

PREGNANT AND POSTPARTUM NEBRASKANS

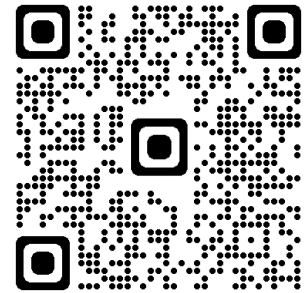
Whether it be in health care settings, at work, at school, or in other areas, Nebraskans who are pregnant are too often coerced, manipulated, discriminated against, or otherwise mistreated. This resource provides an overview of the rights of pregnant Nebraskans in various settings to ensure that pregnant Nebraskans can know their rights, assert them, and make the decisions that are best for themselves and their families.

This resource is not to be taken as legal advice.

You have the right to make your own decisions with respect to your pregnancy.

If you are pregnant, you may choose to continue your pregnancy and parent, continue your pregnancy and place the baby for adoption, or terminate the pregnancy by having an abortion.

If you choose to have an abortion, although abortion is legal in Nebraska, there are many restrictions that make accessing care difficult. For information on accessing abortion in Nebraska, scan the QR code.



LANGUAGE ACCESS

Healthcare providers that receive federal funds are required to provide language services to those with limited English proficiency (LEP).¹

- Patients are protected under Title VI of the Civil Rights Act from medical providers failing to offer adequate language services, such as translators or interpreters.²
- Recipients of Nebraska's Medicaid/Medicare programs are entitled to free language services.³ The following health networks have their own language services available: Bryan,⁴ CHI Health,⁵ Children's Hospital,⁶ Methodist Health,⁷ and Nebraska Medicine.⁸

HEALTHCARE

You have the right to complete information that you understand before you agree to any medical procedures or tests. You have the right to refuse any procedure or test.

1. 42 U.S.C. § 18116(a); Exec. Order. No. 13166 (2000) (requiring all agencies to develop services for LEP persons).

2. 45 C.F.R. § 80 (2022).

3. Nebraska Department of Health and Human Services, Notice of Nondiscrimination and Program Accessibility (2022), <https://dhhs.ne.gov/Documents/Notice%20of%20Nondiscrimination%20and%20Program%20Accessibility.pdf>.

4. Bryan Health, Non-Discrimination and Language Help, <https://www.bryanhealth.com/patients-visitors/information/non-discrimination-language-help/>.

5. CHI Health, Notice of Nondiscrimination, <https://www.chihealth.com/en/patients-visitors/language-access/nondiscrimination.html>.

6. Children's Hospital, Interpretive Services, <https://www.childrensomaha.org/hospital-experience/support-services/interpreter-services/>.

7. Methodist, Interpreter Services, <https://bestcare.org/patient-resources/patient-and-visitor-services/interpreter-services/>.

8. Nebraska Medicine, Interpretive Services, <https://www.nebraskamed.com/patients/interpretive-services>.

You have the right to informed consent and informed refusal.⁹ This means that your medical provider must explain medical procedures, tests, risks, benefits, and alternatives to you and get your consent before performing any tests or procedures. You have the right to ask questions to get the information you need to make a decision.

You have the right to receive medical care in an emergency situation or while you are in labor.

Federal law requires hospitals that receive federal funding and have an emergency department to admit and treat any patient who arrives under these circumstances.¹⁰ If you develop concern about being in labor and giving birth at a particular hospital, you have the right to leave and seek care elsewhere and if you are in the midst of active labor or another medical emergency, you cannot be turned away at hospitals that participate in the federal Medicare program and offer emergency services.¹¹ Keep in mind that this means you are entitled to care to stabilize you, but this does not entitle you to any care you want or care free of charge.¹² If you are in labor, care to make you stable generally includes giving birth.¹³

Generally, you have the ability to decide how, with whom, and in what setting you give birth. You also have the ability to change medical providers during your pregnancy.

You can choose whether you give birth in a hospital, at home, or a birth center and can also choose who is with you while you are in labor. It is important to know, however, that for those who elect to have a home birth in Nebraska, state law does not currently permit

healthcare providers, like certified nurse midwives, to be present. If you want to change providers during your pregnancy, you are generally able to do so. However, it is important to remember that hospital and birthing center policies, insurance coverage, and other factors can play into these decisions.

