's not too late for New Hampshire's future families.


If you have any questions or concerns, please don't hesitate to contact me.

With Gratitude for Your Leadership,

Katherine Devon-Abra Silver Frederick
on behalf of The NH Breastfeeding Rights Coalition & The Rustik Baby Project with Rustik Events



The NH Breastfeeding Rights Coalition at the NH State House, 2015, giving awards to Senators Jeb Bradley, Martha Fuller Clark, US Senators Jeanne Shaheen and Kelly Ayotte's Offices, Kary Jencks of NH Citizens Alliance and Christine Dodson, Mamava.

 Mindful Mama Birth

Acknowledgements

Special Thanks to My Family

This report could not have been written without the support of my parents, the late Donald Paul Silver who passed while this report was being drafted and Barbara Mary Silver of Hanover, NH as well as my husband Brad Frederick and our son Devon Frederick, now 8 years old. My parents and my husband were my caregivers during my two-year illness and provided primary childcare for our son.

House Representative Ed Butler



Thank you to House Representative Ed Butler for being the first Prime Sponsor of the “Breastfeeding Bill,” speaking at the State House Advocacy Luncheon, and helping work with Mt. Washington Valley employers and employees to support breastfeeding. None of this would have been possible with you!!

Ed Butler (left) with Rep. Hunt and House Rep. Richard Abel.

Senator Martha Fuller Clark



Barbara Silver (left) with Kate Frederick and Sen. Fuller Clark at Advisory Council on Pregnancy and Lactation

Thank you to Senator Martha Fuller Clark for being the Prime Sponsor of multiple bills and for Chairing the Advisory Council on Pregnancy and Lactation, Hosting an Advocacy Luncheon at the State House, Speaking at the Global Big Latch On at the State House and all you time and effort.

Senator Jeb Bradley

Thank you to Senator Jeb Bradley for Sponsoring Pregnancy and Breastfeeding Bills and speaking at the Global Big Latch On at the NH State House.

House Representative Richard Abel (pictured above)

Thank you Rep. Richard Abel for sponsoring HB 231 – (2021) and voting in favor of all our bills from the beginning.

A special thank you for the leadership and support from the following organizations:

- The Center for Worklife Law’s Cynthia Calvert and Liz Morris
- A Better Balance, Elizabeth Gedmark, Sarah Braufman and Dina Bakst
- Vermont Law School Professors Jarred Carter, Hillary Hoffman, Molly Smith
- The Dartmouth Institute for Health Policy and Clinical Practice, Professors Craig Westling, Manish Mishra and Paul Barr

Additionally, a massive thank you is extended to Vermont Law School Professors Robert Sand and Stephanie Clark the VLS Center for Justice Reform, who designed the nation’s first Master’s in Restorative Justice. I hope that we can find workable solutions to these issues, establish a more contemporary justice and institute reformed policies that address the needs of NH communities. Thank you all.



About the Author

As author, I have multiple roles related to this report.

Student - First, I am a student of the law and public health primarily at the Vermont Law School with supplemental coursework at the Dartmouth Institute for Health Policy and Clinical Practice at the Geisel School of Medicine in Hanover, NH.

Advocate - I am the Founder of Rustik Events, grassroots, organization of volunteers currently working on social and economic laws, policies, rules and regulations.

Former NH State Employee/Plaintiff - I am a plaintiff in a suit that involves pregnancy and lactation discrimination, which has been ongoing for over 8 years combined in the

NH Commission on Human Rights

NH Department of Labor

US Department of Labor

Equal Employment Opportunity Commission

US-NH District Court

NH Superior Court and the

NH Supreme Court.

My case has not yet been heard on the merits nor have I had the opportunity to speak in court. The NH Supreme Court heard oral arguments a year ago as to whether or not I have the right to the State or if they have sovereign immunity, as well as, how the statute of limitations applies. I have seen firsthand how impossible navigating a solution, filing a complaint, utilizing mediation and involving lawyers can be. I hope to ensure that the path to getting reasonable accommodations in the workplace becomes easier for others.

Business owners need to be supported and have a process in place to provide reasonable accommodations in a way that doesn't hurt their operations. My own experience with discrimination became a calling to work towards compromise and solutions in aiding NH to be a better place where families could live and work in a safe and healthy environment and where businesses owners would choose to locate and thrive.

Patient in Need of Caregiving by Family Members

In 2016, while working full time hours in two different jobs, I was a lactating employee. Just a few weeks after the first "breastfeeding bill" passed, I became catastrophically ill with multiple life-threatening diagnoses, resulting in my being paralyzed with a chest-level spinal cord injury and damage to my brain. I was incapacitated and hospitalized for over 7 weeks, while I was also running for NH House Representative.

At this time, my husband worked as a Sous Chef at **The Snowvillage Inn, in Eaton, NH**. The owners, Jen Kovach and Kevin Flynn were incredibly supportive, along with then Chef Peter Willis and let him have as much unpaid time off as he needed and even started a GoFundMe page for our family. Most employees would have simply lost their jobs. Ultimately, we had to move for my medical care and my husband had to give up his job in order to care for me and be the primary care giver of our 4-year-old son, for the next 2 years while I was disabled and recovering.

My husband resumed work at **Salt Hill Pub in Lebanon, NH** a small business owned by brothers Joe and Josh Tuohy and again found extremely supportive employers. They let him take time off when I was having medical infusions, or my son needed him as a caregiver. Most workers would have been fired for being unable to come to work. Nothing short of a miracle and completely against all odds, I've been able to make great strides in my recovery, running after my son, riding a bike and swimming as physical therapy.

About Rustik Events – The NH Breastfeeding Rights Coalition

Rustik Events has helped numerous employees to keep their jobs, while helping businesses keep their valued employees and design plans to provide reasonable accommodations under the law. Doing so has been a win-win scenario for all involved. Rustik Events includes the NH Breastfeeding Rights Coalition, a group of breastfeeding allies of all genders and ages, a bipartisan representation of legislators, expert medical professionals, business owners and community leaders. The coalition's mission is to advocate for pregnancy and breastfeeding rights and accommodations in public places and the workplace. We believe that legislation and enforcement measures, along with restorative practices¹ are necessary to counter lactation discrimination.

We have informally consulted as Policy Advisor to the Prime Sponsors on several proposed bills we had previously submitted for protecting lactation rights, two of which have become law.² Additionally, our Consulting Division, the Rustik Baby Project, helps clients draft individualized, written agreements for reasonable accommodations relating to pregnancy and breastfeeding issues. We've helped both public and private employers and employees, as well as school communities, religious organizations and municipalities.

Having worked with state and federal legislators, as well as with business owners and employees, we've found that discrimination based on sex and status as an expecting or new breastfeeding mother is rampant in New Hampshire. In addition, having had firsthand experiences while running for House Representative³ in Carroll county in NH⁴ and as an employee for the State as a DHHS Child Support Officer, an adjudicator at NH Employment Security and as Psychology Instructor at Granite State College, I've had the unique perspective from which to see some of the issues in detail and envision strong solutions to these problems.

Lastly, As President of our NH Breastfeeding Rights Coalition, I served as a member of the NH Advisory Council on Lactation, first established by NH statute in 2016, and was elected Clerk, through 2017. The Council was last called to meet in December of 2020. I offer our coalition's findings for urgent consideration. We hope to assist the legislature in attempting to remedy the prevalent issues of discrimination based on pregnancy, lactation and caregiving responsibilities in the workplace in the subsequent legislative session.

¹ Restorative practices may include policies and trainings to improve the business climate or facilitated discussion with a restorative practices professional, etc.

² Bills that were passed into law had provisions for providing reasonable accommodations removed before passing into law. Thus, the need for better laws.

³ A former Judge in local party leadership told me she didn't think I should run for office because I had a young child.

⁴ I became severely ill, was hospitalized and requested to withdraw from the election, however the ballots had been already been printed. A press release went out asking voters not to vote for me.

Introduction

This report offers a more comprehensive background to prioritize and understand workplace discrimination in the realms of pregnancy, lactation and caregiving, as well as suggests a prescriptive plan for the NH legislature to lead the way in supporting working families seeking reasonable accommodations. Exemptions for small business owners is also detailed.

Content is organized into three sections. First solutions and proposed legislative provisions are suggested, with the invitation to work together with the legislature to see new laws in 2021. Second, the issues are broken down so legislators can have an accurate understanding of the problems that need to be addressed. Third, relevant laws are surveyed. The issue of workplace lactation discrimination is the most detailed topic in this guide as this is where the legislature last focused their efforts. Why this is so crucial involves the science of lactation, which is explained next.



North Conway, NH Memorial Hospital Breastfeeding Support Group, Big Latch On

Legislators Can Save NH Lives – The Health Benefits of Breastfeeding



In order to understand why working hard to counter lactation discrimination should be a priority for NH in the 2020-2021 legislative session, one must look at best practices derived from medical research urging human milk production. Some of the benefits of breastmilk are listed by the Office on Women's Health - US Department of Health and Human Services, including benefits provided to society by breastfeeding individuals. "The cells, hormones, and antibodies in breastmilk protect babies from illness. This protection is unique and changes to meet your baby's needs."v The medical research presented by the US DHHS is clear and widely accepted by leaders in the medical field. Breastfeeding is optimal for children's nutrition, while it is also optimal for societies' longevity.

