

Talking to Your Boss About Your Bump: New York

This fact sheet focuses on New York 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/new-york/ 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 (FMLA) or New York State Paid Family Leave (PFL).
- 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.



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.

- 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.
- 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 New York law³ that applies to employers with four or more employees, you have a right to a reasonable accommodation to address known medical conditions related to your pregnancy or childbirth, so long as an accommodation can be provided without imposing an undue hardship (significant difficulty or expense) on your employer. Additionally, if you work in New York City for an employer of four or more employees, you are entitled to reasonable accommodation for needs related to your pregnancy or childbirth.⁴ For example, you may ask for:

- acquisition or modification of equipment,
- job restructuring,
- modified work schedules, or
- other accommodations that would address your known conditions.

Have a conversation with your medical provider about your job duties to understand if you may need changes at work because of pregnancy or childbirth-related conditions. 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 condition and that you need a reasonable accommodation on the job.

² The New York State Paid Family Leave law guarantees covered parents paid time off to bond with a new child (including adopted and foster children). Moms have the right to take bonding leave at any point within the first 12 months following a child's birth or placement for adoption or foster care. If a child has two parents, *each* parent (of any gender) has the right to up to eight weeks of paid family leave (and ten weeks beginning in 2019). New York law also gives most workers the right to temporary disability insurance (TDI), sometimes known as disability benefits (DB). TDI gives you the right to partial wage replacement while you are unable to work due to an off-the-job illness or injury, including pregnancy-related disabilities and recovery from childbirth. If you gave birth, you may be able to receive TDI to recover from childbirth and then take paid family leave to bond with your child, though you cannot receive both benefits at the same time. Learn more at familyleaveworks.org.

³ 2015-S8, to be codified at NY Exec. Law §§ 292, 296.

⁴ N.Y. Admin. Code 8-107(22).

To receive an accommodation under the New York 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.).

- For accommodation ideas, see the list above or look at The Center for Worklife Law's list of pregnancy-related conditions and possible workplace accommodations (<https://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 requires a note from your doctor to confirm your medical need (which they may do under state law), 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.
- 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.
- Your boss may ask you to bring in a note from a healthcare professional to verify the existence of your pregnancy-related medical condition. You have the right to have that medical information kept confidential.
- 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