**Kate Frederick**

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February 8, 2016

Dear Senator Bradley,

Please accept this written testimony and share with the Senate Commerce committee regarding SB 488 *requiring reasonable accommodations for pregnancy and related medical conditions.* My name is Kate Frederick. I am the Founder of the Rustik Baby Project with Rustik Events and the President of the NH Breastfeeding Rights Coalition. Initial input for this bill was submitted by me to Senator Martha Fuller Clark, based on my own experiences with pregnancy discrimination in the workplace in NH.  I am in full support of the idea behind this bill and am willing to work with the Senate Committee, the business community and other advocates to work on any needed amendments that would result in moving this bill forward.

**The Rustik Baby Project and the NH Breastfeeding Rights Coalition**

The Rustik Baby Project helps employers, businesses and families with creating customized written workplace accommodation plans for pregnancy and lactation, as well as provides other services, pro-bono. The NH Breastfeeding Coalition is the largest breastfeeding coalition in NH and includes members from all the breastfeeding coalitions in the state as well, actual breastfeeding mothers, state legislators, and medical providers. I became an advocate after I experienced pregnancy discrimination in the workplace.

**My Experience with Pregnancy Discrimination**

* In 2012, while working for the State of NH as a Child Support Officer at the Department of Health and Human Services, I requested pregnancy accommodations for medical symptoms I was having. When I did this, my boss started treating me differently than she had prior.
* My work performance was not in question and was found to be exemplary, however my boss then started criticizing me incessantly and in front of other co-workers.
* She added an unreasonable amount of cases to my workload with unrealistic deadlines
* I was new to the job and was still in training.  Because there was not training manual, I took notes and compiled one for myself and for others.  I also was assigned over 700 cases and kept a case log to track my work.
* My boss decided to take away my training manual notes and wouldn't let me keep a case log.  I requested further accommodations and reported her for pregnancy discrimination.
* She then told me I couldn't talk to her supervisor anymore and that I had to work to catch up on my break time.   I reported this to Human Resources.
* Meanwhile, she often left early to attend a Pilates class and took long breaks to get her haircut in the middle of the work day.
* I was retaliated against for having reported her and the harassment continued.
* After our baby was born, I requested further accommodations for breastfeeding - a medical condition related to pregnancy - and was never cleared to return to work by my employer, because of the accommodations I needed for my own health and the health of our son.
* I was forced out of the workplace and fired while my boss was promoted.
* I was awarded unemployment insurance benefits and found to have lost my job through no fault of my own by NH Employment Security.
* The NH Commission on Human Rights and the NH Department of Labor declined to investigate my claim because they did not have jurisdiction. I filed a complaint with the Federal Equal Employment Opportunity Commission while the US Department of Labor did not take claims for breastfeeding, only pumping.
* After a year in the investigation process, the EEOC provided me with a notice of the right to sue.

For more information, you can view my [pending lawsuit against my former employer.](https://dockets.justia.com/docket/new-hampshire/nhdce/1:2014cv00403/41258)

**NH’s High Rate of Pregnancy Discrimination**

My experience with pregnancy discrimination was not an isolated incident.  Too many NH families have had to go through similar experiences.  I don't want any other family to have to suffer during or after their pregnancy due to being denied simple and reasonable accommodations.

NH has consistently had a consistently high rate of complaints filed with the NH Commission on Human Rights for pregnancy discrimination.

NH Commission on Human Rights Data

2010 - 26 Pregnancy /employment- Charges Filed - Federal Fiscal Year

2011 - 27

2012 - 24

2013 - 11

2014 - 15

2015 - 21

I think it is important to point out that many employees decline to report their employers for discrimination after they consider the risks involved, such as getting fired, enduring retaliation, loss of income and health benefits and retirement, etc., the hardship of a lawsuit and the threat to their future employment elsewhere. As such, the data does not accurately show the incidence of discrimination, it is actually much higher than is reported.

**NH Specific Data**

Mothers in the Labor Force with an Infant -  National 62%,  **NH - 67%**  - the highest in the nation!

