

New Mexico's Pure Comparative Negligence Law and Pedestrian Accident Claims

An Albuquerque, NM pedestrian accident lawyer explains what to know

[Pedestrian accidents](#) happen often in New Mexico, especially in large cities like Santa Fe and Albuquerque, which consistently have one of the highest pedestrian injury rates in the country. When these accidents happen, expenses can add up fast, especially if you or a loved one sustained a serious injury that requires extensive medical care.

In such situations, you should be fairly compensated for all your accident-related expenses, especially if you did nothing wrong. But what if you were partially at fault for causing your pedestrian accident? Or what if the at-fault driver claims you somehow caused the accident? How does compensation work in such cases in New Mexico?

The key to understanding how much money you can – or should – receive often comes down to New Mexico's comparative negligence law. Albuquerque pedestrian accident lawyer [Andras Szantho](#) explains how the legal process works in New Mexico.

What is comparative negligence?

Comparative negligence is a legal principle that explains how blame is shared when more than one person plays a part in causing an accident. In pedestrian accidents, it means the fault may not rest entirely on the driver or the pedestrian – it can be divided between both parties.

Think of it like splitting a pie. If someone decides the driver was 70 percent responsible because they were speeding, but you were 30 percent responsible because you crossed outside of a crosswalk, you would still receive 70 percent of your total settlement or verdict. So if your injury-related expenses were worth \$100,000, you would receive \$70,000.

This also means you would be responsible for paying for the additional \$30,000 in accident-related expenses out of your own pocket. That's a lot of money. That's why it's important that fault is assigned accurately for your pedestrian accident.

What is New Mexico's pure comparative negligence law?

In New Mexico, the regulation that applies to how fault is assigned for injury accidents is known as the state's pure comparative negligence law. The details for this law can be found in [New Mexico Statute \(NMSA\) § 41-3A-1](#).

The reason the law is called "pure" comparative negligence is because everyone involved in the accident can receive compensation, even if they were mostly at fault. In some states, only individuals who are less than 50 percent at fault can receive compensation.

So if the tables were turned on the example above and you were found to be 30 percent at fault for your New Mexico pedestrian accident, you would receive \$30,000 in compensation for all your injury-related expenses. The remaining \$70,000 in accident-related expenses would be your responsibility.

Who decides who's at fault for causing a pedestrian accident?

After a pedestrian accident, several people and groups often have a lot to say about who was responsible. At first, the police who respond to the scene will write an accident report. That report often includes their observations, any traffic tickets given to the driver, and sometimes an opinion on who caused the crash. While useful, the police report is not the final word on fault.

Insurance companies also play a major role. The driver's insurance company will frequently investigate the accident. And if you have insurance coverage that applies, your insurance company will likely investigate your accident. But the driver's insurance company isn't on your side. They often have an agenda – to look for ways to reduce how much they have to pay injured pedestrians. That might mean trying to blame you or downplaying the driver's actions.

Then, if your case ends up in court, a judge or jury will often make the final decision about who was at fault. They will review evidence like witness statements, photos, video footage, and expert testimony.

Fortunately, you can be part of the decision-making process. And often, the best way to do so is by having an attorney speak on your behalf. Your lawyer can gather and present evidence to show the driver was responsible and to make sure your side of the story is fully heard.

Common situations where drivers blame pedestrians

Drivers and their insurance companies rarely accept full responsibility without a fight. When a pedestrian files an injury claim, the driver's insurer may argue that the pedestrian's own actions contributed to the crash. Common examples insurance companies try to use to blame pedestrians include:

- **Crossing outside a crosswalk (jaywalking):** Insurance companies often argue that pedestrians should have used a designated crosswalk.
- **Crossing against the light:** If a pedestrian enters the intersection while the "don't walk" signal is flashing, insurers may try to assign partial fault.
- **Walking while distracted:** Looking at a phone or listening to headphones may be used to argue that the pedestrian was not paying attention.
- **Wearing dark clothing at night:** Drivers may argue the pedestrian was difficult to see and should have taken steps to increase visibility.

- **Stepping suddenly into traffic:** Insurers may claim the driver did not have enough time to react.

It's important to remember that even if a pedestrian made one of these mistakes, it doesn't automatically eliminate their right to compensation. Drivers have a legal duty to operate their vehicles safely and watch out for pedestrians in Albuquerque or any community in New Mexico.

How New Mexico law protects pedestrians

New Mexico's traffic laws grant pedestrians certain rights when crossing the street or walking alongside a road. For example:

- Drivers must yield to pedestrians in marked crosswalks.
- Drivers must exercise "due care" to avoid colliding with any pedestrian.
- Special care must be taken when children, elderly pedestrians, or visibly impaired individuals are present.

In particular, New Mexico Statute 66-7-339 (which was updated in 2024) clearly outlines the rights and regulations governing pedestrians in the state. For example, a pedestrian can legally walk alongside a road if no sidewalks exist. Drivers must also "anticipate pedestrians' presence and exercise reasonable care."

Such rules and regulations leave many things open to legal interpretation. What is "reasonable care," for example? This is why it's critical that you have an experienced New Mexico pedestrian accident lawyer who thoroughly understands such laws and who keeps up to date on the latest developments in state laws that apply to pedestrians.

