

CHAPTER 191  
HB 358 - FINAL VERSION

16Mar2023... 0648h  
06/08/2023 2072s  
06/08/2023 2172s  
06/08/2023 2081s  
06/08/2023 2156s  
29Jun2023... 2204CofC

2023 SESSION

23-0226  
05/10

HOUSE BILL

**358**

AN ACT                    relative to the filing and adoption of proposed administrative rules and relative to overpayment of unemployment compensation and relative to policies relating to nursing mothers.

SPONSORS:            Rep. C. McGuire, Merr. 27; Rep. Layon, Rock. 13; Sen. Lang, Dist 2; Sen. Ward, Dist 8

COMMITTEE:          Executive Departments and Administration

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AMENDED ANALYSIS

This bill:

I. Makes various changes to the procedures for the filing and adoption of proposed administrative rules.

II. Makes a technical correction to SB 44-FN if it becomes law.

III. Establishes minimum work place supports for nursing mothers.

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                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT                    relative to the filing and adoption of proposed administrative rules and relative to overpayment of unemployment compensation and relative to policies relating to nursing mothers.

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

1            191:1 Administrative Procedure Act; Definition of Form. Amend RSA 541-A:1, VII-a to read as  
2 follows:

3            VII-a. "Form" means a document, ~~[that establishes a requirement for]~~ ***whether hardcopy or***  
4 ***electronic, with blank spaces for insertion of required or optional information, which must be submitted to***  
5 ***the agency by*** persons outside the agency, ~~[to provide information to an agency and the format in which~~  
6 ~~such information must be submitted. The term does not include any document, regardless of what the~~  
7 ~~document is called, that (a) is provided by an agency to facilitate the submission of information that is~~  
8 ~~required to be submitted to the agency by federal or state statute, regulation, or rule and does not add to~~  
9 ~~or modify such requirement or (b) that is used only by the agency to provide information to persons~~  
10 ~~outside the agency]~~ ***such as, but not limited to, licensing applications, petitions, or requests. The term***  
11 ***does not include a document that is called a form by the agency but which does not have blank spaces for***  
12 ***insertion of information by persons outside the agency.***

13            191:2 Fiscal Impact Statements. Amend RSA 541-A:5, VI to read as follows:

14            VI. Agencies shall also obtain an amended fiscal impact statement from the legislative budget  
15 assistant ~~[only]~~ if as a result of notice and hearing a change has been made which affects the original  
16 fiscal impact statement ***or to correct an error in the original fiscal impact statement.*** Agencies shall file the  
17 amended fiscal impact statement as part of the final proposal pursuant to RSA 541-A:12, II.

18            191:3 New Paragraph; Rulemaking Register. Amend RSA 541-A:9 by inserting after paragraph II the  
19 following new paragraph:

20            III. The rulemaking register shall be sent by email to all members of the general court.

21            191:4 New Paragraph; Filing of Final Proposal. Amend RSA 541-A:12 by inserting after paragraph II  
22 the following new paragraph:

23            II-a. The agency shall file with the final proposal a copy of any draft, new, or amended form, or  
24 screenshot, mock-up, or prototype of an electronic-only form, which has been incorporated by reference in  
25 the final proposed rule or whose requirements are set forth in the final proposed rule pursuant to RSA  
26 541-A:19-b.

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191:5 Review by the Joint Legislative Committee on Administrative Rules; Basis for Objection.  
Amend RSA 541-A:13, IV(c) to read as follows:

(c) Determined not to be in the public interest; *including the existence of substantive inconsistencies between a form and the rule where the form is incorporated by reference or which sets forth the requirements of the form, pursuant to RSA 541-A:19-b*; or

191:6 Final Adoption. Amend RSA 541-A:14, III to read as follows:

III. The agency shall file ~~[all-adopted-rules]~~ with the director of legislative services *all adopted rules and any related new or amended form, or screenshot, mock-up, or prototype of an electronic-only form, which the rules incorporate by reference or whose requirements are set forth in the rules pursuant to RSA 541-A:19-b.*

191:7 Publication of Rules. Amend RSA 541-A:15, I and I-a to read as follows:

