



Pregnant Workers' Rights in New Mexico

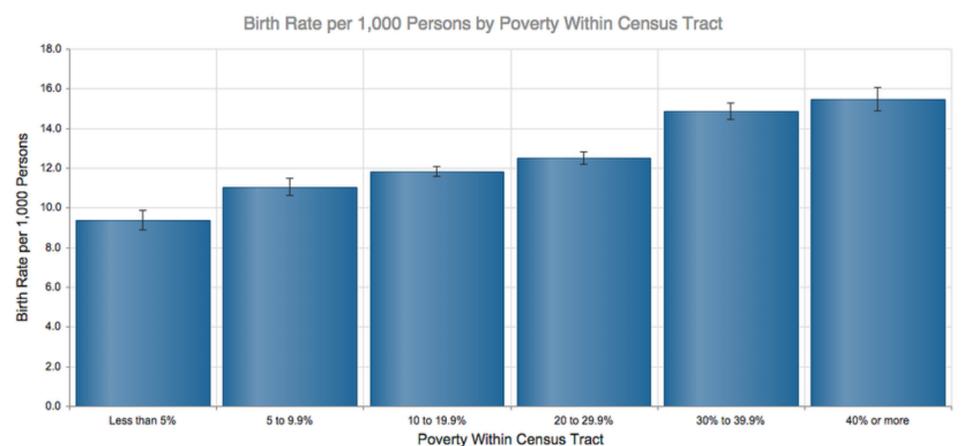
Effect of Discrimination Against Pregnant Workers

Women still face discrimination during their pregnancy. This discrimination comes in many forms, but one of the most detrimental types is from her employer. Current laws still fail to adequately protect women from these kinds of discrimination. Discrimination against pregnant workers can result in women being placed on unnecessary unpaid leave or even being fired. This creates financial struggles for women about to give birth.

While pregnancy discrimination hurts all women, it has a significant impact on low-income women who are already struggle with financial hardships and are more likely to live paycheck-to-paycheck. There are approximately 430,000 women of childbearing age in New Mexico. In 2014, New Mexico women gave birth to 25,985 children. New Mexicans living in poverty have a higher birth rate.

Everything about having an infant is expensive. Even with health insurance, a new mother will have to pay insurance deductibles, coinsurance, or copayments to give birth in a hospital. A new mother may need to purchase a crib, changing table, car seat, stroller, and clothing. She will have to deal with monthly costs such as formula and diapers. Families spend \$30 to \$80 a month on disposable diapers alone. All these additional expenses create financial hardships and make working during a pregnancy extremely important for some women.

Pregnancy can create limitations for working women. Doctors can give women weight lifting restrictions, tell them to eat and drink at certain times, advise women to stay off their feet, and advise them to take frequent breaks. Women also need to avoid exposure to certain chemicals, which may be present in their work environment.



<https://ibis.health.state.nm.us/query/result/birth/BirthPopSDH/BirthRate.html>

These limitations may not affect women employed in certain fields. Other women will need accommodations to continue working. Basic accommodations can usually make it possible for a woman to continue to working through most or all of her pregnancy. There are a wide range of basic accommodations that help women continue working during their pregnancy. These accommodations can include putting a stool out for a cashier, allowing a woman to keep a water bottle with her as she stocks shelves, permitting additional bathroom breaks for a customer service agent on the phone all day, or reassigning moving heavy items to another employee. Other women may need to be put on light duty. These women can include first



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responders and delivery drivers. Women who work at a facility with hazardous materials may need to be relocated away from potentially toxic chemicals. Finally some women may need adjustments to their schedules or time off work. In some professions, these limitations will not affect a woman's employment. However, other women need accommodations to continue working. Basic accommodations can usually make it possible for a woman to continue to working throughout most or all of her pregnancy. These accommodations can include putting a stool out for a cashier, allowing a woman to keep a water

There are laws to protect women who need accommodations, but they often fall short of what women really need. Employers put women on unpaid leave instead of giving them these basic accommodations. Other women face even harsher realities when not given an accommodation. Some are forced to decide between the health of their pregnancy and their employment. Women are forced to quit because their job is putting their pregnancy at risk or are fired because they are unable to perform as required due to limitations.

Federal Protections:

The Pregnancy Discrimination Act of 1978 (PDA) amended Title VII of the Civil Rights Act to prohibit sex discrimination on the basis of pregnancy and created basic protections for all pregnant workers in the United States. The PDA prohibits discrimination on the basis of pregnancy, childbirth and related medical conditions. A pregnant woman cannot be excluded from work because of her pregnancy.

An employer cannot refuse a woman a position because she is pregnant, cannot fire her for becoming pregnant, and cannot pass her over for a promotion because she is pregnant. An employer is required to give pregnant workers the same access to benefits as other workers. Employers must provide women who are pregnant the same health insurance as other workers. Finally, it requires employers to make some accommodations for some pregnant workers in need of accommodation to perform their job duties.

