



PREGNANCY AND FAMILY FRIENDLY WORKPLACE LAWS

Pregnant Worker's Rights

A woman cannot be fired for becoming pregnant. Employers cannot refuse to hire or promote a woman because of pregnancy, childbirth or any other related medical condition. Employers have to provide accommodations to pregnant workers when they provide accommodations for workers “not so affected but similar in their ability or inability to work.” In other words, if an employer provides an accommodation for another employee whose ability to work is limited by something other than pregnancy, the employer has to provide an accommodation for a pregnant worker.

This does not cover all the needs pregnant workers may have. A pregnant worker may need an accommodation that the employer is not providing another employee. For example, a pregnant worker may need additional bathroom breaks when no other employee is given additional breaks. An employer is under no legal obligation in New Mexico to provide additional accommodations to pregnant workers. Currently, there is no state law requiring employers to provide all basic accommodations pregnant workers need that would not create an undue hardship on the business.

Qualifying for Unpaid Leave When Pregnant

If a woman has complications or needs to take leave during her pregnancy, she may qualify for protections under the federal Family Medical Leave Act (FMLA). If a woman has a serious health condition that prevents her from performing her job tasks, she may qualify for up to 12 weeks of unpaid leave in a year. Prenatal appointments can also qualify for Family Medical Leave.

A father-to-be may qualify for Family Medical Leave if he is caring for a spouse who has complication in her pregnancy resulting in a serious health condition. FMLA does not allow a woman's partner to take unpaid leave if the couple is not married. Caregivers must be a spouse, parent or child of the individual with a serious health condition. The law does not include domestic partnerships.

During these 12 weeks, an employee's job and health benefits are protected. An employer must allow her to return to her same or equivalent position. An employer is under no obligation to pay the employee during this time. An employer may require an employee to take any paid time off they have accrued during the time they are on FMLA Leave. When an individual is on FMLA Leave for a serious health condition, the employer can require the employee to use any sick leave the employee has accrued.



PREGNANCY AND FAMILY FRIENDLY WORKPLACE LAWS

To qualify for FMLA Leave, a pregnant worker or her spouse must work for a qualifying employer for a certain amount of time. All federal, state, and local employers and private employers with 50 or more employees must allow for Family Medical Leave. The employee must have worked at the company for 12 months and worked at least 1,250 hours during the previous year to qualify for Family Medical Leave. The 12 months of employment does not have to be consecutive.

An employer can require the employee to have a medical provider certify their serious health condition.

If an employee works for a private company with less than 50 employees or has not worked for a company for required amount of time, FMLA does not apply to the employee. New Mexico does not have a law that protects an employee's position or her health benefits if she does not qualify for FMLA Leave. An employee who does not qualify for FMLA Leave is not guaranteed any period of job-protected leave.

Leave for Pregnancy is Unpaid in New Mexico (No Temporary Disability Insurance)

New Mexico does not have a statewide temporary disability insurance program to provide for full or partial income replacement while a pregnant worker is on leave. This means that if an employee has to take leave due to pregnancy, there is no guarantee she will have any income.

Individual companies may offer paid time off, paid family leave, or similar benefits that would be available to the pregnant worker during leave, but are not required to provide any income to a pregnant worker on leave.

Leave for Bonding with a Child

An employee may qualify under the federal Family Medical Leave Act to a up to 12 weeks of unpaid leave to bond with a newborn child, a newly adopted child, or a newly placed foster child. Both parents may qualify to take up to 12 weeks for bonding within a year of the child's birth or placement. If both parents work for the same employer, the employer can divide the 12 weeks of unpaid leave between the parents. This division would cut the available leave time in half.

These 12 weeks of unpaid leave provide job and health benefit protections. An employee has the right to return to their previous or a similar position when they return from leave.

The employee's health benefits are to continue during their leave just as if they were continuing to work their typical schedule.



PREGNANCY AND FAMILY FRIENDLY WORKPLACE LAWS

An employee has to work for a qualifying employer for a certain amount of time to be eligible for FMLA Leave. All federal, state, and local employers and private employers with 50 or more employees must provide unpaid leave under FMLA. An employee must have worked for the employer for 12 months and worked at least 1,250 hours during the 12 months prior to taking the leave.

If an employee works for a private company with less than 50 employees or if the employee has not worked for their employer for required amount of time, they do not qualify for FMLA Leave.

New Mexico does not provide any additional protections to employees that do not qualify for FMLA Leave. Without a state law, these employees are not guaranteed any leave and are not provided with any job or health benefit protections. Employers can choose to provide leave to these employees, but are not required to under law.

No Paid Family Leave Required at the State or Federal Level

Neither the federal government or New Mexico have implemented paid family leave to care for a family member with a serious health condition or to bond with a newborn child, newly adopted child, or newly placed foster child. Four states (California, New Jersey, Rhode Island, and New York) have created a statewide paid family leave program.

State that have passed paid family leave laws created a state administered program which gives employees a percentage of their income while on Family Leave. These laws create a floor for the amount employees can earn during their Family Leave. Employers can supplement the state benefits to provide employees with their full income while the employee is on Family Leave. Implementing state family leave has proven to help small employers who cannot afford to provide paid family leave to compete with larger competitors.

A paid family program does not currently exist in the State of New Mexico. Employees that qualify for unpaid leave under FMLA or whose employers offer unpaid leave have no guarantee they will get any income replacement while out of work. An employer can choose to offer paid time off, paid family leave, or a similar benefit to employees, but employers in New Mexico are under no legal obligation to provide paid family leave. For employees without these benefits, anytime away from work will be unpaid.



PREGNANCY AND FAMILY FRIENDLY WORKPLACE LAWS

References:

The Pregnancy Discrimination Act included pregnancy, childbirth and related issues to be included in the definition of sex discrimination under the Civil Rights Act of 1964.

Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k)).

Family Medical Leave Act of 1993, Pub. L. No. 103-03, 107 Stat. 6 (codified at 29 USC §§ 2611-2619).

The United States Department of Labor Wage and Hour Division Family Medical Leave Act, FMLA Frequently Asked Questions. Available at <https://www.dol.gov/whd/fmla/fmla-faqs.htm>.

29 CFR 825.110.

Nat'l Partnership for Women and Families, *Expecting Better: A State-by-State Analysis of Laws That Help Expecting and New Parents*, Fourth Edition (August 2016).

About the Southwest Women's Law Center:

The Southwest Women's Law Center is a non-profit legal advocacy organization in New Mexico. Founded in 2005, the Center's mission is to provide women in New Mexico with the opportunity to achieve their full economic and personal potential by: eliminating gender bias, discrimination and harassment; lifting women and their families out of poverty; and ensuring access to comprehensive reproductive health services and information. SWLC integrates five tools to create social change: legal research; policy analysis; advocacy; community and stakeholder education; and coalition work on local, state and national levels. The Center's goals include ensuring women and families have the opportunity to have and maintain meaningful employment during a pregnancy and after the birth of a child, adoption of a child or placement of a foster child.

If you have questions or concerns about issues relating to employment and pregnancy, childbirth, or bonding time in New Mexico, please call the Southwest Women's Law Center at (505) 244-0502 or email us at info@swwomenslaw.org.