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Alithia Rolon-Rodriguez
Deputy Director of Government Affairs
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: The Breastfeeding Mother's Bill of Rights and the Department of Labor's Expressing at Work Bill

Dear Ms. Rolon-Rodriguez:

On behalf of the Sex and Law Committee of the New York City Bar Association, we are writing to urge the New York State Department of Health ("NYSDOH") to publicize the rights established by Section 206-c of the New York State Labor Law pursuant to the Expressing at Work Bill in conjunction with its mandate to distribute information contained in the Breastfeeding Mother's Bill of Rights, ("BMBOR")¹ to mothers who have recently given birth.

We applaud the New York State Legislature for the passage of the BMBOR, as well as the Expressing at Work Bill, and the Commissioner's ongoing commitment to increasing the rates of breastfeeding among new mothers in New York State. We believe, however, that to realize the full intent of the BMBOR, which lacks mention of a breastfeeding woman's rights in the workplace, it is imperative that the NYSDOH publicize the Expressing at Work Bill as part of its efforts to inform expectant mothers of their rights to breastfeed.

State laws across the country, along with proposed federal legislation, reflect the consensus view that breast milk is the best and most complete source of nutrition for infants. Both the American Academy of Pediatrics² and the U.S. Surgeon General³ recommend that babies be exclusively breastfed for the first six months of life, and that breastfeeding continue through the first year, because breast milk contains the ideal combination of carbohydrates, proteins, and fats, as well as the digestive enzymes, minerals, vitamins, and hormones that infants require.⁴ Mothers who wish to breastfeed, however, continue to face significant challenges. Undoubtedly, foremost among these challenges is the transition to work outside the home.

¹ N.Y. Publ. Health L. § 2505-a.

² American Academy of Pediatrics, Breastfeeding and the Use of Human Milk Policy Statement, 115 Pediatrics 496 (2005), found at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;115/2/496>.

³ HHS Blueprint for Action on Breastfeeding, Department of Health and Human Services Office on Women's Health ("HHS Blue print"), found at <http://www.4women.gov/breastfeeding/index.cfm?page=233.aqw23aqw23>.

⁴ Id.

In 2008, over 56 percent of mothers with an infant under one year old were participating in the national work force.⁵ Full-time employment at 12 weeks postpartum is one of the strongest predictors for the discontinuance of breastfeeding:⁶ working moms nurse an average of 16 weeks, whereas nonworking moms nurse an average of 25 weeks.⁷ In the NYSDOH Commissioner's September 2009 Call to Increase Breastfeeding in New York State, Commissioner Daines cited the importance of breastfeeding and acknowledged New York State's low percentage of breastfeeding mothers at three months and six months after birth.⁸ Research suggests that the lack of support for breastfeeding mothers at work contributes to the decline in breastfeeding when new mothers return to work.⁹ Conversely, when mothers' breastfeeding efforts are supported in the workplace, working mothers breastfeed at rates comparable to stay-at-home mothers.¹⁰

The New York State Legislature addressed these concerns in passing the Expressing at Work Bill in January 2007. Pursuant to this bill, which was strongly supported by the City Bar Association,¹¹ a mother's right to express milk at work in New York is protected under Section 206-c of the New York State Labor Law. Under this section, employers are required to provide reasonable time and private space to their employees who wish to express milk during the workday.¹² Employers are also prohibited from discriminating against employees who choose to express breast milk in the workplace.¹³ New York is now one of twenty-four states that offer protections to nursing mothers in the workplace.¹⁴

Most fundamental among the enumerated rights in the BMBOR is the right to "breastfeed your baby in any location, public or private, where you are otherwise authorized to be."¹⁵ In addition, the BMBOR provides that women have the right to "receive information about safely collecting and storing" breast milk.¹⁶ For those working mothers who choose to breastfeed their infants, information about the right to breastfeed or express milk in the workplace is essential to exercising these important rights and increasing New York's percentage of breastfed infants. As more working mothers learn of their right to express milk at work, more will choose to breastfeed their babies while working. Thus, it is our view that the rights established by the

⁵ Employment Characteristics of Families in 2008, United States Department of Labor Bureau of Labor Statistics, found at <http://www.bls.gov/news.release/famee.nr0.htm>.

⁶ Report 2 of the Council on Scientific Affairs, Factors that Influence Differences in Breastfeeding Rates, found at www.ama-assn.org/ama/pub/category/15169.html.

⁷ CBS News Correspondent Emily Senay, January 24, 2001, New Study Finds Breastfeeding Delivers Health Benefits for Children.

⁸ <http://mail.ny.acog.org/website/DainesIncreaseBreastfeeding.pdf>

⁹ Id.

¹⁰ See Rona Cohen and Marsha B. Mrtek, The Impact of Two Corporate Lactation Programs on the Incidence and Duration of Breast-feeding by Employed Mothers, American Journal of Health Promotion, July/August 1994, Vol. 8, No. 6, located at <http://www.mchs-services.com/article.htm>.

¹¹ http://www.abcny.org/pdf/report/expressed_breast_milk.pdf

¹² N.Y.S. Labor L. § 206-c.

¹³ Id.

¹⁴ <http://www.kaiserhealthnews.org/Stories/2009/November/30/Senate-Health-Bill-Secrets.aspx>.

¹⁵ N.Y. Publ. Health L. § 2505-a(3).

¹⁶ Id.

Expressing at Work Bill should be disseminated in conjunction with information about the BMBOR.

We recommend, therefore, that, in connection with the distribution of the BMBOR, the Commissioner reference the Expressing at Work Bill in postings and other informational materials that are distributed to new mothers in maternal health care facilities. We further recommend that the Commissioner reference the Expressing at Work Bill in connection with the issuance of regulations to implement the BMBOR. Without important information about the right to breastfeed or express milk in the workplace, the post-discharge rights contained in the BMBOR will prove meaningless to the many working mothers who wish to continue to breastfeed their children.¹⁷

Thus, for the foregoing reasons, we urge NYSDOH to continue and strengthen its efforts to promote breastfeeding by disseminating information about the right to express breast milk in the workplace to women at maternal health facilities throughout the state along with the BMBOR.

Thank you for your consideration. Please feel free to contact us if we can be of any further assistance.

Best regards,



Rachel Braunstein
Chair, Sex and Law Committee

Cc: Assembly Member Aileen Gunther
Senator Liz Krueger

¹⁷ The post-discharge rights include the right to get information about breastfeeding resources, the right to get information about collecting and storing breast milk, and the right to breastfeed anywhere the mother is otherwise authorized to be. Id.