

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

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ANALYSIS

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

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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