EDUCATION

If you are a student at a public K-12 school, public college or university or a private school that receives federal funds, Title IX protects you from pregnancy or parenting discrimination while you are at school.¹⁴ Schools must allow you to participate in classes and extracurricular activities just as any non-pregnant person or person without children may participate.¹⁵ If the school offers special instructional programs or classes for pregnant students, you have the right to choose to participate in those programs but you cannot be forced to participate.¹⁶ All absences related to pregnancy or childbirth must be excused as long as they are medically necessary. This includes allowing you to make up any missed work without it negatively impacting your grades.¹⁷

In Nebraska, school districts are required to adopt written policies to encourage the success of pregnant and parenting students, including providing alternative methods to complete coursework, accounting for absences relating to pregnancy, providing accommodations for breastfeeding students, and providing assistance in locating childcare.¹⁸

9. Neb. Rev. Stat. § 44-2816.

10. See Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (1986).

11. Id. at § 1395dd(b).

12. Id. at § 1395dd(h).

13. Id. at § 1395dd(e)(3).

14. 20 U.S.C. § 1681 (1972).

15. OFFICE OF CIV. RTS., U.S. DEPT. OF EDUC., Know Your Rights: Pregnant or Parenting? Title IX Protects You From Discrimination At School (Jan. 10, 2020),

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.html>.

16. Id.

17. Id.

18. Neb. Rev. Stat. § 79-2,151.

EMPLOYMENT

Many Nebraskans who are pregnant or postpartum have the right to reasonable accommodations at work.

Under Nebraska's Pregnant Workers' Fairness Act, you are eligible for reasonable accommodations if your employer has 15 or more employees¹⁹ and you are pregnant, have given birth,²⁰ or have a related medical condition.²⁰

If you are covered under the law, and you tell your employer about your condition and request an accommodation, your employer must provide you with a reasonable accommodation to address your limitation unless doing so would be an undue hardship (doesn't require "significant difficulty or expense"²¹) on the employer.

Under the law, a covered employer must treat an employee's pregnancy and related limitations in the same way they treat an employee's physical limitations from a disability.

The law also protects employees from retaliation for asserting their rights under the Nebraska Pregnant Worker's Fairness Act. Some examples of reasonable accommodations include "acquisition of equipment for sitting, more frequent or longer breaks and/or periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, break time and appropriate facilities for breast-feeding."²² The list is not exhaustive so other modifications may also qualify as reasonable accommodations.²³

Lincoln and Omaha also have ordinances that protect workers from discrimination on the basis of sex which includes pregnancy, childbirth, and related medical conditions. Lincoln's ordinance applies to employees who work for employers with four or more employees and Omaha's ordinance applies to employees who work for employers with six or more employees.²⁴

HOUSING

The Fair Housing Act protects parents and pregnant people from discrimination in many housing-related transactions. Discrimination based on parental status is considered a form of gender and familial status discrimination that is prohibited under federal law, Nebraska law, and under city

Connecting Needs During Pregnancy to Accommodations:

Need:

Frequent appointments later in pregnancy.

Accommodation:

Additional availability of remote work.

Need:

Sensitivity to food and other smells.

Accommodation: Ability to move desks or seats away from breakroom or kitchen.

Need:

Restriction on lifting more than a certain amount.

Accommodation:

Temporary restructuring of duties.

19 Neb. Rev. Stat. § 48-1102(2).

20. Neb. Rev. Stat. § 48-1102(18).

21. Neb. Rev. Stat. § 48-1102(11).

22. Neb. Rev. Stat. § 48-1107.02(2)(j).

23. Neb. Rev. Stat. § 48-1102(11).

24. Lincoln, Neb., Code § 11.08.040; Omaha, Neb., Code § 13-88, § 13-89.

ordinances in Lincoln and Omaha. This protection applies both when applying for a lease or mortgage and while you are an occupant. Your pregnancy or familial status cannot be considered in deciding if you are able to rent or get a mortgage for a property and properties cannot put unreasonable restrictions on property use that single out those with children.

Stories from Pregnant and Postpartum Nebraskans

Jillian



As a first time mom who works in the pregnancy and birth field I knew my right to ask questions and seek alternatives when it came to certain testing. It was incredibly important to me to have an alternative to the test for gestational diabetes because I did not want to ingest many of the ingredients the standard glucola drink contains. I had done research and knew the Fresh Test was FDA approved, only had three ingredients, and was being used as an alternative at many doctor's offices across the country. When I met with my midwife I expressed my concerns with the standard glucola drink and asked what my options were, at the time their clinic had the option between the glucola drink, two weeks of finger testing at home and tracking, or refusing the test but then I would be treated as if I had GD once at the hospital. I mentioned my desire for the Fresh Test and asked for them to get it approved by their Medical Director. After a few weeks of appointments and asking for updates each time we were told that it was approved to use as an alternative but I would have to pay out of pocket for the test and bring it to my next appointment. We were thrilled to have it approved not only for our pregnancy but for all families in the future.





Nyaduoth

In December 2021, I became a mom for the first time. I had a high-risk pregnancy, which was emotionally and physically taxing, but it was all worth it once I delivered a healthy little boy. I felt so much joy and peace as a new mom. As someone who grew up with eight siblings, I watched my mom breastfeed my younger siblings, and once I had a child of my own, I looked forward to bonding with and nourishing my own son in a similar manner. Returning to work with a newborn would be a difficult transition because I was solely breastfeeding. After 16 weeks postpartum, I returned to work. Upon returning to work as a bedside nurse and a breastfeeding mother, I quickly learned that there would be barriers to overcome.

