

SB 69-FN - AS AMENDED BY THE SENATE

02/04/2021 0111s

2021 SESSION

21-0861

04/11

SENATE BILL

69-FN

AN ACT

requiring employers to provide access to a sufficient space for nursing mothers and reasonable break time.

SPONSORS:

Sen. Whitley, Dist 15; Sen. Hennessey, Dist 1; Sen. Perkins Kwoka, Dist 21; Sen. Bradley, Dist 3; Sen. Cavanaugh, Dist 16; Sen. Soucy, Dist 18; Rep. McWilliams, Merr. 27; Rep. Wazir, Merr. 17; Rep. Marsh, Carr. 8; Rep. Abel, Graf. 13

COMMITTEE:

Commerce

ANALYSIS

This bill requires certain employers to provide access to a sufficient space and a reasonable break period for nursing mothers to express milk during working hours.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 requiring employers to provide access to a sufficient space for nursing mothers and reasonable break time.

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

1 1 New Subdivision; Policies Relating to Nursing Mothers. Amend RSA 275 by inserting after
2 section 77 the following new subdivision:

3 Policies Relating to Nursing Mothers

4 275:78 Policies Relating to Nursing Mothers. In this subdivision:

5 I. "Employee" shall mean a person who may be permitted, required, or directed by an
6 employer in consideration of direct or indirect gain or profit but shall not include any individual who
7 volunteers services for a public, charitable, or religious facility without expectation or promise of
8 pay.

9 II. "Employer" shall mean a person, partnership, association, corporation, or legal
10 representative of a person, partnership, association, or corporation, or the state or any of its political
11 subdivisions, which has 6 or more employees working in the state.

12 III. "Expression of milk" means the initiation of lactation by manual or mechanical means
13 but shall not include breastfeeding.

14 IV. "Reasonable break period" shall mean an unpaid break of approximately 30 minutes for
15 every 3 hours of work performed by a nursing employee for the purpose of expressing milk.

16 V. "Undue hardship" shall mean any action that requires significant difficulty or expense
17 when considered in relation to factors such as the size of the business, its financial resources and the
18 nature and structure of its operation.

19 275:79 Notification of Policies.

20 I. Every employer shall adopt a policy to address the provision of sufficient space and
21 reasonable break periods for nursing employees that need to express milk during working hours.

22 II. Every employer shall, at the time of hire, make available to its employees the employer's
23 policy related to expression of milk during working hours.

24 III. A nursing employee shall notify its employer at least 2 weeks prior to needing
25 reasonable break periods and sufficient space for expression of milk during work hours.

26 275:80 Sufficient Space.

27 I. Every employer shall provide access to reasonable, sufficient space, either temporary or
28 permanent in nature, for the use of an employee to express milk for a nursing child for a period of
29 one year from the date of birth of the child.

1 II. The location of the space provided shall be within a reasonable walk of the employee's
2 worksite, unless otherwise mutually agreed to by the employer and employee.

3 III. Sufficient space provided in accordance with this section shall not be a bathroom, and
4 shall be a clean space shielded from view and free from intrusion from coworkers and the public.

5 (a) If the space is not solely for the use of employees expressing milk it shall be made
6 available when requested to comply with the requirements set forth in this subdivision.

7 (b) If feasible, the room shall have, at a minimum, an electrical outlet and a chair.

8 275:81 Reasonable Break Period.

9 I. Every employer shall provide reasonable break periods to employees who need to express
10 milk for a child for a period of one year from the date of birth of the child. Nothing in this section
11 shall preclude an employer from negotiating with an employee reasonable break periods to express
12 milk that are different from the requirements in this subdivision.

13 II. Nothing under this subdivision shall preclude an employee from taking a reasonable
14 break period contemporaneously with break or meal periods already provided to the employee by the
15 employer.

16 III. An employer shall not require an employee to make up time related to use of unpaid
17 reasonable break periods.

18 275:82 Penalties. Any employer who violates any provision of this subdivision shall be subject
19 to a civil penalty pursuant to RSA 273:11-a.

20 275:83 Hardship Exemption. An employer may be exempted from this subdivision if providing
21 reasonable break time and sufficient space for expressing milk would impose an undue hardship to
22 the employer's operations.

23 2 Effective Date. This act shall take effect 60 days after its passage.

SB 69-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2021-0111s)

AN ACT requiring employers to provide access to a sufficient space for nursing mothers and reasonable break time.

FISCAL IMPACT: ☒ State ☐ County ☒ Local ☐ None

| STATE: | Estimated Increase / (Decrease) | | | |
|------------------------|--|-------------------------|-------------------------|-------------------------|
| | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
| Appropriation | \$0 | \$0 | \$0 | \$0 |
| Revenue | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |
| Funding Source: | <input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Various Government Funds | | | |

LOCAL:

| | | | | |
|---------------------|-----|-------------------------|-------------------------|-------------------------|
| Revenue | \$0 | \$0 | \$0 | \$0 |
| Expenditures | \$0 | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |

METHODOLOGY:

This bill requires certain employers to provide access to a sufficient space and a reasonable break period for nursing mothers to express milk during working hours.

The Department of Administrative Services indicates the fiscal impact on State expenditures is indeterminable. The Department offered the following information concerning the potential fiscal impact:

- Many state buildings already include areas for private lactation needs for mothers.
- Existing buildings will meet this accommodation using existing space that will be converted or shared. As almost all rooms in state buildings have outlets, no new electrical work will need to be done in existing buildings. Chairs and furniture already owned by an agency would be used in the mothers' rooms located in existing buildings.
- When new construction takes place, an additional 50 square feet would be included for a mothers' room. The average construction costs for office buildings are \$175 per square foot. For newly constructed or outfitted office spaces, a new chair would be purchased at the cost of \$200. (50 square feet x \$175 plus \$200 = \$8,950)

- Occasionally no suitable space is available in an existing building and the requirement could be met using a lactation pod. The cost of commercial lactation pods is \$8,000 - \$25,000 depending on size and features.

The Department of Labor does not anticipate this bill would impact county or local revenues. The Department states it is possible there would be an indeterminable increase in state revenue as a result of the proposed fines. The Department indicates it is likely that there would be an indeterminable increase in state, county and local expenditures in relation to offering space and additional flexibility in staffing and/or scheduling. The Department states these potential costs cannot be predicted and are indeterminable. The Department does not anticipate it would need additional staff to undertake administration of this chapter.

The New Hampshire Municipal Association states the break period requirement is unlikely to affect municipal expenditures. The requirement to provide a separate space is likely to require additional expenditures for those workplaces that do not have an existing space or a space that can be converted easily. The bill provides that an employer may be exempted if providing sufficient space for expressing milk would impose an undue hardship to the employer's operations." However the Association indicates, it is uncertain how often such exemptions would be granted; and the need to spend significant money to comply may not necessarily be considered an "undue hardship to the employer's operations." Further, the legislation does not indicate who would be responsible for granting an exemption or how an employer would request an exemption. There will be no impact on municipal revenues.

The New Hampshire Association of Counties indicates that the counties already provide such accommodations and the bill would have no impact on county expenditures or revenue.

It is assumed that any fiscal impact would occur after July 1, 2021

AGENCIES CONTACTED:

Department of Administrative Services and Labor, New Hampshire Municipal Association and New Hampshire Association of Counties