Under the PDA, an employer is required to treat a pregnant worker who needs accommodations

“as other persons not so affected but similar in their ability or inability to work.” This law does not specify anything else in regards to what accommodations are necessary, nor how an employer is to define a similarly affected employee. Pregnant workers are not actually guaranteed accommodations. If a business does not accommodate any other workers, the business is not required to accommodate pregnant workers. The law does not define what constitutes an accommodation. Under the PDA, being placed on unpaid leave could accommodate a woman needing an additional bathroom break during her shift. This action does nothing to ensure a woman actually continues to earn a paycheck. Courts have continuously interpreted the PDA very narrowly. It was not until 2015 when the United State Supreme Court decided *Young v. United Parcel Services, inc.* that the Courts took a step towards protecting some pregnant workers under the PDA.



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The Americans with Disabilities Amendment Act of 2008 expanded the Americans with Disabilities Act (ADA) to include additional disabilities. While pregnancy is still not considered a disability, some limitations pregnant women face may now be covered because of the expansion of the ADA. If an employer makes accommodations for a recognized disability, the PDA requires employers to make the same type of accommodations for pregnant workers. For example, an employer would have to make an accommodation for a pregnant worker's lifting restriction if they make an accommodation for a recognized disability with that same limitation. Therefore by expanding recognized disabilities, this amendment makes it more likely that another employee will be considered a "person not so affected but similar in their ability or inability to work" and make it more likely a pregnant worker will be given an accommodation. However, by not listing pregnancy as a disability, the ADA does not guarantee pregnant workers will always get appropriate accommodations needed.

Young v. United Parcel Services, Inc. In 2015, the Supreme Court of the United States decided *Young v. United Parcel Services, Inc.* This historic decision was a positive step in recognizing pregnant workers' rights. This case followed Peggy Young, a part-driver for UPS who was put on unnecessary, unpaid leave and ultimately fired from her job. In 2006, Young became pregnant and her doctor advised her not to lift more than 20 pounds. UPS requires drivers to have the ability to lift 70 pounds individually and 150 pounds with assistance. The company made exceptions to this rule when employees were injured on the job, had their Department of

Transportation Certificate revoked, or suffered from a disability covered by the ADA. Young requested to be put on light duty as an accommodation during her pregnancy. UPS denied her request. UPS claimed that Young did not meet their qualifications for an accommodation. The company said it did not give accommodations to employees unless they fell into one of the three categories above. Therefore, a pregnant worker would never be accommodated. The lower courts agreed with UPS and ruled the company had acted within the guidelines of the PDA. The Supreme Court reversed the lower court decision and said that Young had presented enough evidence that UPS violated the PDA. The case was sent back to the lower court to make a ruling based on the Supreme Court's guidance.

The Supreme Court's analysis highlights two important issues with the PDA. First, it does not give clear guidance to employers outlining when they must give a pregnant worker an accommodation. When an employer gives accommodations to some employees, but not others, it is unclear whether a pregnant worker must be accommodated. Second, it shows holes in the protections that pregnant workers are supposed to receive. Each pregnancy comes with a unique set of circumstances. Women are still facing termination or unnecessary, unpaid leave when they simply need a basic accommodation. Under current federal law, it is legal to place a pregnant woman needing few extra bathroom-breaks in a day or a water bottle at desk to be placed on unpaid leave as long as the company does not provide another employee a similar accommodation.



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Need for State Protection in New Mexico

Sixteen states and Washington D.C. have passed legislation to protect pregnant workers. Alaska, Connecticut, Louisiana have laws giving pregnant workers the lowest level of protection. These states have passed laws requiring employers to transfer a pregnant worker to a different position and/or location if medically necessary and such a position exists. Thirteen states and Washington D.C. require employers to give pregnant workers reasonable accommodations when requested and does not create an undue hardship. (Although, Texas' law only applies to county and municipal employers.) Only six of these states include a specific provision that the pregnant worker cannot be forced to take an unpaid leave if she can be reasonably accommodated.

New Mexico does not have any additional protections for pregnant workers. New Mexico employers must follow the ADA and the PDA, but do not have to go any further. This leaves New Mexican women at risk.

The Southwest Women's Law Center is calling on the New Mexico Legislature to make protecting pregnant workers from workplace discrimination a priority in the 2017 legislative session. New Mexican women deserve to work during their pregnancy and not be forced into unnecessary, unpaid leave when a basic accommodation would allow them to continue working. Pregnant workers should be reasonably accommodated unless those accommodations caused an undue hardship for an employer. New Mexico needs to guarantee women the right to continue working when a reasonable accommodation can be provided and forbid employers from forcing women on unnecessary, unpaid leave. Employers should not be permitted to fire women when an accommodation could allow them to do their jobs.

References:

The Baby Center, <http://www.babycenter.com/top-baby-costs>

New Mexico's Public Health Database (New Mexico's Indicator Based Information System)

<https://ibis.health.state.nm.us/query/result/birth/BirthPopCnty/BirthRate.html>

Mayo Clinic Recommendations For Pregnant Women <http://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/pregnancy/art-20047441?pg=1>

The Pregnancy Discrimination Act, 42 USC §2000e(k), <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

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Reasonable Accommodations for Pregnant Workers: State and Local Laws, National Partnership for Women and Families, <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/reasonable-accommodations-for-pregnant-workers-state-laws.pdf>