

Talking to Your Boss About Your Bump: Hawaii

This fact sheet focuses on Hawaii law. Protections will differ in other states. In addition, you may be protected by federal law through the Americans with Disabilities Act or the Pregnancy Discrimination Act.¹ Visit babygate.abetterbalance.org/hawaii/ for more information.

WHEN to break the news:

- There are no real legal deadlines for notifying your employer until late in your pregnancy, when you will need to request leave 30 days in advance of taking off for childbirth, if you are covered by the Family and Medical Leave Act.
- If you need time off for pregnancy-related illness, or you need another workplace change to accommodate your pregnancy, you may have to break the news earlier.
- If you suspect that your boss won't be happy to hear you are pregnant, don't feel pressure to tell before you are ready. However, keep in mind that your colleagues and boss may appreciate being told as soon as you feel comfortable, so that they, and you, can plan ahead.

WHAT to say:

- Before starting the conversation, it's a good idea to do your homework and review your employer's policies about pregnancy and parental leave. You may also want to consult with human resources.
- Reassure your boss that you are committed to your job and that you plan to return to work after the baby arrives. Many bosses wrongly assume that pregnancy means the end of an employee's dedication and reliability. It's important to tackle those assumptions up front.
- Stress that you are willing and able to keep working—even if your pregnancy impacts your work, it will be a short-term situation, like a temporary disability. You don't need a doctor's note to announce your pregnancy, and in fact, sometimes a note can cause trouble if your boss thinks it limits what you can do on the job.
- Highlight that you are a breadwinner (or primary earner) for your family, and your household depends on your paycheck.
- If you have access to parental leave,² come armed with a plan to help your boss prepare for your absence and cover your workload while you are gone.



¹ The Equal Employment Opportunity Commission enforces the Pregnancy Discrimination Act (PDA) and Americans with Disabilities Act (ADA), which cover employers nationwide who have 15 or more employees. The PDA makes it illegal for your employer to punish you because of your pregnancy or to treat you differently than other workers because you are pregnant. The ADA protects you from discrimination and entitles you to reasonable accommodations if you have a pregnancy-related disability, such as hypertension, preeclampsia, gestational diabetes, or another pregnancy-related impairment that substantially limits a major life activity.

² You may be entitled to leave after your baby arrives under the federal Family and Medical Leave Act (FMLA) or the Hawaii Family Leave Law (HFLL). You are covered by HFLL if 1) you work for an employer with 100 or more employees in the state and 2) you have worked for that employer for at least 6 months in a row. If you qualify, you are entitled to 4 weeks of family leave during a calendar year. You are covered by the federal FMLA

- Listen carefully and take careful notes after your conversation, especially about anything that sounded strange or wrong to you.
- Unfair treatment based on pregnancy (e.g. firing, penalizing, or harassing you upon learning you are pregnant) is illegal.

Workplace Accommodations

Under a Hawaii regulation,³ you have a right to a reasonable accommodation to address needs related to your pregnancy, childbirth, or related medical conditions.⁴ Examples of reasonable accommodations include time off for prenatal appointments or nausea, a stool to sit on, the ability to carry a water bottle, a change to your uniform, limiting heavy lifting, frequent bathroom breaks, or anything else.

You are also entitled to a “reasonable” amount of leave from work for pregnancy disability, childbirth, and recovery.⁵ Your physician determines what is “reasonable.”⁶

Have a conversation with your medical provider about your job duties to understand if you may need changes at work because of pregnancy, childbirth, or a related medical condition. Keep in mind that your needs may change over the course of your pregnancy. If you do want to seek an accommodation, keep reading!

HOW to ask for an accommodation:

- Tell your boss that you have a condition arising from your pregnancy, childbirth, or related medical conditions and that you need a reasonable accommodation on the job. To receive an accommodation under the Hawaii regulations, you should explain what

if 1) you work for an employer with 50 or more employees within 75 miles of your worksite, 2) you have worked for that employer for at least 1250 hours in the year before taking leave, and 3) you have worked for that employer for at least 12 months. If you qualify, you can use up to 12 weeks of leave within a 12-month period to care for your own health (including pregnancy), to care for a new child after birth, adoption, or foster placement, or to care for a seriously ill family member.

³ Haw. Code R. §§ 12-46-107. This regulation was upheld in a Hawaii Supreme Court case *Sam Teague, Ltd. v. Hawaii Civil Rights Comm’n*, 971 P.2d 1104 (Hawaii 1999).

⁴ Though the regulations refer to workers “affected by disability due to and resulting from pregnancy, childbirth, or related medical conditions,” the Deputy Executive Director of the Hawaii Civil Rights Commission stated that even if you have a healthy pregnancy, you have the right to a reasonable accommodation. Conversation with Marcus Kawatachi, Deputy Executive Director, Hawaii Civil Rights Commission, over telephone (Jan. 22, 2014).

⁵ Haw. Code R. §§ 12-46-108.

⁶ Some birth mothers who work in Hawaii can get some cash benefits while they are unable to work because of pregnancy and childbirth under Hawaii’s Temporary Disability Insurance program, which covers most workers. You can receive TDI benefits for up to 26 weeks per year. The benefit amount is 58% of your average weekly wage, up to a maximum of \$552 a week. Read more at: <http://babygate.abetterbalance.org/hawaii/>.

- your pregnancy-related limitations are (e.g., can't lift more than 50 pounds; can't stand for more than 4 hours without taking a break; must drink water regularly; etc.).
- For accommodation ideas, look at The Center for Worklife Law's list of pregnancy-related conditions and possible workplace accommodations:
www.pregnantatwork.org/wp-content/uploads/Workable-Accommodation-Ideas.pdf.
 - Specify what kind of accommodation you need, including any job duties that you need modified, and make sure your boss knows you can still perform the bulk of the duties of your job. Refer your boss to the Job Accommodation Network (<http://askjan.org/soar/other/preg.html>) for more information and ideas.
 - Come prepared with a plan—what kind of changes do you need and how can you make that work? Talk with coworkers and enlist their help.
 - Explain how your requested accommodation will not be too difficult or expensive for the company (e.g. it's time limited, another employee is willing to help you on occasion with the task you can't perform, etc.).
 - If your boss requests a note from your doctor to confirm your medical need, make sure that the doctor's note is as specific as possible and outlines exactly what you can and cannot do at work. Avoid vague terms like "heavy lifting" or "light duty," which may be interpreted by your boss to mean you can no longer do your job. Be aware that employers often use doctor's notes to say that pregnant women can't do their jobs and to push them out of the workplace, either by forcing them onto leave before they are ready or by firing them outright. Here are guidelines on writing effective work accommodation notes that you can print and share with your prenatal care provider: <https://www.pregnantatwork.org/wp-content/uploads/hawaii-work-note-guidelines.pdf>.
 - Make sure to get any conversation with your employer documented in writing—you may send an e-mail or note summing up what was discussed and keep a copy for your records.

Your employer's obligations:

- When you ask your employer for an accommodation, it should be a two-way conversation—your boss must engage with you. If she asks for additional information to understand your limitation, you should provide it. If your limitation is not obvious, your boss may ask you to bring in a note from a healthcare professional to confirm the limitation(s).
- You are not entitled to receive your first choice accommodation, but your boss cannot send you out on leave if there is any other reasonable accommodation available that would address your pregnancy-related limitation(s).

Questions? Call:
A Better Balance at (212) 430-5982
Center for Worklife Law at (415) 703-8276