

COMMITTEE ON SEX AND LAW

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January 19, 2011

The Honorable Andrew M. Cuomo

New York State Governor

State Capitol

Executive Chamber Albany, NY 12224

Dear Governor Cuomo:

We congratulate you on your election as Governor and want to take this opportunity to introduce our Committee. The Sex and Law Committee of the New York City Bar Association ("City Bar") studies how gender affects the formulation and operation of law and policy. We address issues ranging from gender discrimination and reproductive rights to domestic violence and the rights of same-sex couples. Our membership includes attorneys from government agencies, law firms, and not-for-profit organizations. In furtherance of our agenda, we have become immersed in two issues which are the subject of this letter: the modernization of New York law to ensure that women's reproductive rights as set forth in *Roe v. Wade* and its progeny are secure under state law; and the implementation of legislation granting nursing mothers the right to express or pump breast milk in the workplace.

The Reproductive Health Act

The Sex and Law Committee applauds your support for the Reproductive Health Act (A.11484/S.5808 {2009/10 Session}). The Committee supports passage of this legislation, which echoes the principles of individual liberty and a tradition of supporting the freedom of women to make private health care decisions and reproductive choices to which the City Bar has long been committed.

Most fundamentally, the Reproductive Health Act removes the regulation of abortion from New York Penal Law and places it in the New York Public Health Law. As a result, it will remove the chilling effect the current criminal regulation places on medical providers while also ensuring the safe provision of reproductive health services. In addition, the Reproductive Health Act codifies a fundamental right to privacy with respect to reproductive decisions, including the right to choose or refuse contraception and the right of a woman to determine the course of her pregnancy (*i.e.*, whether to bear a child or terminate a pregnancy) (1) prior to "fetal viability", or

¹ http://www.nycbar.org/pdf/report/uploads/20071804-CommentinsupportoftheReproductiveHealthAct.pdf.

(2) when necessary to protect the pregnant woman's life or health.² In affording appropriate protection for these rights, the Reproductive Health Act expressly requires that any state regulation denying, regulating or restricting the fundamental rights set forth in the statute be narrowly tailored to serve a compelling state interest.³ This will protect against future attempts to impose unnecessary and harmful restrictions on the rights to access contraception and abortion. Significantly, the Act remedies the current Penal Law's lack of an explicit statutory health exception and therefore brings the law in line with the constitutional requirement, under *Roe v. Wade* and its progeny, that states permit termination of a pregnancy even after fetal viability when necessary to protect a woman's health. Finally, the Act also brings New York law into line with U.S. Supreme Court precedent by removing the current law's criminal ban on the sale of contraceptives to minors, which was held unconstitutional in *Carey v. Population Serv. Int'l*, 431 U.S. 678 (1977).

New York should follow the lead of other states, including California, Connecticut, Hawaii, Maine, Maryland, Nevada, and Washington, that have adopted reproductive rights laws protecting the right of a woman to obtain an abortion either before fetal viability or, in the case of post-fetal viability, to protect the life or health of the pregnant woman. Like these states, New York has a strong interest in ensuring that its citizens have access to comprehensive reproductive health care and that its laws reflect it longstanding commitment to women's reproductive health and rights. We urge New York to pass the Reproductive Health Act this legislative session.

Educating New Mothers about the "Expressing at Work" Bill

In 2007, the Legislature passed the Expressing at Work Bill, which amended the New York State Labor Law to require employers to "provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk for her nursing child" and to "make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy."⁴

Breastfeeding is critical to the health and wellbeing of children and their mothers because breast milk is the best and most complete source of nutrition and immunity-building for infants and breastfeeding has important health and economic benefits for mothers. We remain committed to supporting the implementation of and public education around the Expressing at Work Bill, in particular for low-income women, among whom breastfeeding rates are far lower than for middle and upper-income women⁵ and for whom, if they are working in non-professional jobs, it may be even more difficult to pump breast milk without access to private areas or unrestricted break time. To that end, we prepared a flyer concerning the rights of nursing mothers under the Expressing at Work Bill and we intend to distribute it as broadly as possible to employees and employers alike. (A copy of that flyer is enclosed for your reference.)