I. The director of legislative services shall compile, index, and publish~~[-or require agencies to publish,]~~ all effective rules adopted by each agency. The text of an adopted rule as filed with the director and which is effective shall *then* be the official version of the rule~~[-,].~~ *The director shall publish the adopted rule text online in a format as determined by the director. The agency shall be notified when the text is published. The agency shall then have 120 days to certify that the published rule is accurate. If*~~[unless or until a version prepared for publication, which may have]~~ *editorial changes not affecting the substance of the rule*~~[is certified by the agency as the same in substance as originally filed.]~~ *are needed, or an error in the publishing process is identified, then the agency shall notify the director, and such changes shall be made by the director and certified by the agency that it is the same in substance as originally filed. If the agency does not notify the director within the 120-day deadline, then it will be presumed that the agency has reviewed the published language and agreed that it is the certified version and shall be published online by the director in a format as determined by the director.* The certified version shall *then* be the official version. Both the adopted rule as-filed and as-certified may be an electronic document and still be the official version if in compliance with RSA 541-A:1, V-a and VI and the drafting and procedure manual for administrative rules under RSA 541-A:8. The official version of the rule shall be available to the public by the agency and the director pursuant to RSA 541-A:14, IV *as described in the drafting and procedure manual under RSA 541-A:8.*

I-a. ~~[The director shall send the text of a rule to be certified to the agency adopting the rule. The agency shall certify the rule under paragraph I within 120 days of receiving the first edited text.]~~ The 120-day deadline *in paragraph I* shall not apply to interim rules or emergency rules. A copy of each rule as filed and each as certified shall be sent by the director to the state library and the New Hampshire law library at the supreme court.

191:8 Rules; Filing Required. Amend RSA 541-A:16, III to read as follows:

III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, RSA 541-A:14-a, III, or RSA 541-A:19, X, or such other *later* date ~~[and time]~~ as specified, provided that filing occurs before such effective date ~~[and time]~~. Except as provided in RSA 541-A:14-a, a rule adopted under RSA 541-

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A:14, IV shall expire after the last day of the tenth year following its becoming effective, unless sooner amended, readopted, or repealed.

191:9 New Paragraph; Interim Rules. Amend RSA 541-A:19 by inserting after paragraph IV the following new paragraph:

IV-a. The agency shall file with the proposed interim rule a copy of any related new or amended form, or screen shots, mock-up, or prototype of an electronic-only form, which has been incorporated by reference in the proposed interim rule or whose requirements are set forth in the proposed interim rule pursuant to RSA 541-A:19-b.

191:10 Interim Rules; Basis for Objection. Amend RSA 541-A:19, VII(c) to read as follows:

(c) Determined not to be in the public interest, ***including the existence of substantive inconsistencies between a form and the rule where the form is incorporated by reference or which sets forth the requirements of the form, pursuant to RSA 541-A:19-b;*** or

191:11 Interim Rules; Response to Conditional Approval. Amend RSA 541-A:19, VIII(b) to read as follows:

(b) If the committee objects to the proposed interim rule as filed, it shall so inform the agency. In lieu of an objection, and with or without a written request under subparagraph (a), the committee may vote to conditionally approve the rule with an amendment, provided that the committee specified in its conditional approval the language of the amendment to address the basis for a preliminary objection. The committee shall notify the agency in writing of its conditional approval. Within 14 days of the meeting, ***or in the case of a board or commission, 7 days following its regularly scheduled meeting,*** the agency shall submit a written explanation to the committee in the form of a letter and an annotated text of the final proposed rule detailing how the rule has been amended in accordance with the conditional approval. The written explanation shall be signed by the individual holding rulemaking authority, or, if a body of individuals holds rulemaking authority, by a voting member of that body, provided that a quorum of the body has approved. Failure to submit a written explanation in accordance with the conditional approval and this paragraph shall cause the conditional approval to be deemed a committee vote to make a preliminary objection on the date of the conditional approval. If the committee legal counsel determines that the agency has amended the rule in accordance with the conditional approval and this paragraph, the committee legal counsel shall promptly send written confirmation of compliance to the agency. The agency may then adopt the rule as amended.