There are additional benefits that establish best practices for breastfeeding, such as the benefits to the mother. The birthing center at Bridgton Hospital in Maine, a New England state with protective legislation, is a certified baby friendly hospital – meaning they meet best practice standards for breastfeeding –distributes the pamphlet, 101 Reasons to Breastfeed which includes the following.

- Reduced risk of Maternal Osteoporosis,
- Protects against Crohn's Disease,
- Reduced risk of Ovarian and Endometrial Cancer,
- Protects against Anemia,
- Reduced risk of Breast Cancer^{vi}

Besides a reduced risk for cancers and diseases, breastfeeding provides more benefits to the mother and also the co-parent such as more sleep,^{vii} which can lead to better productivity at work for both caregivers. The NH DHHS also has information on best practices, citing the American Academy of Pediatrics, The World Health Organization, the US Surgeon General and the Center for Disease Control. A simple foundation for the benefits of breastfeeding during work hours is provided on the NH-DHHS site.

Companies successful at retaining valued employees after childbirth find that two components can make the difference: providing dedicated space (as small as 4' x 5') for breastfeeding employees to express milk in privacy and providing worksite lactation support. The payoff is significant: more satisfied, loyal employees and cost savings to the business. These savings are seen in such areas as: Retention of experienced employees; Reduction in sick time taken by both moms and dads for children's illnesses; and Lower health care and insurance costs.^{viii}

As these resources show, breastfeeding support is a good financial business decision, as well as a best health practice. The World Health Organization recommends that breastfeeding for more than two years is optimal, and benefits both mother and child.^{ix} Further, valuing breastfeeding in the workplace and providing reasonable accommodations can ensure better breastfeeding success. As the medical research shows, breastfeeding is not just the best choice for children and families but is a crucial public health issue affecting our communities, specifically related to breast cancer and obesity prevention. Babies who receive human milk

and mothers who lactate have better health outcomes, than those who do not receive human milk or cease lactation. By leaving our citizens vulnerable to discrimination, NH is at risk for a public health epidemic of obesity, infectious disease, cancer. In 2014, NH was the number one state in the country for having the highest rate of breast cancer.x At the time of this report it is the second highest.xi In order to save NH lives, finding solutions to passing better legislation is of dire consequence.

Photo by Rustik Events – DC Global Big Latch On



101 Reasons to Breastfeed

1. The American Academy of Pediatrics recommends breastfeeding as the optimal nutrition for infants
2. The American Dietetic Association promotes breastfeeding
3. Breast milk is more digestible than formula
4. Breastfeeding reduces a mother's risk of breast cancer
5. Baby's suckling helps shrink mother's uterus to pre-pregnancy size after childbirth
6. Formula feeding increases baby girls' risk of developing breast cancer in later life
7. Formula Feeding is associated with lower I.Q.
8. Breast milk is always ready and comes in a nicer package than formula
9. Breast milk helps pass meconium
10. Breast milk contains immunities to diseases and aids in the development of baby's immune system.
11. Breastfeeding satisfies baby's emotional needs and increases bonding between mother and baby
12. Breast milk provides perfect infant nutrition
13. Breastfeeding reduces a mother's risk of developing ovarian cancer
14. Recommended by the World Health Organization & UNICEF
15. Breastfeeding protects against Crohn's disease (intestinal disorder)
16. Formula-fed babies are more at risk for obesity and being over-weight in later life
17. Formula feeding increases risk of children developing diabetes
18. Breastfeeding helps decrease insulin requirements in diabetic mothers
19. Breastfeeding may help stabilize progress of maternal endometriosis
20. Breastfed babies have less chance of cardiopulmonary distress while feeding
21. Baby's suckling helps prevent post-partum hemorrhage in mother
22. Breastfeeding reduces a mother's risk of developing endometrial cancer
23. Formula feeding increases chances of baby developing allergies
24. Breast milk lowers risk of baby developing asthma
25. Formula feeding increases baby's risk of otitis media (ear infections)
26. Formula feeding may increase risk of sudden infant death syndrome (SIDS)
27. Breastfeeding protects baby against diarrheal infections
28. Breastfeeding protects baby against bacterial meningitis
29. Breastfeeding protects baby against respiratory infections
30. Formula fed babies have a higher risk of developing certain childhood cancers
31. Breastfeeding decreases chances of developing rheumatoid arthritis
32. Pre-term milk is specially designed for premature infants
33. Breastfeeding decreases child's chances of contracting Hodgkin's disease
34. Nursing helps mom lose weight after baby is born
35. Breastfeeding protects baby against some vision defects
36. Breastfeeding decreases chances of osteoporosis
37. Breast milk aids in proper intestinal development
38. Cow's milk is an intestinal irritant
39. Breastfed babies have less chance of developing ulcerative colitis
40. Breast milk protects against hemophilus b. bacteria
41. Breastfed babies require shorter pre- and post-surgical fasting

Written by Leslie Burby at ProMoM.com

<https://studylib.net/doc/8709300/101-reasons-to-breastfeed>

Solutions and Options for NH Legislature

Lactation: Mandate Reasonable Accommodations with Enforcement Provisions

NH Legislators can:

(Option 1) do nothing,

(Option 2) continue to study the issues and form a Governor's Council on Lactation,

(Option 3) pass legislation only for employees who need to use a mechanical pump to maintain lactation and explicitly exclude breastfeeding, SB 69, or

(Option 4) pass legislation, HB 231, to mandate reasonable accommodations for all lactating employees and protection from discrimination with enforcement provisions, with an employer exemption for undue hardship.

Our recommendation is to act on (Option 1) form a Governor's Council on Lactation and (Option 4) pass HB 231, with comprehensive and inclusive legislation for lactating employees. Option 2 is simply discriminatory, disregards federal protections and can lead to an increase in lawsuits against employers and job losses for employees.

Effective legislation would include, but is not limited to:

1. Reasonable break time
2. A designated lactation space – may be temporary as needed
3. Anti-retaliation laws
4. Adding lactation as a status to sex discrimination definition
5. Implement timely enforcement of complaints filed within administrative agencies
6. Have an option for injunctive relief
7. Establish lactation as a medical condition related to pregnancy
8. Cover all workers while they are lactating
9. Mandate participation in mediation when complaints/suits are filed
10. Update EEO statements to include lactation and caregiving

Once these provisions are passed into law, breastfeeding rates of lactating workers will go up, as will the productivity of NH's workforce. Passing legislation hurts no individual nor any entity rather just the opposite, new laws would improve the health outcomes for NH's breastfeeding population. Next, a look at what a NH District Judge, Honorable Steven J McAuliffe wrote about future legislation is revealed in the suit filed by the author.

Katherine Frederick v State of New Hampshire ^{xii}

Pictured Below Judge McAuliffe and his granddaughter



1. Reasonable Expectations of Employers

*"...Her proposal was not unreasonable. And, it would seem that DHHS could have avoided this entire controversy with just a minimal exercise of reasonable administrative judgment, even if the applicable law did not 'require' it to act in a cooperative manner...Frederick v. New Hampshire, No. 14-CV-403-SM, 2015 WL 5772573, at *5 (D.N.H. Sept. 30, 2015)"*

2. Deplorable Insensitivity of Employer

*"The complaint describes an unfortunate (even deplorable) insensitivity and intransigence on the part of her employer...Frederick v. New Hampshire, No. 14-CV-403-SM, 2015 WL 5772573, at *6 (D.N.H. Sept. 30, 2015)"*

3. Inexplicable Refusal of Employer to Accommodate

*"What Frederick actually complains about, understandably, is DHHS' s inexplicable refusal to accommodate her desire to breastfeed her child, either in the lactation room at work or a short distance away from her workplace, during an extended lactation break period... Frederick v. New Hampshire, No. 14-CV-403-SM, 2015 WL 5772573, at *6 (D.N.H. Sept. 30, 2015)"*

4. Breastfeeding is Not Covered Under the Pregnancy Discrimination Act

*"But, breastfeeding per se is not (yet) covered by the Pregnancy Discrimination Act and, as noted, the PDA does not require affirmative accommodations. Frederick v. New Hampshire, No. 14-CV-403-SM, 2015 WL 5772573, at *6 (D.N.H. Sept. 30, 2015)"*

NOTE TO READER:
BREASTFEEDING IS COVERED UNDER THE PDA IN OTHER CIRCUITS

Sashay ALLEN-BROWN v. DISTRICT OF COLUMBIA

“...lactation is undeniably a “condition of the mother.” Indeed, this condition, left to itself, “can be quite disabling[.] [W]hen a woman is unable to relieve the buildup of milk in the breasts, [the result may be] breast and back pain, plugged ducts, and breast infection.” Nicole Kennedy Orozco, Note, Pumping at Work: Protection from Lactation Discrimination in the Workplace, 71 Ohio St. L.J. 1281, 1314 (2010); see also Currier, 965 N.E.2d at 836 (“A nursing mother ... should express breast milk ... to maintain milk production and avoid engorgement, blockage of milk ducts, galactoceles (milk retention cysts), mastitis (an infection of the breast caused by the blocked milk ducts), and breast abscesses.”). **The fact that this “medical condition” is at times a result of a decision made by the mother to breastfeed does not mean that it is not a medical condition or that it is unrelated to pregnancy.** In any event, Allen-Brown’s claim is distinguishable from the “condition of the child” cases upon which the District relies because those cases involved mothers who were not physically disabled or prevented from working and who sought to extend their maternity leave in order to breastfeed, whereas Allen-Brown sought an accommodation based on a physical condition that limited her ability to work.”¹⁰ Allen-Brown v. D.C., 174 F. Supp. 3d 463, 479–80 (D.D.C. 2016)

Hicks v. City of Tuscaloosa, Ala., 11th Circuit

...the Appellate Court explained that lactation is a medical condition related to pregnancy and that, as a result, discrimination based on lactation or breastfeeding amounts to discrimination in violation of the Pregnancy Discrimination Act. (<https://caseandsedey.com/2017/09/15/lactation-pregnancy-related-medical-condition-protected-pda/#:~:text=Lactation%20is%20Pregnancy%20Related%20Medical%20Condition%20Protected%20by%20PDA,-Kate%20Sedey%20September&text=Specifically%2C%20the%2011th%20Circuit%20Court,of%20the%20Pregnancy%20Discrimination%20Act.>)

The panel also holds that lactation is a “medical condition” related to pregnancy or childbirth, and is thus protected by the PDA. “[I]t is a common-sense conclusion that breastfeeding is a sufficiently similar gender-specific condition covered by the broad catchall phrase included in the PDA We have little trouble concluding that Congress intended the PDA to include physiological conditions post-pregnancy. The PDA would be rendered a nullity if women were protected during a pregnancy but then could be

readily terminated for breastfeeding—an important pregnancy-related8
'physiological process.'"

