

Jan. 3, 2019

The Honorable Ralph Northam
Governor of Virginia
P.O. Box 1475
Richmond, VA 23218

Dear Governor Northam,



701 E. Franklin Street
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Claire G. Gastañaga
Executive Director

We write to express concern about the treatment of breastfeeding employees at Virginia state prisons. We strongly encourage you to direct the head of the Department of Corrections (DOC) to adopt policies and practices supporting all breastfeeding employees, as required by state policy and federal law. Specifically, we encourage you to require all Virginia state prisons to adopt security protocols that allow employees to bring breast pumps into the prisons and to provide adequate breaks and space for employees to pump breast milk as needed.

Supporting nursing employees by providing reasonable accommodations for pumping breast milk at work is critical to ensure all parents have access to the workforce. Failure to do so violates the law and policy of the Commonwealth and federal discrimination and Fair Labor Standards laws. The Virginia Human Rights Act (VHRA) states that it is the policy of the Commonwealth to safeguard Virginians from discrimination based on pregnancy, childbirth or related medical conditions. (*See* VA Code § 2.2-3901) Lactation and breastfeeding are clearly related conditions. Moreover, the VHRA provides that conduct that violates a federal discrimination law is an “unlawful discriminatory practice” under the VHRA, 2.2-3901. The EEOC has held that, under Title VII of the Civil Rights Act, applicable to state agencies, discrimination against lactating people is unlawful gender discrimination. (*See* EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues, No. 915.003(I)(A)(4)(b) (June 25, 2015), available at

https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.)

The Commonwealth repeatedly has recognized the importance of breastfeeding as a matter of public policy and law. In 2015, state law was amended to protect the right to breastfeed in any public location or private location where one is legally permitted (such as a restaurant or retail store). (VA Code § 32.1-370.) Nursing parents have been permitted to breastfeed on state-owned property since 2002. (VA Code. § 2.2-1147.1.) In 2002, the General Assembly also passed a resolution



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encouraging employers to provide breaks and appropriate spaces for employees who need to breastfeed or pump breast milk. (H.J. 145 (2002).) Further, federal law requires employers (including public agencies) to provide breaks and a space that is not a bathroom for hourly employees to pump milk while at work. (29 U.S.C. § 207(r).)

Your administration should be acting affirmatively to uphold the policy of the Commonwealth, comply with federal law and support the rights of nursing employees. Instead, the New York Times recently reported that employees at Deerfield Correctional Center have had to breastfeed in their car, smuggle breast pumps into the facility, or pump in dirty public restrooms. This report is the latest in a series of documented incidents demonstrating that the Virginia Department of Corrections does not adequately consider, never mind meet, the needs of its female inmates, employees, and visitors.

Entering a prison, whether as an employee, inmate, or visitor, should not require an individual to shed their dignity and fundamental rights.

Accordingly, we urge you to adopt and enforce policies that support the right of all Virginia state employees to breastfeed and receive reasonable accommodations for expressing milk while at work, and to require all Virginia state prisons immediately to adopt security protocols that allow breast pumps to be brought into prisons by employees, and to provide adequate breaks and space for employees to pump breast milk.

Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive, with the first and last names being the most prominent.

Claire G. Gastañaga
Executive Director

CC: Secretary Brian J. Moran, Public Safety and Homeland Security
Director Harold J. Clarke, Virginia Department of Corrections