How does comparative negligence impact compensation?

The biggest impact of New Mexico's pure comparative negligence law is on the final settlement or verdict amount awarded to injury victims. Let's look at another example of a New Mexico pedestrian accident.

Imagine a pedestrian is hit while crossing the street. The total damages (the legal term for financial losses) add up to \$200,000. If an insurance company or jury decides the pedestrian was:

- **0 percent at fault:** They recover the full \$200,000.
- **25 percent at fault:** They recover \$150,000.
- **50 percent at fault:** They recover \$100,000.
- **80 percent at fault:** They receive \$40,000.

This is different from states with stricter rules, where being 50 percent or more at fault means you receive no compensation. In New Mexico, compensation is still possible no matter the level of fault, although the amount decreases as fault increases.

What role do insurance companies play in pure comparative negligence claims?

Insurance companies are skilled at using New Mexico's pure comparative negligence law to reduce payouts. Their goal is simple – to shift as much blame as possible onto the pedestrian. They may hire accident reconstruction experts, comb through medical records, and even scour social media for evidence that makes the pedestrian look careless or that their injury is a pre-existing medical condition unrelated to the accident.

Insurance adjusters are also trained to ask trick questions designed to make injured pedestrians say things that could harm their claim. During recorded statements, adjusters often try to make pedestrians say things like "I thought I could make it across" or "I didn't see the car at first." These statements can later be used as evidence of shared fault and reduced compensation.

This is why it's risky to deal directly with an insurance company after a New Mexico pedestrian accident. Insurance adjusters often have years of experience manipulating injured pedestrians into saying things that could harm their claim. Your lawyer can step in, communicate directly with insurance companies on your behalf, and make sure your side of the story gets the attention it deserves.

How can evidence strengthen my pedestrian injury claim?

Building a strong pedestrian accident claim often comes down to gathering the right evidence in support of your case. Some of the most important pieces of evidence can include:

- **Police reports:** These provide an official, unbiased record of the accident and may include traffic violations issued to the driver.
- **Surveillance or dashcam footage:** Cameras near intersections, businesses, or on vehicles can show what really happened. The camera doesn't lie.
- **Witness statements:** Bystanders who saw your accident can confirm the driver was speeding, distracted, or ran a red light right before causing your pedestrian accident.
- **Expert testimony:** Accident reconstruction experts can explain how the crash occurred based on sophisticated analysis of the evidence and whether your actions played a major or minor role.
- **Medical records:** These connect the pedestrian's injuries directly to the crash.

With strong evidence in support of your New Mexico pedestrian injury claim, it's possible to minimize the percentage of fault assigned to you and maximize the compensation awarded for your injury-related expenses.

What types of compensation are available in pedestrian accident claims?

Even when New Mexico's pure comparative negligence law reduces the total amount, injured pedestrians can still pursue a wide range of damages. You can generally seek compensation for:

- **Medical expenses:** Hospital bills, physical therapy, surgery, medication, and future medical care.
- **Lost income:** Wages lost while recovering, plus loss of future earning capacity.
- **Pain and suffering:** Compensation for physical pain and emotional distress caused by the accident.
- **Permanent disability or disfigurement:** Extra compensation for lasting injuries that change your life.
- **Wrongful death damages:** If the accident results in a fatality, families may pursue compensation for funeral costs and loss of future financial support.

These damages highlight why even a reduced settlement under comparative negligence can still be substantial – and why injured pedestrians should still take steps right away to demand the compensation they deserve. And one of the most important steps an injured New Mexico pedestrian can take is to contact a lawyer right away.

How can a pedestrian injury lawyer help with pure comparative negligence cases?

Comparative negligence cases are rarely simple. An experienced New Mexico pedestrian injury lawyer who regularly handles such cases understands both the law and the tactics insurance companies often use to shift blame. A lawyer can:

- Investigate your accident
- Collect evidence in support of your claim
- Identify traffic laws the driver violated
- Work with accident reconstruction experts to find out what really happened
- Negotiate with insurance companies to secure a fair settlement
- Represent you in court if the insurer refuses to pay fairly

Having someone who's skilled and experienced in your corner can level the playing field and keep the insurance company from taking advantage of you. This is why it's important to meet with an attorney as soon as possible after your New Mexico pedestrian accident.

Talk to an experienced New Mexico pedestrian injury accident lawyer

Pedestrian accidents can be traumatic, life-changing events. When drivers and their insurance companies try to shift blame onto injury victims, it can feel overwhelming, confusing, and frustrating.

Fortunately, an experienced New Mexico pedestrian injury lawyer who understands how state laws apply to injury claims can keep your case moving forward and on track.

If you or a loved one has been injured as a pedestrian in New Mexico, don't assume being blamed means you're out of options. Albuquerque pedestrian accident attorney Andras Szantho of the [Szantho Law Firm, P.C.](#), can give your case the focus and attention it deserves.

Get a legal warrior who will fight for you. [Contact us](#) and schedule a [free case evaluation](#). Our Albuquerque office is conveniently located on Prospect Avenue. We also have an office located in Santa Fe, New Mexico. Best of all, we work on a [contingency fee](#) basis. That means you only pay us if we obtain a financial settlement or verdict for you.