While noting that the PDA did not require that Hicks receive special accommodations, "the jury found that the City's action in refusing an accommodation afforded to other employees compelled Hicks to resign. In the eyes of a jury, this constituted a constructive discharge, which is effectively an adverse action."

[https://www.employmentlawblog.info/2017/09/hicks-v-city-of-tuscaloosa-ala-no-16-13003-11th-cir-sept-7-2017/#:~:text=Hicks%20v.-,City%20of%20Tuscaloosa%2C%20Ala.%2C%20No.,16%2D13003%20\(11th%20Cir.&text=In%20a%20potentially%20important%20development,would%20no%20accommodate%20her%20breastfeeding.\)](https://www.employmentlawblog.info/2017/09/hicks-v-city-of-tuscaloosa-ala-no-16-13003-11th-cir-sept-7-2017/#:~:text=Hicks%20v.-,City%20of%20Tuscaloosa%2C%20Ala.%2C%20No.,16%2D13003%20(11th%20Cir.&text=In%20a%20potentially%20important%20development,would%20no%20accommodate%20her%20breastfeeding.))

See additional cases, including, but not limited to:

[E.E.O.C. v. Houston Funding II, Ltd.](#)

United States Court of Appeals, Fifth Circuit. May 30, 2013 717 F.3d 425 2013 WL 2360114

5. Solution lies with NH General Court or the Congress – Title VII – Sex Discrimination Fails

*"The solution to Frederick's and other breastfeeding mothers' workplace predicament lies, in the first instance, with management and, if necessary, with the New Hampshire General Court, or the Congress. Because Frederick's desire[which was medically prescribed] to breastfeed her child at work, as distinguished from expressing milk at work for later use, did not place her in a protected class, her Title VII discrimination claim... fails. Frederick v. New Hampshire, No. 14-CV-403-SM, 2015 WL 5772573, at *6–7 (D.N.H. Sept. 30, 2015)"*

6. NH SB 219- Right to Breastfeed Would Expand Rights

*"It is also of note that the New Hampshire Senate recently passed a bill that would expand breastfeeding rights in New Hampshire, including a right to breastfeed in the workplace. See N.H. Senate Bill No. 219, as amended (Mar. 12, 2015). Frederick v. New Hampshire, No. 14-CV-403-SM, 2015 WL 5772573, at *4 (D.N.H. Sept. 30, 2015)"*

7. No Disparate Treatment in Denying Break Time

*"The complaint seems to suggest the outlines of a disparate treatment claim arising from her allegations that other employees were allowed to leave the work premises for various reasons, notwithstanding the DHHS policy against leaving during breaks, while she was denied a request to leave the premises to breastfeed her child. But Frederick sought not only an exception permitting her to leave, but also an extended break period, so, even in that respect, the complaint does not allege disparate treatment of similarly situated employees. Frederick v. New Hampshire, No. 14-CV-403-SM, 2015 WL 5772573, at *7 (D.N.H. Sept. 30, 2015)"*

8. Use of FMLA for Breastfeeding – Malnutrition and Serious Health Conditions

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“...the defendant's motion to dismiss Frederick's FMLA interference claim is granted. *Frederick v. New Hampshire*, No. 14-CV-403-SM, 2015 WL 5772573, at *10 (D.N.H. Sept. 30, 2015) Frederick explained that because her baby would not take a bottle, pumping was not an option for her, so she reiterated her requests to walk the three minutes on her regular break to breastfeed her baby and for additional break time as needed. Hebert refused, and told Frederick that she would not be permitted to leave the premises on her regular break nor would she receive additional break time for lactation purposes. (*Id.*) *Frederick v. New Hampshire*, No. 14-CV-403-SM, 2015 WL 5772573, at *3 (D.N.H. Sept. 30, 2015)

“...Later that day, Frederick received a call from human resources indicating that she “could come back to work as long as [she was] able to work the complete 4 hours of work and not leave during this time.” (*Id.* at ¶ 16; Ex. D; Ex. I at 6.) Frederick was also told “that if she could not do this that perhaps [her] other option was to wait until [she] could return full time.” *Frederick v. New Hampshire*, No. 14-CV-403-SM, 2015 WL 5772573, at *3 (D.N.H. Sept. 30, 2015)”

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“...Finding the offer to permit breastfeeding (only in public outside or)... in front of DHHS staff and clients unacceptable, Frederick ...received a letter, on August 21, 2012, notifying her that she was expected to attend a disciplinary hearing on August 23. *Frederick v. New Hampshire*, No. 14-CV-403-SM, 2015 WL 5772573, at *4 (D.N.H. Sept. 30, 2015)

The Boston Globe



FRED FIELD FOR THE BOSTON GLOBE

1. Pregnancy Laws

A. PREGNANCY DISCRIMINATION IS SEX DISCRIMINATION

Amend the definition of sex discrimination to include pregnancy and medical conditions which result from pregnancy, including lactation/breastfeeding/pumping, etc.

B. MEDICAL CONDITION RELATED TO PREGNANCY

Add lactation to the definition of medical conditions, such as follows. Lactation, the postpartum production of milk, is a physiological process triggered by hormones. Lactation and breastfeeding are included as a medical condition related to pregnancy. An employee affected by pregnancy, childbirth or related medical conditions shall be treated in the same manner as any employee who is similar in their ability or inability to work.

Note: Lactation may be related to hormone therapy and not pregnancy in some instances, such as adoption or induced lactation by various genders. This does not negate that lactation is a medical condition related to pregnancy, when it is related to pregnancy.

2. WORKPLACE LACTATION RIGHTS

A. BREAK TIME - AMEND RSA 275:77

An employer shall not be required to compensate an employee receiving reasonable break time for any work time spent for such purpose, providing such break shall be documented as a break for the purpose of lactation.

Where employers already provide compensated breaks, an employee who uses that break for lactation must be compensated in the same way that other employees are compensated for break time. In addition, the employee must be completely relieved from duty or else the time must be compensated as work time.

B. DURATION AND FREQUENCY OF BREAKS

An employer shall provide a reasonable break time for an employee for lactation purposes for her nursing child each time such employee has need. Lactating “workers who are away from their babies during the workday typically need to express milk using a breast pump 2–3 times during an 8-hour work period and 3–4 times during a 12-hour shift to maintain their milk production and avoid health complications. In addition to the 15-20 minutes it takes to express milk, most need additional time to walk to and from the pumping location, set up their pump, clean up, and store their milk.”^{xiii}

C. EMPLOYER EXEMPTIONS

An employer that employs less than 6 employees shall not be subject to the requirements of this chapter, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business. This will be determined by the NH DOL who can use the federal regulations of the US DOL as a guide. Exemptions must be granted in writing and submitted to the employee requesting accommodations.

HOW UNDUE HARDSHIP IS DETERMINED BY THE US DOL

"The term "undue hardship" is defined as 'significant difficulty or expense' to the employer, determined in light of specific factors listed in the (relevant) regulations (to the ADA)... Examples of these factors include the size, type, and budget of the employer's business or operation and the nature and cost of the accommodation. Undue hardship must be determined on a case-by-base basis; for example, a larger employer may be able to bear a more significant cost than a smaller employer based upon the number of employees and the budget the employer has to work with. The excerpt from the Electronic Code of Federal Regulations below goes more in depth.

...For example, to demonstrate that the cost of an accommodation poses an undue hardship, an employer would have to show that the cost is undue as compared to the employer's budget. Simply comparing the cost of the accommodation to the salary of the individual with a disability in need of the accommodation will not suffice. Moreover, even if it is determined that the cost of an accommodation would unduly burden an employer, the employer cannot avoid making the accommodation if the individual with a disability can arrange to cover that portion of the cost that rises to the undue hardship level, or can otherwise arrange to provide the accommodation. Under such circumstances, the necessary accommodation would no longer pose an undue hardship. See Senate Report at 36; House Labor Report at 68-69; House Judiciary Report at 40-41.

