

# **Pregnant Workers' Fairness Act and New Hampshire's Policies Relating to Nursing Mothers**

**2024 Bradley F. Kidder Law Conference**  
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*Presented by Drummond Woodsum Attorney:*



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**Pregnant Workers' Fairness Act and New Hampshire's  
Policies Relating to Nursing Mothers**

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Pregnant employees in New Hampshire have long been protected against discrimination in the workplace under the Pregnancy Discrimination Act of 1978, as well as the New Hampshire Law Against Discrimination (RSA 354-A:7, VI). Under these laws, pregnant employees, as well as individuals affected by childbirth and related medical conditions, are entitled to be treated the same as their coworkers who are not affected by pregnancy, childbirth, or related medical conditions but who have a similar ability or inability to work. Additionally, certain pregnant employees may be entitled to take protected leave under the FMLA, to the extent they are eligible, and/or are entitled to take protected leave under New Hampshire's maternity leave statute for the "period of temporary physical disability resulting from pregnancy, childbirth, and related medical conditions." Finally, although pregnancy itself is not considered a disability under the Americans with Disabilities Act or state law, pregnancy related conditions can constitute disabilities. Therefore, under certain circumstances, pregnant employees, and employees affected by childbirth and related medical conditions, could seek workplace reasonable accommodations with appropriate supporting medical documentation.

Recently, there have been two changes to the legal landscape impacting employees who are, recently were, or who seek to be pregnant – the federal Pregnant Workers Fairness Act (PWFA) and New Hampshire's Policies Related to Nursing Mothers, codified in RSA 275:78 et seq.

***The Pregnant Workers' Fairness Act***

The PWFA, which went into effect on June 27, 2023, requires covered employers, those with fifteen (15) or more employees, to provide reasonable accommodations to a qualified employee's or applicant's known limitation(s) related to, affected by, or arising out of pregnancy, childbirth, or related medical condition. On June 18, 2024, the U.S. Equal Employment Opportunity Commission (EEOC)'s final rule to implement the PWFA went into effect.

To determine what reasonable accommodation should be provided, the PWFA requires employers to engage in an interactive process similar to that required by the Americans with Disabilities Act (ADA). However, the PWFA's protections are, in many ways broader, and more complicated to apply.

For example:

1. The PWFA applies to *pregnancy and related medical conditions*, the list of which is extensive including: menstruation, infertility /fertility treatments, pregnancy termination (including abortion), and lactation conditions including low milk supply. It may also apply to underlying conditions exacerbated by pregnancy, including where an employee can no longer take medication treating another medical condition due to pregnancy.
2. The PWFA applies to *current pregnancy, past pregnancy, or potential /intended pregnancy*. Only exploring or utilizing the PWFA when an employee *is* pregnant will not be enough.
3. Employees and applicants may be entitled to accommodations under the PWFA even where they cannot perform one or more essential functions of the job, so long as that inability is “temporary”, and they will be able to perform the essential function in the “near future.” Thus, under the PWFA, employers will need to consider and/or assess the temporary suspension or removal of an essential function / functions as a potential accommodation.
4. Under the PWFA, there are specific instances where employers may *not* ask for a doctor’s note during the interactive process. This includes: where the limitation and reasonable accommodation is obvious; where the employer has sufficient information to support a known limitation; where the request is one of the four “predictable assessment accommodations” (to carry / keep water, to take additional restroom breaks, to sit/stand as needed, to take breaks to drink/eat); requests for lactation accommodations; and when employees with known limitations receive the request modification under policy or practice without supporting documentation.

***New Hampshire’s Policies Relating to Nursing Mothers –  
RSA 275:78 – 275:83***

Effective July 1, 2025, new sections of RSA 275, subtitled Policies Relating to Nursing Mothers, impose specific requirements beyond those already required by the federal PUMP Act. This new state law applies to employers with *six* (6) or more employees and requires employers to: (1) provide nursing employees with an unpaid break of approximately 30 minutes for every 3 hours of work performed; (2) a sufficient space for expression of milk; and (3) adopt a policy addressing these topics, provided to employees at the time of hire. The “sufficient space” cannot be a bathroom and must be clean, shielded from view, free from intrusion by coworkers or the public, and be equipped with at least a chair and an electrical outlet unless such equipment is infeasible.

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