To continue breastfeeding, I had to step away from patient care three times in a 12-hour shift to pump. Mindfulness and courtesy for my fellow staff and patients were required to schedule my pump breaks. There were a few of my coworkers who found my pumping breaks inconvenient. I was met with disgruntled behaviors that felt like I was being bullied and singled out for being a breastfeeding mother. The bias I endured impacted me greatly. It brought on anxiety, stress, and decreased breast milk supply. Disappointed about the treatment, I contacted my unit manager and found that despite being a mother, she was unsure of breastfeeding mothers' rights in the workplace. Due to the lack of solutions, I took it upon myself to seek answers.

The biased behavior and discrimination I experienced as a breastfeeding mom trickled down to other first-time moms who had returned to work and wanted to continue their breastfeeding journey. We experienced snide remarks concerning our pump breaks as well a lack of cooperation by staff. Despite conversing with my manager, I was not receiving the help or guidance I needed, so I arranged a meeting with human resources. Human resources guided me in understanding my rights as an exclusively breastfeeding mom. My rights included a private, non-closeted space to pump and no specific time frame on how long my pumping sessions should be, as long as I was courteous to my patients and coworkers while off the floor. It was astonishing to learn that although the policy and the procedures were not updated, I had rights. I took the information that I gathered when I spoke to human resources and arranged a follow-up meeting with my unit manager. We reflected on the rights of breastfeeding mothers, and this new information allowed me to distribute my knowledge to breastfeeding mothers on my floor. I knew the information and resources I received were insufficient, so I contacted the Director of Malone Maternal Wellness. She provided me with a contact at the American Civil Liberties Union (ACLU) to a senior legal and policy council to share my story and provide support if applicable. The discrimination I faced also sparked my curiosity to gain more knowledge about breastfeeding and its overall benefits. The Director of Malone Maternal Wellness, Jillian, informed me of a breastfeeding educator course. This newfound knowledge inspired me to learn even more, and I became a certified breastfeeding educator through Southeast Community College. Since receiving my certification, I have utilized the resources I have attained to provide a broader outreach to moms and advocate for moms and my community.

My journey in breastfeeding and my rights in the workplace continues as it has been a continuum of conversations with senior leaders, my floor managers, and co-workers.



Does Nebraska or Federal law offer any other protections for workers?

Nebraska law also makes it illegal to discriminate against a person who is pregnant, has given birth or has a related medical condition with regard to “job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”²⁵

The Pregnancy Discrimination Act (PDA) of Title VII of the Civil Rights Act, prohibits discrimination or harassment based on pregnancy including related medical conditions such as breastfeeding. The law requires that women and people affected by pregnancy, childbirth, or related medical conditions be treated the same as other employees for all employment-related purposes. This law applies to businesses with 15 or more employees—including all federal, state, and local government employers, employment agencies and labor organizations.²⁶

The Reasonable Break Time for Nursing Mothers law requires that covered employers allow eligible employees to pump breast milk at work for one year after a child’s birth. Employers must give you reasonable break time to pump and a private location, other than a bathroom, to express milk.²⁷ The Break Time for Nursing Mothers law also protects workers from retaliation (like mandatory reassignment or firing) for asserting their rights or filing a complaint about these issues.²⁸

This law applies to employers who are involved in interstate commerce and whose gross revenue is at least \$500,000/year.²⁹ Employers with fewer than 50 employees may seek exemption from the break time requirement if compliance with the provision would impose an undue hardship.³⁰ Only non-exempt (hourly) employees are covered under the Nursing Mothers provision, and workers in certain professions such as teachers, railway workers, and airline employees, are not covered.³¹

What can I do if I believe my employer is not complying with the law?

Contact the ACLU of Nebraska at gethelp@aclunebraska.org. You can also file a complaint with the Nebraska Equal Opportunity Commission. Visit <https://neoc.nebraska.gov/> to learn more about the process.

Further, if your employer is in Lincoln, you can file a complaint at <https://www.lincoln.ne.gov/City/Departments/City-Attorneys-Office/LCHR/Filing-a-Complaint>. If your employer is in Omaha, you can file a complaint at <https://humanrights.cityofomaha.org/>.

25. Neb. Rev. Stat. § 48-1107.01(2).

26. 42 U.S.C. §§ 2000e et seq.

27. 29 U.S.C. § 207(r).

28. 29 U.S.C. § 215(a)(3).

29. 29 U.S.C. § 203(s).

30. 29 U.S.C § 207(r)(3).

31. 29 U.S.C § 207.