Excessive cost is only one of several possible bases upon which an employer might be able to demonstrate undue hardship. Alternatively, for example, an employer could demonstrate that the provision of a particular accommodation would be unduly disruptive to its other employees or to the functioning of its business. The terms of a collective bargaining agreement may be relevant to this determination. By way of illustration, an employer would likely be able to show undue hardship if the employer could show that the requested accommodation of the upward adjustment of the business' thermostat would result in it becoming unduly hot for its other employees, or for its patrons or customers. The employer would thus not have to provide this accommodation. However, if there were an alternate accommodation that would not result in undue hardship, the employer would have to provide that accommodation.

It should be noted, moreover, that the employer would not be able to show undue hardship if the disruption to its employees were the result of those employees fears or prejudices toward the individual's disability and not the result of the provision of the accommodation. Nor would the employer be able to demonstrate undue hardship by showing that the provision of the accommodation has a negative impact on the morale of its other employees but not on the ability of these employees to perform their jobs. [Appendix to 29 CFR Part 1630. Section 1630.2\(p\) Undue Hardship \(https://www.ecfr.gov/cgi-bin/text-idx?node=ap29.4.1630_116.1\)](https://www.ecfr.gov/cgi-bin/text-idx?node=ap29.4.1630_116.1)

For more information about the determination of undue hardship, see [Appendix to 29 CFR Part 1630. Section 1630.2\(p\) Undue Hardship \(https://www.ecfr.gov/cgi-bin/text-idx?node=ap29.4.1630_116.1\)](https://www.ecfr.gov/cgi-bin/text-idx?node=ap29.4.1630_116.1)

D. RIGHT TO CHOOSE BREASTFEEDING AND RETAIN EMPLOYMENT

A lactating employee shall have the right to breastfeed anywhere she is authorized to be.

1. LACTATING AS PART OF THE GRIEVEING PROCESS

An employee who is lactating after the death of their child, in order to donate milk must be permitted lactation breaks for as long as needed.

The following case speaks to an employee's rights to lactation breaks, regardless of whether the child is at home with the mother and if she is only pumping for the purposes of donating to other babies in need. See [Gonzales v. Marriott International, Inc.](#)

United States District Court, C.D. California. November 04, 2015 142 F.Supp.3d 961 2015 WL 6821303

E. DESIGNATED LACTATION SPACE

The location may include a childcare facility or community lactation room in close proximity to the employee's work location or a designated space in the workplace. "Adequate facilities for breastfeeding" shall mean a sanitary indoor place, or other location, other than a bathroom or toilet stall, that is shielded from view from intrusion from co-workers and the public. The lactation space shall have, either in the room where it is located or nearby, access to a sink, refrigerator or cooler, and an electrical outlet.

F. DEFINE REASONABLE ACCOMMODATION

Reasonable Accommodation is a legal term under the Americans with Disabilities Act, defined as follows. Any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee to participate in the application process or to perform essential job functions, unless to do so would cause undue hardship. Reasonable accommodation is similarly defined by the U.S. Department of Justice. Any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. It is not necessary to list all the accommodations a lactating individual could need as each individual's needs vary based on their medical condition and the prescriptive treatment of their medical provider. Under the federal Nursing Mother's Provision the US-DOL considers reasonable to include time to get to the designed lactation area, time for set up, time for lactation, time to clean up and time to get back to the work area.

G. RETALIATION

An employer shall not retaliate or discriminate against an employee who exercises or attempts to exercise their rights under the law. It shall be an unlawful discriminatory practice for any person engaged in any activity to discharge, expel, or otherwise retaliate or discriminate against any person because she has opposed any practices forbidden per law or because she has filed a complaint, testified, or assisted in any proceeding.

H. POSTING OF NOTICES; VIOLATION.

This law is to be posted in places of employment.

I. PENALTIES

Any employer violating these provisions shall be subject to a civil penalty, to be imposed by the labor and human rights commissioners.

J. INJUNCTIVE RELIEF

In lieu of an enforcement action through an administrative agency, a private party may enforce the provisions of this section by bringing a civil action for temporary or permanent injunctive relief, economic damages, including prospective lost wages, investigative and court costs.

K. MANDATED MEDIATION

Mediation is to be offered and participants are mandate to participate by the NH Commission on Human Rights and the NH Department of Labor. Participating in mediation does not ensure resolution or prevent further legal action.

L. UPDATED EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

Employers will update their EEO statements to include Lactation including /Breastfeeding/chestfeeding/pumping/tube feeding at the chest, etc.

3. PAID FAMILY AND MEDICAL LEAVE

Paid Family and Medical Leave legislation is needed in NH, but has not yet passed. This report does not go into great depth on the topic. Our coalition supports ongoing bipartisan efforts. As proposed by A Better Balance, the following information provided in the link is slightly different than what was heard in the legislature in 2019.

<https://www.abetterbalance.org/resources/paid-family-leave-tools-and-resources/>

4. FAMILY CAREGIVER DISCRIMINATION LAWS

As reported on by The Center for Worklife Law, see link <https://worklifelaw.org/get-help/what-is-frd/> for more info, family caregiver discrimination laws are needed in New Hampshire, in concert with pregnancy/lactation laws an paid family and medical leave laws.

Understanding Lactation Discrimination in the Workplace

Contributing Factors

1. Employers Policies and Compliance with Federal/Case/Admin. Law and Guidances Vary
2. NH Legislature Has Declined to Pass Protective Legislation
3. Defining Lactation Has Been Problematic in NH
4. Contrast with Our Neighboring New England States Makes Discrimination More Evident
5. Employers Don't Realize They Save Money by Providing Reasonable Accommodations
6. Unaware There Are Different Types of Lactation Discrimination
7. Accounts of Discrimination Are Minimized and Under Reported
8. We've Become Desensitized to the Health Benefits of Human Milk

There are many factors that contribute to the prevalence of lactation discrimination in the workplace. Sometimes, discrimination is intended based on outright bias and other times it is unintended due to lack of knowledge or outdated business practices. The list shown includes, but is not limited to, issues that may lead to lactation

discrimination in the workplace. Currently, NH does not have any state-level, explicit statutory language protecting lactating NH workers from discrimination in the workplace. Meanwhile the United States has seen a large-scale, ongoing mobilization towards political reform in the Me Too^{xiv} and Times Up^{xv} movements and from other concerned citizens. These activists are working to fight sexual violence, harassment and discrimination in the workplace. Goals include addressing negative and unwanted comments and actions in the workplace, being subjected to hostile work environments and having one's body sexualized. This report addresses these types of discriminatory practices based on lactation, a legally established medical condition related pregnancy.^{xvi} Lactation, simply defined is the biological production of human milk.

Factor 1. Types of Lactation Discrimination

There are several forms in which lactation discrimination may manifest in the work force. All of these types of lactation discrimination are occurring in New Hampshire. These include; allegations of failure to hire or to promote, demotion, transfer to dead-end jobs, removal of sales territory or responsibility, increase or strict enforcement of goals for mothers, but not for others, humiliation or embarrassment, selection for layoff despite seniority and strong performance, termination for reasons that are not accurate or legitimate.^{xvii}

Factor 2. Employers Policies and Compliance with Multiple Laws Vary

Certainly, many employees in New Hampshire are treated well⁵ and many employers are supporting their pregnant or lactating employees by easily making reasonable accommodations for them. Egregiously, there are far too many NH lactating employees who are being treated with hostility, getting fired and/or receiving unwarranted disciplinary action in violation of their human and civil rights, as well as labor, employment and disability laws.

Factor 3. NH Has Not Passed Protective Legislation for the Last Seven Years

Many instances of lactation discrimination were first brought to the NH legislature seven years ago in 2013 in the form of HB 1571. House Representative Ed Butler suggested and sponsored the bill after a constituent in his District, this report's author, had been fired for needing to breastfeed during work hours. This legislative effort was initiated by Butler after he read about the charge filed with the EEOC in the Boston Globe.

Butler worked directly with his constituent to craft protective provisions that already existed on the books in other states. Then, each year after, bills were brought forth again, SB 219 sponsored by Senator Martha Fuller Clark and SB 488 sponsored by Senator Jeb Bradley, which also included provisions against pregnancy discrimination. Both Senators participated in two of our Public Service Announcements on pregnancy and lactation rights, seen below.



Left, pumping worker, Janice Synder in green. Middle, Sen. Martha Fuller Clark in black. Far right, House Rep. Ed Butler. Rustik Events

⁵ such as Badger Balm, Inc and International Mountain Equipment, who allow babies in the workplace, as well as paid leave

Video: The NH State House-Global Big Latch On – Scott Barber Film



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Family-Friendly Award Winning
Small Business Owners

Rick and Celia Wilcox – Community Lactation Room

Pictured with Senator Jeb Bradley- right
International Mountain Equipment
North Conway, NH

Featured in the Public Service Announcement video

The NH State House Big Latch On.
[Click Control over the picture to see this important video.](#)



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Alyssa Thompson received accommodations for pregnancy and pumping. She advocates for better legislation for those aren't as lucky.

"There is absolutely no opposition from businesses, both sides came together in the way that is typically done to solve the problem."

Senator Jeb Bradley

[Click Control over the picture to see this important video.](#)

Even though these bills were collectively supported with testimony and no one opposed the bills,⁶ each legislative session went by without any substantive provisions passing to protect NH families from the devastating effects of discrimination in the workplace. After the NH Advisory Council on Lactation was established per SB 488, two more bills were sponsored by Senator Martha Fuller Clark, SB 497 and SB 558. Although they were recommended by the statute-established NH Advisory Council on Lactation, neither of them passed. Our legislature has heard five lactation bills with accommodation provisions and anti-discrimination language, since 2013. All substantive provisions that would protect lactating employees, whether they need to breastfeed or pump have been removed. This has led to problems in New Hampshire that could have been prevented. Lawyers nationwide convened to discuss these issues.

