

Talking to Your Boss About Your Bump: New Mexico

This fact sheet focuses on New Mexico 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/newmexico/ 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, come armed with a plan to help your boss prepare for your absence and cover your workload while you are gone.
- Listen carefully and take careful notes after your conversation, especially about anything that sounded strange



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.

or wrong to you.

- Unfair treatment based on pregnancy (e.g. firing or penalizing you upon learning you are pregnant) is illegal.
- Depending on your situation and the city or state you work in, you may have a right to workplace changes to accommodate your pregnancy.

Workplace Accommodations

Under New Mexico law,² if you work for an employer with 4 or more employees, you have a right to reasonable accommodations for your needs arising from pregnancy, childbirth, or related conditions, so long as providing an accommodation would not impose an undue hardship on your employer. For example, common accommodations you can ask for include:

- modification or adaptation of the work environment
- acquisition of equipment for sitting
- more frequent or longer breaks
- ability to periodically eat or drink water
- periodic rest
- time off for medical appointments
- assistance with lifting or other manual labor
- modified work duties or job responsibilities
- modified work schedules
- other accommodations that would address your pregnancy or childbirth related needs.

Have a conversation with your medical provider about your job duties to understand if you may need changes at work because of your pregnancy-related needs. 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:

1. **Share with your boss that you have a need arising from your pregnancy, childbirth, or a related condition and that you need a reasonable accommodation on the job.**
To receive an accommodation under the New Mexico law, you should explain what your pregnancy-related limitations are (e.g., can't lift more than 50 pounds; can't stand for more than four hours without taking a break; must drink water regularly; etc.).
 - a. 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.
 - b. For accommodation ideas to match your needs, see the list above or 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.
2. **Specify for your boss 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

² N.M. Stat. Ann. §§ 28-1-2, 28-1-7.

- (<http://askjan.org/soar/other/preg.html>) for more information and ideas.
3. **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.).
 4. **If your boss requires a note from your doctor to confirm your 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," "avoid stress," 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/new-mexico-work-note-guidelines.pdf>
 5. **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 they ask for additional information to understand your limitation, you should provide it. If you have questions about whether a request is permissible, contact us at the phone numbers below.
- Your employer may not discriminate or retaliate against you (e.g., fire, penalize, or harass you) due to your pregnancy, childbirth, and related conditions, including for requesting or using an accommodation.
- You are not entitled to receive your first choice accommodation, but your boss cannot send you out on leave (paid or unpaid) that you did not voluntarily request if there is any other reasonable accommodation available that would address your pregnancy-related limitation(s).
- Your employer has to post up notices of these rights, as prepared by the New Mexico Human Rights Bureau, where you can see them in the workplace (like the break room).

Questions? Call:
A Better Balance at (833) 633-3222
Center for Worklife Law at (415) 703-8276