² See Act, § 2 at § 1700(2).

³ See Act, § 2 at § 1702(1).

⁴ N.Y. Labor Law § 206-c (2007).

⁵ According to a 2005 study by the CDC, only 32% of women with incomes below the poverty line were exclusively breastfeeding after three months, compared to 46% of women with incomes at or greater than 350% above the poverty line. Likewise, only 30% of women below the poverty line were breastfeeding after six months, compared with 49% of women whose incomes were at or greater than 350% above the poverty line.

In 2009, the Legislature passed the Breastfeeding Mother's Bill of Rights ("BMBOR").⁶ The BMBOR mandates that maternal health care facilities provide information to mothers who have recently given birth about the benefits of breastfeeding and their rights to breastfeed.⁷ The bill does not, however, explicitly require the dissemination of information about the rights of nursing mothers to pump breast milk in the workplace pursuant to the 2007 law. If New York State truly wants to increase breastfeeding rates, this information is critical and must be disseminated. In February 2010, we wrote to the New York State Department of Health ("NYSDOH") expressing our view that the rights established by the Expressing at Work Bill must be disseminated as part of the BMBOR campaign. (A copy of that letter is enclosed for your reference.) We will continue to work with NYSDOH on this issue so that the benefits of *both* new laws can be fully achieved. We appreciate any support your office can give to our efforts.

Thank you for your consideration.

Respectfully,

Rachel L. Braunstein

Chair

Sex and Law Committee

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⁶ N.Y. Publ. Health L. § 2505-a.

⁷ See id. § 2505-a(3).

New Mothers: "Express Yourself" Pump Breast Milk at Work!



- ❖ Mothers who return to work after having a baby have the right under New York's Expressing at Work Law to pump breast milk at work for up to three years following childbirth.
- ❖ You have the right to take reasonable unpaid breaks at work so that you can pump your breast milk. You also are allowed to use your paid break and meal times for this purpose, but you are not required to.
- ❖ Your employer is required to make reasonable efforts to provide a private room or other location that is close to your work area that you may use for this purpose.
- ❖ Your employer may not discriminate against you based on your decision to express breast milk at work.



To report a violation, write or call the New York City District Office of the New York Department of Labor's Division of Labor Standards, 75 Varick Street, New York, NY 10013 or 212-775-3880.

For more information about federal law regarding the right to express milk at work, a fact sheet may be downloaded from the New York Department of Labor's website at http://www.dol.gov/whd/regs/compliance/whdfs73.pdf.

Prepared by the New York City Bar Association, Committee on Sex and Law



COMMITTEE ON SEX AND LAW

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2432 Grand Concourse, Suite 506

Bronx, NY 10458 Phone: (718) 233-2765 bskass@gmail.com February 23, 2010

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 <u>American Academy of Pediatrics, Breastfeeding and the Use of Human Milk Policy Statement</u>, 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.aqw23aqw23aqw23.

⁴ <u>Id.</u>

In 2008, over 56 percent of mothers with an infant under one year old were participating in the national work force. Full-time employment at 12 weeks postpartum is one of the strongest predictors for the discontinuance of breastfeeding: working moms nurse an average of 16 weeks, whereas nonworking moms nurse an average of 25 weeks. 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. Research suggests that the lack of support for breastfeeding mothers at work contributes to the decline in breastfeeding when new mothers return to work. Conversely, when mothers' breastfeeding efforts are supported in the workplace, working mothers breastfeed at rates comparable to stay-at-home mothers.

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, <u>New Study Finds Breastfeeding Delivers Health Benefits for Children</u>.

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

⁹ Id.

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

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Cc: Assembly Member Aileen Gunther

Senator Liz Krueger

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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. <u>Id.</u>