⁶ The NH Breastfeeding Taskforce testified against the provision to form the Advisory Council on Lactation

THE PREGNANCY DISCRIMINATION ACT 40TH ANNIVERSARY AND THE CONTINUED ROLE OF LAWYERS –
PANEL DISCUSSION. 10/29/18.



Reva Siegel, Nicholas deB. Katzenbach Professor of Law, Yale Law School,
Charlotte Burrows, EEOC Commissioner,
Cynthia Calvert, Senior Adviser, WorkLife Law, President, Workforce 21C,
Dina Bakst, Co-Founder and Co-President, A Better Balance
David Lopez, Dean of Rutgers Law School and former General Counsel of the EEOC
📍 Malcolm Quinn Silver-Van Meter, NYU

Factor 4. Defining Lactation Has Been Problematic in New Hampshire


When creating the Advisory Council on Lactation, the term *lactation* was explicitly chosen by the NH House Commerce and Consumer Affairs Committee to include addressing the need for both breastfeeding and pumping legislation. Lactation includes producing and delivering human milk via direct access, producing human milk with the use of medical equipment such as a pump, and any other techniques⁷ to feed and or produce milk. The reason lactation includes both production and delivery of milk is due to the biological process involved. When one lactates, the act of having the child latched on to feed increases the production process, while it simultaneously draws on the supply. Breastfeeding therefore is a form of lactation and a way to directly feed one's child. Similarly, pumping if successful may help to maintain lactation, or production of milk, but often at a slower rate with less quantity produced than direct feeding. Lactating employees need to produce milk in order to keep producing milk. For some, pumping is not enough to maintain one's milk supply. With direct access feeding, the mother is able to look at her child, forming feelings of love and bonding. This often results in hormone production

⁷ Such as the use of a feeding tube at the breast that goes to the baby

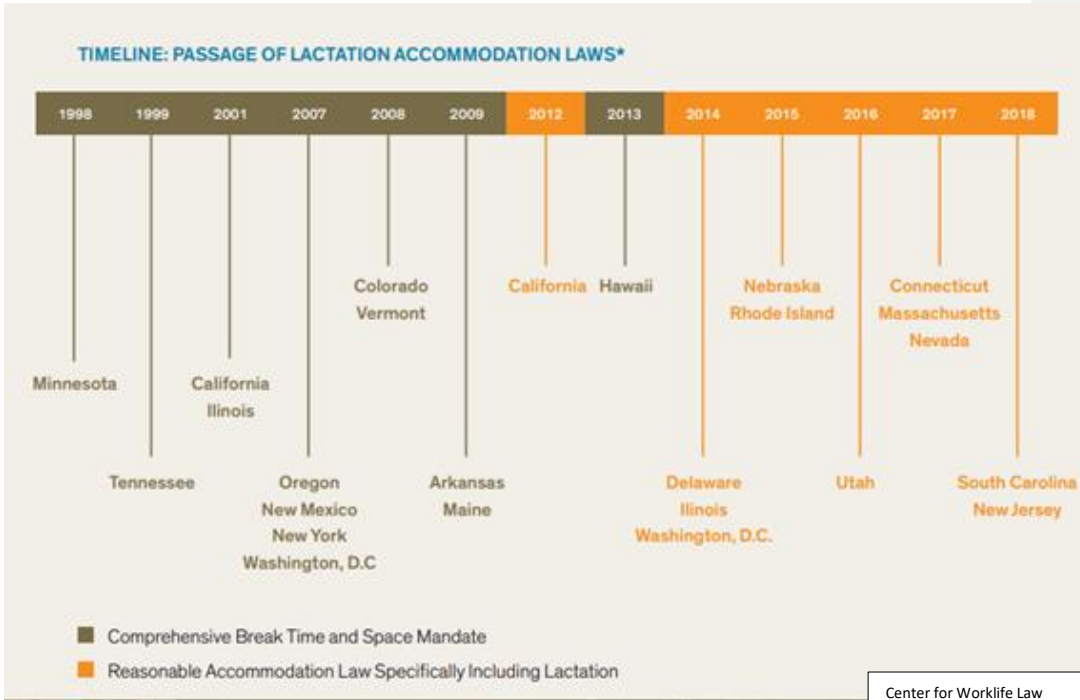
that serves to maintain lactation. Looking into a pump, sadly, does not create these feelings of love, which is another reason why direct access feeding is more efficient with better health outcomes, yet direct access breastfeeding rights are often excluded or not made explicit in policies affecting worker's rights during the workday. In the NH Legislature, provisions to protect both breastfeeding and pumping were amended out of bills that passed into law.



NH House Commerce Committee SB 219 Hearings

 Rustik Events

Factor 5 – Contrast with Our Neighboring New England States ^{xx}



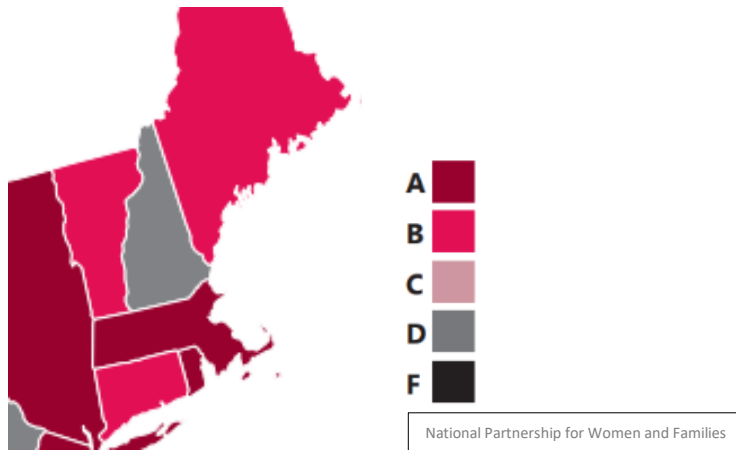
Outside of NH, in every other New England state and many states across the country, anti-discrimination legislation has passed to protect lactating individuals in employment. Other states have gone even further in their legislative provision in other areas where lactation discrimination is of concern, such as in transportation hubs, rights in public, at childcares, religious organizations, in court houses, with hospital practices, as well as licensing lactation consultants to be able to be reimbursed by insurance, commerce provisions for the sale of human milk, and many, many more facets. NH needs better legislation and cannot continue to wait. It us up the current NH legislature prioritize lactation rights, go beyond awareness into action. A legislative effort in New Hampshire, staring with protecting worker’s rights is recommended. Meanwhile, all our New England states of Maine, Vermont, Massachusetts, Connecticut and Rhode Island all have protective legislation for workplace lactation rights.

xxi



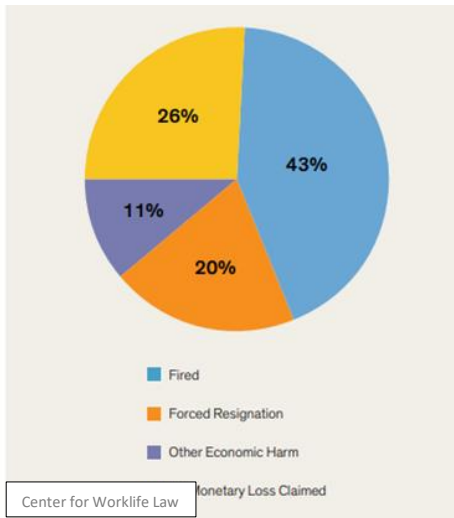
NH is the least family friendly state in New England NH, D+ 2018^{xxii}

State Grades



Approximately, 39,000 or 24% of NH women workers of childbearing age are not covered under the Federal Nursing Mother's Provision, which amended the Fair Labor Standards Act in the Patient Protection and Affordable Care Act. NH has no state law providing a clear right to break time and an appropriate space for lactation needs. As you can see, NH needs more protective, substantive legislation with enforcement provisions and injunctive relief to protect our most vulnerable citizens.

Factor 6 - Financial Impact of Lactation Discrimination



Once an employee is fired, it is often impossible to find a comparable job while seeking reasonable accommodations. This can lead to loss of vehicle and a dependence on state assistance benefits, even homelessness or the need to move out of state. The cost of childcare in NH is almost as much as one year of college tuition. New Hampshire was ranked the 12th most expensive state in the nation for childcare costs in 2016.^{xxiii} With a loss of income, it can be impossible to regain employment as a breastfeeding parent. This is what happens to 74% of lactating workers across the country, who have either been fired, (43%) forced to resign, (20%) or experience other economic harm, (11%) such as being put on unpaid leave.^{xxiv} Employers don't always realize they save money when they provide accommodations. The financial aspects of both savings and liabilities related to providing breastfeeding accommodations is as follows. Savings to employers were calculated

to be: [\\$14,500 savings](#) per employee for Unemployment Insurance. [Businesses can save \\$50K](#) per employee for worker retention vs a new hire.^{xxv} Other savings include [\\$400](#) per breastfed baby of employee on health insurance claims. When adding in legal fees for complaints, investigations and lawsuits, employers want to know what they are required to do and most want to know how to best help their employees stay in the workforce. The lack of protective legislation puts New Hampshire businesses at a disadvantage when attracting employees and new businesses. New Hampshire will be able to compete with each of the other New England states, if such legislation is passed in the upcoming legislative session.

