**SB 488-FN-LOCAL - AS AMENDED BY THE SENATE**

03/24/2016   1176s

2016 SESSION

16-2902

01/09

SENATE BILL ***488-FN-LOCAL***

AN ACT relative to breastfeeding.

SPONSORS: Sen. Fuller Clark, Dist 21; Sen. Kelly, Dist 10; Sen. Lasky, Dist 13; Sen. Boutin, Dist 16; Rep. Sherman, Rock. 24; Rep. Rosenwald, Hills. 30; Rep. McBeath, Rock. 26; Rep. P. Gordon, Rock. 29

COMMITTEE: Commerce

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AMENDED ANALYSIS

This bill requires employers to provide reasonable accommodations to women who are breastfeeding and exempts a nursing mother from jury duty.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/24/2016   1176s 16-2902

01/09

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Sixteen*

AN ACT relative to breastfeeding.

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

1  New Subdivision; Breastfeeding; Employer Responsibilities.  Amend RSA 275 by inserting after section 75 the following new subdivision:

Breastfeeding; Employer Responsibilities

275:76  Definitions.  In this subdivision:

I.  “Department” means the department of labor.

II.  “Express milk” means the act of extracting human milk which can be accomplished by hand or pump.

III.  “Employer” means an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, governmental entity, and any common carrier who employs any person.  “Employer” shall also include any person acting in the interest of an employer directly or indirectly.

275:77  Time and Space to Express Milk.

I.  An employer shall provide:

(a)  A reasonable break time for an employee to express breast milk for her nursing child each time such employee has need to express the milk; and

(b)  A sanitary indoor place, other than a bathroom or toilet stall, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk.

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

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

IV.  An employer that employs less than 50 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.

275:78  Retaliation.  An employer shall not discharge or in any other manner discriminate against any employee because he or she makes a charge, files any complaint, or institutes or causes to be instituted any investigation, proceeding, hearing, or action under or related to this chapter, including an investigation conducted by the employer, or has testified or is planning to testify or has assisted or participated in any manner in any such investigation, proceeding, hearing, or action.

275:79  Penalty.  Any employer violating this chapter shall be subject to a civil penalty, to be imposed by the labor commissioner in accordance with the procedures established in RSA 273:11-a.  An employer aggrieved by the commissioner’s assessment of such penalty may appeal in accordance with RSA 273:11-c.

275:80  Advisory Council on Breastfeeding.

I.  There is hereby established an advisory council on breastfeeding.  The advisory council shall follow the goals of the United States Surgeon General and the United States Breastfeeding Committee.  The advisory council shall be comprised of, but not limited to:

(a)  One member of the house of representatives, appointed by the speaker of the house of representatives.

(b)  One member of the senate, appointed by the senate president.

(c)  The commissioner of the department of labor, or designee.

(d)  A representative from the women, infants, and children program (WIC), appointed by the commissioner of the department of health and human services.

(e)  A  certified midwife, appointed by the midwifery council established in RSA 326-D:3.

(f)  A member of the New Hampshire Business and Industry Association, appointed by the association.

(g)  The president of the New Hampshire Breastfeeding Rights Coalition, or designee.

(h)  The chair of the New Hampshire Breastfeeding Task Force, or designee.

(i)  A hospital administrator from a certified baby-friendly hospital, appointed by the governor.

(j)  A transportation representative, appointed by the governor.

(k)  A currently breastfeeding mother, appointed by the governor.

(l)  An attorney with experience in human rights issues, appointed by the New Hampshire commission on human rights.

II.  The advisory council shall examine best practices in New Hampshire, including but not limited to the Baby Friendly Hospital Initiative, Family and Sick Leave, Childcare Trainings on Breastfeeding, Milk Banks, Lactation Spaces in Public Accommodations, and the World Health Organization’s International Code of Marketing of Breastmilk Substitutes.

III.  Legislative members shall receive mileage at the legislative rate while attending to the duties of the commission.

IV.  The advisory council may meet as often as necessary to effectuate its goals and meetings may be held by conference call.  A minimum of 3 meetings per year shall be open to the public.

