

ACT 172

H.B. NO. 266

A Bill for an Act Relating to New Mothers Breastfeeding Promotion and Protection Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that women with infants and toddlers are the fastest growing segment of today's labor force, with at least fifty per cent of pregnant women who are employed returning to work by the time their children are three months old.

The legislature further finds that the American Academy of Pediatrics recommends that women breastfeed for at least the first twelve months of a child's life and urges that arrangements be made to provide for expressing breastmilk if the mother and child are separated.

The legislature further finds that women who wish to continue breastfeeding after returning to work have relatively few needs, such as the availability of suitable, dependable, and efficient breast pumps; a clean, convenient, safe, private, and comfortable location to express milk at the worksite; the opportunity to pump their breasts frequently enough to maintain their milk supply; and an adequate place to temporarily store their expressed milk.

The purpose of this Act is to promote breastfeeding by:

- (1) Disallowing an employer to prohibit an employee from expressing breastmilk during any meal period or other break period required by law to be provided by the employer or required by collective bargaining agreement;
- (2) Prohibiting discriminatory employment practices against women who breastfeed or express milk at the workplace; and
- (3) Requiring the Hawaii civil rights commission to compile and publish information on workplace discrimination against lactating employees.

SECTION 2. Section 378,¹ Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§378- Breastfeeding. No employer shall prohibit an employee from expressing breastmilk during any meal period or other break period required by law to be provided by the employer or required by collective bargaining agreement.”

SECTION 3. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

“§378-2 Discriminatory practices made unlawful; offenses defined. It shall be an unlawful discriminatory practice:

- (1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:
 - (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
 - (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;
 - (C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or

publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination;

- (D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or
- (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be [less] younger than sixteen years of age;
- (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
- (3) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
- (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;
- (5) For any employer to refuse to hire or employ or to bar or discharge from employment, any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52; [or]
- (6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association[.]; or
- (7) For any employer or labor organization to refuse to hire or employ, or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because an employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast."

SECTION 4. The Hawaii civil rights commission shall accumulate, compile, and publish data concerning incidences of discrimination involving breastfeeding or expressing breastmilk in the workplace. The commission shall submit a report to the legislature on its findings no later than twenty days prior to the convening of the 2000 legislature.

SECTION 5. Nothing in this Act prohibits employers from establishing internal rules and guidelines for employees who may wish to breastfeed or express breastmilk in the workplace.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 7. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.