Factor 7 – Accounts of Discrimination are Minimized and Underreported

Most workers do not file a complaint, because they either feel they will not be believed, or it will take too long and be too costly to resolve legally. Some workers find they must work with their union in order to complain and don't agree with union tactics or fear associating with the union will affect future promotions. Other reasons why employees don't speak up is because they fear being fired, retaliated against, passed up for promotions or being subjected to a hostile work environment – all behaviors which are hard to prove.^{xxvi}

REASONS WHY MOST WOMEN DON'T SPEAK OUT

[\(https://imdiversity.com/villages/career/is-complaining-worth-the-risk/\)](https://imdiversity.com/villages/career/is-complaining-worth-the-risk/)



We have consulted with employees experiencing workplace discrimination based on lactation and offer this revealing data to show this is truly not an isolated occurrence. Three employees have now come forward claiming lactation discrimination at the Department of Health and

Human Services. The following quotes describe these employees struggles to retain employment and also maintain their milk supply to feed their babies.

SUBJECT: Three NH DHHS Employees Speak Out

“Is it too much to ask for DHHS to support their employees that choose to breastfeed, rather than target them?”

Tori Bullek, State of NH Child Care Licensing Unit - Tori is currently reporting that she's being subjected to repeated harassment and discipline for asserting her legal rights for taking lactation breaks to breastfeed and pump. She's submitted documentation that she's being forced to use leave time for lactation in violation of the Fair Labor Standards Act. DHHS is currently being investigated by the NH Commission on Human Rights, while Tori retains her employment.

“I too work for DHHS. It's so unbelievable. I started a little bit of a battle but was too afraid to lose my job as I have nothing to fall back on. I left several meetings (to request accommodations) in tears after being quickly shut down for trying to stand up for what I believed in.” This worker chose not to publicly reveal her identity or to file a complaint with an administrative agency for fear of losing her job.

“I was not allowed to breastfeed my newborn during work hours, make up any time missed that same day or take unpaid leave to do so, but my co-worker was allowed to take leave to repair their cosmetic breast implants. I was told to stay at home until I didn't need accommodations, had a disciplinary hearing, was asked to resign but when I refused, I was fired. The supervisor who fired me was later promoted.” Katherine Frederick v State of NH – currently in the NH Supreme Court.

These are only three accounts, but there are certainly more who remain silent, thinking “Me Too.” Discrimination is not just in the public sector in New Hampshire but is prevalent in the private sector as well. This section reveals several accounts from real NH employees who

have communicated with us. Their identities are being protected due to confidentiality agreements but may be available upon request if they wish to be named.

ACCOUNTS OF LACTATION
DISCRIMINATION FROM REAL
NH EMPLOYEES

NH NEEDS BETTER LAWS



YOU'RE PROBABLY GONNA QUIT

"When I would come and go from the lactation space, my boss referred to it as 'playing with my boobs'. I was told through my whole pregnancy that 'you're probably just going to quit anyway' and my performance was scrutinized much more so than in my previous 9 years with the company. The owner talked about me 'waddling' around the office and made remarks about the size of my belly." JLF



ARE YOU DONE YET?

"My coworker and superior would constantly make 'jokes' about my pumping. I was buzzed on my intercom multiple times and asked 'are you done yet?' Although I said I would let them know when I was done they continued to buzz me and ask if I was done. They'd constantly ask how long I'm going to be breastfeeding." HW



OFFICE MOVED TO THE HALLWAY

I shared my needs for a pumping space in my second trimester. I had a private office, but they moved me out into a hallway with no walls after that. I was also discriminated against in pregnancy. It was an awful experience.



NO LOCK ON THE DOOR

I pumped without a locked door. I put a sign on the door and hoped no one walked in. I arranged my desk and computer in such a way that they blocked the line of sight from the doorway as best I could, just in case. JA



SHE WILL BE TERMINATED

My sister is due any day now. She has expressed to me a desire to breastfeed but her employer has convinced her she cannot take breaks to breastfeed at work, or she will be terminated, so to her that's a reason to not even try cause at 6 weeks she will be working full time. This makes me so sad!



NH's lactating employees in the private sector may also have insurmountable obstacles in the workplace that prevent them from maintaining lactation or keeping their jobs and are being economically sabotaged beyond recovery when discrimination strikes. This takes a devastating toll on the NH economy, with workers who are able and available to work having to resort to unemployment, lack of affordable childcare and ultimate reliance on public assistance. Further it is entirely preventable. The following accounts are from some of our clients.



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Standing (from left): Kate Frederick, Senator Jeb Bradley, House Representative Ed Butler and House representative Karen Umberger. Seated: Krystina Robblee and baby Ryker Cram at the North Conway Community Center, which has a community lactation room for pumping and breastfeeding.
TOM EASTMAN PHOTO

ACCOUNTS OF LACTATION
DISCRIMINATION FROM REAL
NH EMPLOYEES

NH NEEDS BETTER LAWS

RESTAURANT WORKER HARRASSED



Janice Snyder, a lactating employee who worked in Concord for a national restaurant chain needed to pump at work. The area she was told to use was the manager's office. He would often walk in on her and interrupt her privacy and make inappropriate comments, causing her stress which affected her milk supply. When one's milk supply is affected, pumping sessions can take longer, as it slows down the biological process.



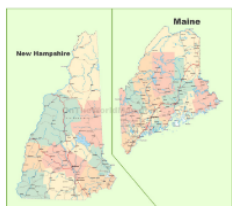
SHE HAD TO TRANSFER TO ANOTHER LOCATION

Janice contacted us and we were able to help her write to the companies HR Director and get accommodations. Ultimately, she decided to transfer to another location within the company, to avoid what had become a hostile work environment.

GAS STATION ATTENDANT TOLD TO USE BATHROOM

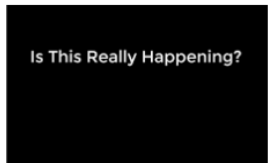


Kristina Roblee, a mom who worked in a gas station in Center Conway, was told to pump in the bathroom - a gas station bathroom. She contacted us asking for help and had resigned to pumping in her car on breaks, but her milk supply was dwindling. Her employer would not work with her until they received a letter stating she had filed a complaint.



SHE LEFT NH TO WORK FOR A MAINE EMPLOYER WITH PROTECTIVE LAWS

We called House Representative Ed Butler to assist speaking with employer. Kristina was able to get the accommodations she needed after Rep. Butler, myself and Kristina met to discuss how the employer grant her requests.



YES, THIS IS REALLY HAPPENING IN NH & THE LEGISLATURE CAN DO SOMETHING ABOUT IT

There are many other accounts we've collected from teachers, baristas, factory workers, retail workers, etc. who have been met with unnecessary struggles and discrimination in the workplace around maintaining lactation.

What If the Baby Can't Use A Bottle?

Another NH account is that of Dee (name has been changed.) Her baby wouldn't yet take a bottle when she went back to work. A childcare worker forced the baby to take a bottle and ripped the infant's frenulum but didn't tell the anyone. When the parents noticed this back at home, they went to the hospital and the hospital called child services and put the parents under investigation for abuse. Had this woman had the opportunity to breastfeed during work hours at the daycare nearby, either by having temporary break times in place, with temporary paid leave or by allowing her infant to come to work with her on a trial basis, that never would have happened. Telling this story years later, the family still feels shame even though the investigation showed no abuse on their part. Now Dee works for an employer who encourages employees to breastfeed at work. What should NH women do when their infant is unable to drink from a bottle, besides force feeding or starving, neither of which are medically

recommended. Legislation mandating reasonable accommodations in the workplace, as well as separate legislation for paid family leave and family responsibilities protection are the answers. While this report speaks only to legislation related to pregnancy and lactation, protections for all categories of caregivers should also be protected in separate legislation.

Survey of Current Laws

The following is a survey of statutory laws related to pregnancy and breastfeeding discrimination for reference, as well as relevant case laws and administrative laws. NH does not currently have any laws related to caregiving discrimination, such as taking unpaid leave to care for an elderly parent.

Understanding administrative laws is especially important because the Equal Employment Opportunity Commission, EEOC, has recently strengthened their priorities around addressing lactation discrimination in the workplace thus having legislation to inform NH businesses is imperative. **New Hampshire has the highest rate of working mothers in the country, at 67%, above the national average at 62%.^{xxviii} Additionally, lawsuits based on family caregiver status are up 800% nationally and with employees succeeding over 52% of the time.^{xxix}** As such, legislators are provided with a roadmap to common sense, industry-friendly statutory language that has the support of the small and large business community, bipartisan sponsorship and NH families.

Federal and Case Laws 1964-2000's

The following cases and statutes are laws documented by The Center for Worklife Law in their report, [Exposed: Discrimination Against Breastfeeding Workers](https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf).
(<https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf>)



PART II: CURRENT LAWS LEAVE BREASTFEEDING WORKERS EXPOSED

THEY COULDN'T GO HOME EARLY, BUT SHE COULDN'T GO ACROSS THE STREET TO NURSE HER NEWBORN SON

Kate Finkelschmidt would go great lengths to learn her way home to drink from a bottle before returning to her job at the Department of Health, but the world's only walk-down anything for her breast. "It used to be tough, but it was a nightmare for all of us."