191:12 Interim Rules. Amend RSA 541-A:19, X to read as follows:

X. No proposed interim rule shall be adopted unless the committee has voted to approve the proposed interim rule or conditionally approve the proposed interim rule, provided that the committee legal counsel has sent written confirmation to the agency pursuant to RSA 541-A:19, VIII(b). An adopted interim rule ***and any new or amended form, or screenshot, mock-up, or prototype of an electronic-only form, which the rule incorporates by reference or the requirements for which are set forth in the rule pursuant to RSA 541-A:19,*** shall be filed with the director of legislative services no later than 30 days following committee approval or conditional approval ***or in the case of a board or commission, 7 days following its next regularly scheduled meeting after committee approval or conditional approval.*** An

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interim rule shall be effective under RSA 541-A:16, III on the day after filing with the director of legislative services, or at a later date, provided the agency so specifies in a letter to the director of legislative services and the effective date is within 30 days following committee approval or conditional approval. Interim rules shall be effective for a period not to exceed 180 days. During the time an interim rule shall be in effect, the agency may propose a permanent rule to replace the interim rule once it expires, but it shall not adopt another interim rule to replace the expiring interim rule.

191:13 Adoption of Forms. Amend RSA 541-A:19-b to read as follows:

541-A:19-b Adoption of Forms. An agency may adopt a form as defined in RSA 541-A:1, VII-a, *either* by incorporating the actual form by reference *in a rule*, or by setting forth the requirements of the form in rules, adopted according to the procedures in this chapter *and in compliance with the drafting and procedure manual pursuant to RSA 541-A:8. No new or amended form shall be effective and enforceable pursuant to RSA 541-A:22, I unless the form has been adopted in accordance with this chapter.*

191:14 Revisions to Forms; Expedited Procedure. Amend RSA 541-A:19-c to read as follows:

541-A:19-c Revisions to Forms; Expedited Procedure.

I. An agency may make editorial changes to a previously adopted form without following the procedures required in RSA 541-A:19-b, in this section, or in RSA 541-A:3, *but shall notify the office of legislative services of any proposed editorial changes in accordance with the drafting and procedure manual pursuant to RSA 541-A:8.*

II. An agency may revise ~~[a form as defined in RSA 541-A:1, VII-a without meeting the requirements of RSA 541-A:5-7]~~ *substantively the requirements on a previously adopted form as defined in RSA 541-A:1, VII-a, and amend the relevant provisions in the rule which set forth the requirements of the form or incorporate the form by reference pursuant to RSA 541-A:19-b, without meeting the requirements of RSA 541-A:5, RSA 541-A:6 and RSA 541-A:9-14 [either in accordance with RSA 541-A:19-b or]* by providing notice and adopting the *amended* form in accordance with paragraphs III through VII.

III. Notice of an agency's intent to ~~[adopt a form or amendment to a form]~~ *amend a form and amend the relevant, affected rule* shall include:

(a) The name and address of the agency.

(b) The statutory authority for the form.

(c) *The rule number and title of the affected rule to be amended, and whether the action is an amendment or readoption with amendment of the rule as described in the drafting and procedure manual pursuant to RSA 541-A:8.*

(d) An explanation of the reason for the proposed ~~[adoption or]~~ amendment of a form *and a summary of the existing, affected rule and the proposed amendment to the form and the rule.*

~~[(d)]~~ (e) The name, address, electronic address, and telephone number of an individual in the agency able to answer questions about the proposed form.

~~[(e)]~~ (f) The deadline for receipt by the agency of written or electronic public comment, which shall be no sooner than the 7th calendar day after the date of publication of the notice in the rulemaking register.

1           ***III-a. The amended rule to be filed shall include only those relevant provisions of the rule, as***  
2           ***described in the drafting and procedure manual, pursuant to paragraph II, and neither the amended form***  
3           ***nor the amended rule shall have a fiscal impact which would otherwise require a fiscal impact statement***  
4           ***pursuant to RSA 541-A:5.***

5           IV. The ***agency shall file a copy of the amended form, the amended rule including an appendix***  
6           ***pursuant to RSA 541-A:3-a, and*** the notice required by paragraph III ~~[shall be filed]~~ with the director of  
7           legislative services, ~~[for publication]~~ ***who shall publish the notice*** in the rulemaking register. ~~[A copy of the~~  
8           ~~form to be adopted shall be filed with the notice.]~~

9           V. If on the basis of public comment the official or the group of individuals with rulemaking  
10          authority determines that the form should not be ~~[adopted]~~ ***amended***, the agency shall so notify the  
11          director of legislative services and the form shall not be ~~[adopted]~~ ***amended***.