V.  The advisory council shall make an interim report commencing on November 1, 2016 and a final report on December 1, 2017 on its activities and findings, together with any recommendations for proposed legislation, to the president of the senate, the speaker of the house of representatives, and the governor.

2  New Paragraph; Notification, Posting, and Records.  Amend RSA 275:49 by inserting after paragraph VII the following new paragraph:

VIII.  Keep posted in a place accessible by his or her employees such notices as prescribed by the commissioner on the protections under RSA 275:76 – 275:80.  The commissioner shall adopt rules, under RSA 541-A, relative to the form, content, and placement of such notices.

3  Nursing Mothers; Exemption from Jury Duty.  Amend RSA 500-A:11 to read as follows:

500-A:11  Excuse From Jury Service.  A person who is not disqualified for jury service may be excused from jury service by the court only upon a showing of undue hardship, extreme inconvenience, public necessity***, nursing mothers,*** or for any other cause that the court deems appropriate.  The person may be excused for the time deemed necessary by the court and shall report again for jury service, as directed by the court.

4  Repeal.  RSA 275:80, relative to an advisory council on breastfeeding, is repealed.

5  Effective Date.

I.  Section 4 of this act shall take effect December 1, 2017.

II.  The remainder of this act shall take effect January 1, 2017.

LBAO

16-2902

1/5/16

**SB 488-FN-LOCAL- FISCAL NOTE**

AN ACT requiring reasonable accommodations for pregnant workers.

**FISCAL IMPACT:**

The Department of Administrative Services, New Hampshire Commission for Human Rights, and New Hampshire Municipal Association state this bill, **as introduced**, may increase state and local expenditures by an indeterminable amount in FY 2017 and each year thereafter.  There will be no impact on state, county and local revenue or county expenditures.

**METHODOLOGY:**

The Department of Administrative Services does not anticipate a fiscal impact other than the “soft costs” of providing more time for breaks, loss of work time, or temporary transfer of a person to another position.  Classified State employees receive leave benefits for physical disability resulting from pregnancy and are also afforded protection under the Family and Medical Leave Act.  The Department states, because the circumstances vary, it cannot determine the cost associated with holding a position open, or providing a returning employee with a position upon return to work, but the Department expects such costs would be negligible.

The New Hampshire Municipal Association states the bill requires employers to make reasonable accommodations for any condition of a job applicant or employee related to pregnancy, childbirth, or a related medical condition.  Such accommodations include more frequent or longer breaks, time off, acquisition or modification of equipment, job restructuring, providing private non-bathroom space, and modified work schedules.  The Association states complying with these requirements may increase municipal expenditures, but the Association has no way to anticipate what changes will need to be made.  The Association indicates there should be no effect on municipal revenues.

The New Hampshire Commission for Human Rights states the proposed language, which amends the definition of “reasonable accommodation” as it relates to pregnancy and pregnancy related medical conditions and expressing breast milk in the workplace, provides a right to reasonable accommodation that is not explicitly stated in current law.  Based on a review of inquiries received between October 2014 and September 2015, the Commission assumes 24 additional charges could have been prepared based on the proposed bill.  Half of the charges would have involved pregnancy related accommodations and half would have involved expressing breast milk in the workplace.  The Commission indicated the potential increase in charges would necessitate hiring an additional full-time Anti-Discrimination Investigator.  The Commission determined the bill would result in the following additional expenditures, of which federal funds would cover 17 percent:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|   | FY 2017          (1/2 year) | FY 2018 | FY 2019 | FY 2020 |
| Anti-Discrimination Investigator –Salary | $20,914 | $42,666 | $44,441 | $46,303 |
| Benefits | $12,648 | $26,723 | $28,436 | $30,267 |
| Other Expenses | $5,175 | $350 | $350 | $350 |
| **Total Expenses** | **$38,737** | **$69,739** | **$73,227** | **$76,920** |
| State Share | $32,384 | $58,302 | $61,218 | $64,305 |
| Federal Share (17%) | $6,353 | $11,437 | $12,009 | $12,615 |

The New Hampshire Association of Counties does not believe this bill would result in any fiscal impact to the counties.

This bill does not provide authorization or appropriations for a new position.