Eventually, Kate landed a spot at the childcare center across the street from her office. "I really wanted that since it was Health and Human Services and all their services like a pediatrician had been so far down. I didn't anticipate any resistance." Kate's doctor wrote a letter saying she needed to directly breastfeed her son back to the milk, and also for her own health condition.

"I was the last when they called me from having the problem," says Kate, because it had been allowed to do so before. I had my baby, along with all my other children. Department employees regularly took trips to Dunkin' Donuts up the road, but "I was being told I couldn't go across the street to find my baby who would go hungry without me."

Dingler, Kate proposed that she be allowed to feed her son in the on-site lactation room. The Department refused, saying she could nurse the room with it the way going pump milk. Because her son refused to take a bottle, Kate's only option was to nurse him in a public area, but she was forced uncomfortable with the idea of breastfeeding in front of her coworkers and others. "None of my clients were providers who had been publicly and respectfully about it. I was actually allowed to meet with them with in a covered room with an alarm, and here I was being told to expose my breasts in front of them."

"It was infuriating. They're called the Department of Health and Human Services. Their mission is to serve families. It was hypocritical on so many levels. They didn't seem to care about any of the health risks to me or my son."

The Department fired Kate. "Since then, the women who fired me got a promotion, and HHS got tons of thousands of dollars in grant money to promote breastfeeding. They even created a booklet that suggests allowing them breastfeeding during work hours when possible."

"The Department has never offered a good explanation as to why they refused to let me nurse my 3-month-old son." The judge in Kate's case characterized her employer's refusal as "an unfortunate (and arguably) insensitive and inappropriate." But despite his sympathy, the judge concluded that the Nursing Mothers Law does not cover breastfeeding, and dismissed her claim.

Interview with Kate Finkelschmidt, Oct. 12, 2018.

Excerpted from Discrimination Against Breastfeeding Mothers

These precedent setting laws and administrative policies initiated the roadmap for NH legislators to follow.

- Title VII of the Civil Rights Act
- Gilbert, v General Electric*
- the Pregnancy Discrimination Act
- Break Time for Nursing Mother's Provision (ACA amended the Fair Labor Standards Act)
- EEOC v Houston Funding*
- EEOC Enforcement Guidance, Pregnancy and Breastfeeding Discrimination
- Young v UPS*
- Hicks v Tuscaloosa,*
- Americans with disabilities Act
- Family and Medical Leave Act

1964 Congress passes Title VII of the Civil Rights Act to prohibit discrimination in employment. The law was initially drafted to protect African Americans from race discrimination, but a prohibition against discrimination on the basis of sex was added at the last minute.⁶⁹

1960s - 2000s Title VII did not prohibit employers from firing someone because they were breastfeeding. Judges dismissed the idea that breastfeeding discrimination was outlawed under the PDA as a "medical condition related to pregnancy," finding breastfeeding is simply a "childrearing concern."⁷¹

1976 The United States Supreme Court rules in *Gilbert v. General Electric* that employers are allowed to discriminate against pregnancy, finding discrimination based on "pregnancy" is not the same thing as discrimination based on "sex" outlawed by Title VII.

1978 Congress passes the Pregnancy Discrimination Act (PDA) to make clear that unlawful "sex" discrimination includes discrimination on the basis of "pregnancy, childbirth, and related medical conditions," and to require that employers do not treat pregnant women worse than other employees.

1980s - 2000s Courts around the country are split on whether the PDA requires employers to make work modifications (accommodations) for pregnancy, childbirth, and related medical conditions. Some judges rule that accommodations must be provided to pregnant employees when they are given to other employees, to ensure equal treatment. But other judges disagree, saying that the PDA does not entitle pregnant workers to "special treatment."

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- 1998 - 2018** States across the country take matters into their own hands and pass laws requiring employers to provide break time, private space, and other breastfeeding accommodations.
-
- 2010** President Barack Obama signs the Break Time for Nursing Mothers provision of the Affordable Care Act, mandating that employers provide reasonable break time and private, non-bathroom space for expressing breast milk during the workday.
-
- 2013** The first federal appellate court in the country decides in *EEOC v. Houston Funding* that firing an employee because she is lactating or expressing milk is illegal sex discrimination under Title VII.⁷²
-
- 2014** The Equal Employment Opportunity Commission, the federal agency responsible for enforcing the PDA, takes the position that the PDA prohibits breastfeeding discrimination. Agency guidance says an employee "must have the same freedom to address lactation-related needs that she and her co-workers would have to address other similarly limiting medical conditions."⁷³
-
- 2015** The U.S. Supreme Court rules in *Young v. UPS* that an employer's refusal to provide work accommodations for pregnant employees is illegal under the PDA if other employees receive accommodations and there's not a strong justification for treating pregnant women differently.⁷⁴
-
- 2017** The first appellate court in the nation rules in *Hicks v. Tuscaloosa* that the PDA requires employers to treat requests for breastfeeding accommodations the same as other accommodation requests, and employers who fail to accommodate breastfeeding may be held liable in court if the employee quits as a result.⁷⁵
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Screening of the Milky Way Movie – DC. World Breastfeeding Month Photo by Rustik Events

New Hampshire Laws (and bills that did not pass)

1987	NH RSA 275-E	Whistleblower Protection Act
1999	N.H. Rev. Stat. Ann. § 132:10-d	Protection for Maternity and Infancy Breastfeeding does not constitute indecent exposure and that limiting or restricting a mother's right to breastfeed is discriminatory
2006	NH RSA 354-A	Law Against Discrimination (amendment XIV-e 2018) ^{8xxx}
2014	HB 1571	Relative to breastfeeding
2015-16	SB 219	Relative to breastfeeding and lactation
2016	N.H. Rev. Stat. Ann. § 275-76	Establishes an advisory council on lactation
2017	N.H. Rev. Stat. Ann §275:77	Establishes an advisory council on pregnancy and lactation
2018	SB 497	Creates a cause of action for a person who believes she has been discriminated against for breast-feeding
2018	SB 558	Relative to discrimination based on pregnancy or lactation

Why These Laws Have Not Been Effective

The New Hampshire Federal Court has ruled in *Frederick v State of New Hampshire* that lactation (breastfeeding, pumping, etc.) discrimination is not protected under the Pregnancy Discrimination Act, (See Appendix 1, #4) while other Federal Courts, such as The District of Columbia Federal Court in *Allen-Brown v District of Columbia*, have ruled that lactation/breastfeeding/pumping is covered under the PDA.^{xxxi} The NH Commission on Human Rights and the NH Department of Labor report they don't have jurisdiction over direct access breastfeeding during work hours for employees, based on lack of state laws, rules and regulations. The Federal ACA Nursing Mother's Provision has loopholes and doesn't protect all working mothers, such as most teachers, waitresses & managers - anyone who doesn't qualify as an hourly employee according to the US Department of Labor, Wage and Hour Division. This means, a customer in a restaurant is legally allowed to breastfeed in public, but her waitress is not ensured the right to have a lactation break. Additionally, there is confusion about the Nursing Mother's Provision regarding which employers it applies to. All employers are subject to the provision, however there is a potential exemption for employers with less than 50 employees. This exemption must be determined by the US DOL and is based on financial hardship, with the burden of proof on the employer however, this has either been reported incorrectly or applied by the employer as an assumed automatic exemption.

⁸ Lactation may be possible for all genders with hormone therapy. Lactation may include chestfeeding – a term used for those individuals who don't identify as having breasts.

The Americans with Disabilities Act^{xxxii} and FMLA May Not Be Applicable

NH legislators have previously asked questions during committee hearings about interpreting state law, the ADA and FMLA. In order to provide a better understanding of why these two federal laws may not be relevant, the following information is provided. NH's RSA 354 a defines pregnancy and related medical conditions as a temporary disability. However, NH cannot then apply mandated reasonable accommodations through the Americans with Disabilities Act to pregnancy-related medical issues such as lactation, because the ADA is a Federal Law, not a NH state law. Medical conditions related to pregnancy and therefore temporary disabilities have not been established on the NH state level to include lactation as of yet. The Pregnant Worker's Fairness Act addresses the outdated definition of a normal healthy pregnancy as a legal disability; however NH chose not to pass this bill when it was before the legislature. Just as the ADA may not be helpful in protecting lactating employees in the workplace, the Family and Medical Leave Act also may not apply.

FMLA is unpaid and many NH employees are ineligible to use this type of leave. It may be used for maternity, but may not be used for basic lactation breaks, unless there is a qualifying serious health condition associated with lactation. An infant unable to drink nutrition from a bottle when apart from its mother is considered a serious health condition by medical practitioners⁹ as it can lead to malnutrition, (see Appendix 2). Yet, denying an employee use of intermittent FMLA to breastfeed during work hours, when their infant can't drink from a bottle has unfortunately been determined by the NH US District Court as legal. (See Appendix 1 # 8) Therefore, New Hampshire's workforce may not be able to use FMLA for direct access breastfeeding when it is needed.

Further, NH Employment Security adjudicators have been confused about how to process wrongful termination unemployment claims based on pregnancy discrimination. For example, if a worker is fired for pregnancy and lactation discrimination, her claim may be adjudicated incorrectly, and she may be found ineligible for unemployment insurance benefits, because the NHES staff does not necessarily know the current breastfeeding laws or Supreme Court of the United States and appellate decisions. NHES has disregarded patient medical documentation from Certified RN midwives for lactation and instead required documentation from MD's who have received no training in lactation. Besides encountering difficulty recouping from immediate job loss, the process of filing a complaint is often to a detrimental effect on resources for both individual and state entities.