12          VI. The proposed form ***as amended and amended rule*** shall be placed on the agenda of the  
13          committee for review at the first regularly scheduled or special meeting at least 5 calendar days after the  
14          close of the period for written or electronic comment described in subparagraph III(e). The committee  
15          may approve or object to the form. The committee may object to the adoption of the form ***as amended***  
16          ***and the affected rule*** if the form is:

17               (a) Beyond the authority of the agency;

18               (b) Contrary to the intent of the legislature; ~~[or]~~

19               (c) ***Deemed not to be in the public interest, including the existence of substantive***  
20               ***inconsistencies between the form and the rule whose provisions incorporate the form by reference or set***  
21               ***forth the requirements of the form pursuant to RSA 541-A:19-b; or***

22               (d) Deemed by the committee not to meet the requirements of this section, ***including***  
23               ***existence of a fiscal impact contrary to paragraph III-a.***

24          VII. Subsequent review and adoption of the form ***as amended and the affected rule*** shall be as  
25          provided in RSA 541-A:13 for final proposed rules.

26          191:15 Validity of Rules. Amend RSA 541-A:22, I to read as follows:

27               I. No agency rule, ***including a form***, is valid or effective against any person or party, nor may it be  
28               enforced by the state for any purpose, until it has been filed as required in this chapter and has not  
29               expired.

30          191:16 New Subparagraph; Filing Final Proposal. Amend RSA 541-A:12, II by inserting after  
31          subparagraph (d) the following new subparagraph:

32               (e) A report of public comments received on the rule and an explanation of how they were  
33               addressed in the final rule.

34          191:17 Final Adoption. Amend RSA 541-A:14, I(a) to read as follows:

35               (a) The passage of ~~[45]~~ ***60*** days from filing of a final proposal under RSA 541-A:12, I, or 60  
36               days from filing under RSA 541-A:12, I-a, without receiving notice of objection from the committee;

37          191:18 Transition; Application. The provisions of this act shall govern the following on or after the  
38          effective date of this act:

39               I. All rulemaking initiated by filing a notice of rulemaking under RSA 541-A:6.

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1 II. All interim rules initiated by filing a proposed interim rule under RSA 541-A:19, II.

2 III. All expedited revisions to forms initiated by filing a notice of rulemaking under RSA 541-A:19-  
3 c, III.

4           IV. All notices submitted to the director of legislative services for publication in the rulemaking  
5   register.

191:19 Contingent Nullification. If SB 44-FN of the 2023 legislative session becomes law then  
section 9 of that act, amending RSA 330-C:17, I(b), shall not take effect.

8       191:20 New Subdivision; Labor; Protective Legislation; Policies Relating to Nursing Mothers. Amend  
9       RSA 275 by inserting after section 77 the following new subdivision:

10 Policies Relating to Nursing Mothers

11 275:78 Definitions. In this subdivision:

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

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

18 III. "Expression of milk" means the initiation of lactation by manual or mechanical means, but  
19 shall not include breastfeeding.

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

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

25 275:79 Notification of Policies.

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

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

III. A nursing employee shall notify its employer at least 2 weeks prior to needing reasonable break periods and sufficient space for expression of milk during work hours; provided that such notice shall comply with the employer's policies.

33 275:80 Sufficient Space.

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

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

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

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

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

6           275:81 Reasonable Break Period.

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

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

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

15          275:82 Penalties. Any employer who violates any provision of this subdivision shall be subject to a  
16 one-time civil penalty pursuant to RSA 273:11-a.

17          275:83 Hardship Exemption. An employer may be exempted from this subdivision if providing  
18 reasonable break time and sufficient space for expressing milk would impose an undue hardship to the  
19 employer's operations.

20          191:21 Effective Date.

21           I. Section 20 of this act, except for RSA 275:82, shall take effect July 1, 2025.

22           II. RSA 275:82, as inserted by section 20 of this act shall take effect July 1, 2026.

          III. The remainder of this act shall take effect 60 days after its passage.

Approved: August 04, 2023

Effective Date:

I. Sec 20, except RSA 275:82 eff July 1, 2025

II. RSA 275:82 inserted by Sec 20 eff July 1, 2026

III. Remainder effective October 3, 2023