(National Center for Infants Toddlers and Families  2015 State Baby Facts <http://www.zerotothree.org/public-policy/state-community-policy/infant-and-toddler-state-fact-sheets.html> )

**Applicable Laws and SB 488**

I would like to clarify some points for the Committee that came up during testimony.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Federal -Pregnancy Discrimination Act** | **NH -SB 488** | **Federal -Americans with Disabilities Act** | **Federal Fair Labor Standards Act – Nursing Mother’s Provision as amended in the Affordable Care Act** | **Federal Bill - Pregnant Workers Fairness Act – co sponsored by Senators Shaheen and Ayotte** | **NH RSA 354 A – Human Rights Commission – Pregnancy Discrimination Law** |
| Pregnancy accommodations | Doesn’t specify accommodations, nor does it clearly state employers are mandated to provide accommodations – does serve to say it’s discriminatory not to provide accommodations to pregnant workers when other non-pregnant workers are accommodate who are similar in their ability or inability to work | Reasonable accommodations such as bathroom breaks, water and food breaks, use of a stool for sitting, job re-assignment if possible and pregnancy accommodations related to medical conditions | See the Job Accommodation Network  <https://askjan.org/> only covers pregnancy related disabilities | only applies to expressing milk by pump | Would cover all workers with the need for pregnancy accommodations | Specific accommodations are not listed |
| Pumping | PDA - Doesn’t mention pumping specifically. | Would be covered | Pumping rights not specified | Covered if eligible under the law | Would be covered | No workplace laws on the state level in NH |
| Employer Exemption | 15 | 6 | 15 | 50 only if exempted by US DOL | 15 | 6 |
| Enforced by | Federal EEOC | NH Commission on Human Rights | Federal EEOC | US DOL and Federal EEOC | EEOC | NH Commission on Human Rights |
| Who is covered? | Those who qualify as under a protected class, etc. | Would protect all pregnant and post-partum workers with accommodations for pregnancy and related medical conditions – with or without a pregnancy related disability related to the accommodation. | Only covers those with a qualified disability on the Federal Level. | Only covers some hourly employees. Not salaried for time and space to pump. Leaves out most teachers, waitresses and service working management | Would cover all workers with the need for pregnancy accommodations | Not clearly specified |

**Employer Resources**

EEOC Enforcement Guidance : Pregnancy and Related Medical Conditions:

Says that lactation and breastfeeding are medical conditions related to pregnancy. <http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm>

Tools for Employers for model policies and providing nursing accommodations:

<http://www.womenshealth.gov/breastfeeding/employer-solutions/index.html>

The BIA was asked if there were problems in states that have pregnancy accommodation laws and referenced confusion when an employee is working in two states. Also mentioned was the confusion with handbook policies in companies that are located in different states.

This issue does not have to be confusing and is dealt with all the time with regard to employment law.

**References in my verbal testimony**

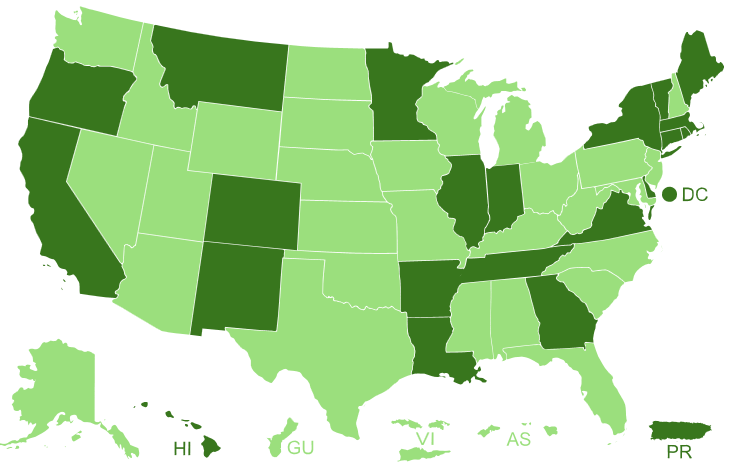
**New Hampshire a "D" for workplace policies for new parents**:  We need to compete with other New England States to keep NH residents living, working and establishing small businesses in NH.    
<http://www.nationalpartnership.org/research-library/work-family/expecting-better-2014.pdf>

**Are NH’s Worplaces Family Friendly Enough?** With Dave Juvet http://nhpr.org/post/are-nhs-workplaces-family-friendly-enough

**State Level Workplace Pumping Rights**

[**http://www.dol.gov/wb/maps/4.htm**](http://www.dol.gov/wb/maps/4.htm)

**NH is the only New England state NOT to have any state level breastfeeding rights in the workplace. Many NH families are moving elsewhere.**



Thank you for your consideration,

Kate Frederick