Process for Getting Help is Daunting and Often Ineffective

The following is a process that an employee experiencing discrimination in the workplace based on lactation may follow. She would need to go to multiple administrative agencies in order to apply each specific law that addresses the whole of her claim. Each agency has a different intake process, different investigation procedure, do not work collaboratively, therefore duplicating services, with a result that is not timely. In most cases, the employee has

⁹ such as Certified Nurse Midwife Kathleen Mulkern of Memorial Hospital in North Conway, NH and Advanced Practice Registered Nurse, Geraldine Lau of Saco River Medical Group, Conway, NH

either been fired, quit in order to continue breastfeeding or has lost her milk supply waiting for help.

Who to Ask for Help	Applicable Law	Time to process claim	Enforcement
Internal – Human Resources, Union, etc.	Usually not a written policy for lactation	n/a	no
Help from an Advocacy Organization	Usually not a written policy for lactation with referrals	n/a	no
Mediation – Restorative Justice Facilitator	Usually, no referrals and not cost free, employer not required to participate	n/a	no
NH Commission on Human Rights	RSA 354-a Breastfeeding is not protected in the workplace. N.H. Rev. Stat. Ann. § 132:10-d is only for public breastfeeding.	3+ years in some cases	no
NH DOL	NH RSA 275-E Does not take claims of breastfeeding during work hours, only whistleblower claims.	Has never had a claim processed for lactation. Approx. 6 weeks for investigation and hearing	no
EEOC	Title VII, ADA, PDA, ACA/FLSA, FMLA	Over 1 year in some cases to get a right to sue letter – then must decide which court to sue in	no
US DOL	Pumping only, ACA/FLSA, FMLA	Undetermined length of investigation	no
Federal Court	Federal Laws	Several years	yes
State Court	State Laws	Several years	yes

NH does not have any direct process or protections in place for breastfeeding employees. Going to court is ineffective in most cases and can take 7-10+ years in some instances. This perpetuates the problem.

Resources

Help with Breastfeeding Rights in New Hampshire

Contact the Rustik Baby Project to get help requesting accommodations and filing a complaint with various agencies (603) 630-6382 RustikBaby@RustikEvents.com

Public and Private Places, Transportation (airlines, trains buses, etc.) Religious Settings, Daycares, Courts (jury duty, hearings etc.):
Contact: NH Commission on Human Rights

Workplace

Employers of any size.

Contact: NH Department of Labor, US Department of Labor, Equal Employment Opportunity Commission (EEOC), NH Commission on Human Rights

Schools

Title 9 Officer

Mindful Mama Birth

HELP WITH REQUESTING WORKPLACE ACCOMMODATIONS

Rustik Events: The Rustik Baby Project and The Breastfeeding Rights Coalition
www.RustikEvents.com

The Center for Worklife Law

<https://www.pregnantatwork.org/healthcare-professionals/breastfeeding/>

Best for Babes

<http://www.bestforbabes.org/nursing-in-public-hotline-855-nip-free/>

Call: (855) Nip-Free

First Shift

<http://www.firstshift.org/legal-services/>

A Better Balance

<http://babygate.abetterbalance.org/new-hampshire/>

Call: (212) 430-5982

TO INQUIRE ABOUT FILING COMPLAINTS

NH Department of Labor

<https://www.nh.gov/labor/index.htm>

Call: (800) 272-4353

NH Commission on Human Rights

<https://www.nh.gov/hrc/index.html>

Call: (603) 271-2767

US Department of Labor Wage & Hour Division (DOL)

<https://www.dol.gov/>

Call: (603) 666-7716

Equal Employment Opportunity Commission (EEOC)

<https://www.eeoc.gov/>

Call: 1-800-669-4000

End Notes

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- ⁱⁱⁱ ("Executive Order 2019-08 Exhibit A", 2019)
- ^{iv} ("Workplace Lactation Laws | Pregnant@work", 2020)
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Photo: Brad Frederick

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Bill as
Introduced

HB 231 - AS INTRODUCED

2021 SESSION

21-0243

05/06

HOUSE BILL **231**

AN ACT relative to workplace lactation rights.

SPONSORS: Rep. Abel, Graf. 13; Rep. Bartlett, Merr. 19; Rep. Fargo, Straf. 14; Rep. Stavis,
Graf. 13

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill directs employers to provide access to reasonable accommodations for employees who are lactating.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to workplace lactation rights.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subdivision; Workplace Lactation Rights. Amend RSA 275 by inserting after section 77
2 the following new subdivision:

3 Workplace Lactation Rights

4 275:78 Workplace Lactation Rights.

5 I. In this section, "lactation" means both the production and secretion of milk by the
6 mammary glands. Lactation includes breastfeeding, chestfeeding, expressing milk, pumping and
7 other methods to extract milk from the mammary glands.

8 II. An employee who is lactating may express breast milk or breastfeed at her workplace
9 anywhere she is authorized to be.

10 III. An employer shall provide adequate unpaid break time or permit an employee to use
11 paid break time or meal time each day for the purpose of lactation. Lactating employees who are
12 away from their babies during the workday typically need to express milk using a breast pump 2-3
13 times during an 8-hour work period and 3-4 times during a 12-hour shift to maintain their milk
14 production and avoid health complications. In addition to the 15-20 minutes typically needed to
15 express milk, most need additional time to walk to and from the pumping location, set up their
16 pump, clean up, and store their milk.

17 IV. An employer shall make reasonable efforts to provide access to a designated lactation
18 space and adequate facilities for breastfeeding. The designated lactation space shall be a room or
19 other location, in close proximity to the work area, other than a toilet stall, where the employee can
20 express milk in private. Adequate facilities for breastfeeding shall mean a sanitary indoor place, or
21 other location, other than a bathroom or toilet stall, that is shielded from view from intrusion from
22 co-workers and the public. The lactation space shall have, either in the room where it is located or
23 nearby, access to a sink, refrigerator or cooler, and an electrical outlet.

24 V. An employer shall not be required to compensate an employee receiving reasonable break
25 time for the purpose of lactation, provided such break shall be documented as a break for such
26 purpose. Where employers already provide compensated breaks, an employee who uses that break
27 for lactation shall be compensated in the same way that other employees are compensated for break
28 time. In addition, the employee shall be completely relieved from duty or the time shall be
29 compensated as work time.

30 VI. An employee who is lactating after the death of her child, in order to donate milk, shall
31 be permitted lactation breaks for as long as needed.

1 VII. An employer that employs fewer than 6 employees shall not be subject to the
2 requirements of this chapter, if such requirements would impose an undue hardship by causing the
3 employer significant difficulty or expense when considered in relation to the size, financial resources,
4 nature, or structure of the employer's business. Any exemption under this paragraph shall be
5 determined by the department of labor. The department shall grant the exemption in writing and
6 provide a copy of the exemption to any employee requesting accommodations under this section.

7 VIII. An employer shall not retaliate or discriminate against an employee who exercises or
8 attempts to exercise the rights under this section. It shall be an unlawful discriminatory practice for
9 an employer to discharge, expel, or otherwise retaliate or discriminate against any person because
10 the person has filed a complaint, testified, or exercised the rights under this section.

11 IX. Each employer subject to the requirements of this section shall post in a place accessible
12 to employees a notice regarding the requirements of this section.

13 X. Any employer violating this chapter shall be subject to a civil penalty, to be imposed by
14 the labor commissioner in accordance with the procedures established in RSA 273:11-a. An
15 employer aggrieved by the commissioner's assessment of such penalty may appeal in accordance
16 with RSA 273:11-c.

17 XI. Any party aggrieved by a violation of this section may:

18 (a) File a discrimination claim with the state commission for human rights under RSA
19 354-A.

20 (b) File a claim for protection under the whistleblowers' protection act, RSA 275-E.

21 (c) Bring a civil action for temporary or permanent injunctive relief and economic
22 damages, including prospective lost wages, and investigative and court costs.

23 (d) Participate in voluntary mediation through a restorative justice program, provided
24 that participation in such a program shall not prevent or preclude subsequent legal action.

25 2 State Commission for Human Rights; Unlawful Discriminatory Practices. Amend RSA 354-
26 A:7, VI to read as follows:

27 VI.(a) For the purposes of this chapter, the word "sex" includes pregnancy, *childbirth*, and
28 *related* medical conditions [~~which result from pregnancy~~]. ***"Related medical conditions"***
29 ***include, but are not limited to, lactation and breastfeeding.***

30 (b) An employer shall permit a female employee to take leave of absence for the period of
31 temporary physical disability resulting from pregnancy, childbirth or related medical conditions.
32 When the employee is physically able to return to work, her original job or a comparable position
33 shall be made available to her by the employer unless business necessity makes this impossible or
34 unreasonable.

35 (c) For all other employment related purposes, including receipt of benefits under fringe
36 benefit programs, pregnancy, childbirth, and related medical conditions shall be considered
37 temporary disabilities, and a female employee affected by pregnancy, childbirth, or related medical

1 conditions shall be treated in the same manner as any employee affected by any other temporary
2 disability.

3 *(d) It shall be an unlawful discriminatory practice for an employer not to*
4 *provide access to reasonable accommodations for an employee who is breastfeeding.*

5 3 Effective Date. This act shall take effect January 1, 2022.