

Q&A: NEW YORK PAID FAMILY LEAVE

This document provides answers to questions about the New York Paid Family Leave (NY PFL) law. The [bill](#), which requires employers to provide paid family leave benefits to eligible employees as part of the state's disability insurance program, was signed on April 4, 2016 by New York Governor Andrew Cuomo.

Starting January 1, 2018, New York employees will be eligible for paid family leave benefits. The benefits will be funded by employees' payroll deductions and will be phased in over a period of four years. When the law is fully implemented in 2021, employees may be eligible for up to 12 weeks of paid family leave.

Updated September 6, 2018

What employers are affected by the new law?

Covered employers include those that are in the private sector and have one or more employees employed in New York on each of at least 30 days in any calendar year. (Public-sector employers are not obligated to comply, but can opt in.)

What employees are eligible?

A full or part-time employee, regardless of citizenship or immigration status, is eligible for paid family leave benefits if the employee works for a covered employer for 26 or more consecutive weeks.

Are self-employed individuals eligible?

Independent contractors are not eligible unless they purchase coverage for themselves. If they choose to purchase coverage, they must do so within 26 weeks of forming their business or becoming a member of an LLC/LLP. If they miss the window, they are subject to a 2-year waiting period.

They must still provide coverage for their employees and must be under the same policy if they choose coverage for themselves.

When does coverage begin?

Monday, January 1, 2018

What is the maximum employee contribution rate?

The rate will be updated annually thereafter, on September 1 of each year.

For 2019, the maximum employee contribution rate is 0.153% of the employee's annual wages for the calendar year (capped at 0.153% of New York's annualized average weekly wage, which is currently \$70,569.72). This means the maximum annual premium to be charged to an employee for paid family leave benefits coverage for 2019 is \$107.97.

For 2018, the maximum employee contribution rate is 0.126% of the employee's annual wages for the calendar year (capped at 0.126% of New York's annualized average weekly wage, which is currently \$67,907.84). This means the maximum annual premium to be charged to an employee for paid family leave benefits coverage for 2018 is \$85.56.

What are employers required to do under the law?

- **Funding:** Employers are not responsible for contributing to or funding paid family leave benefits. The premium will be fully funded by employees through payroll deductions. Paid family leave coverage must be included under the New York State disability policy held by employers.

Paycheck deductions: Employers will need to comply with the administrative task of deducting the appropriate amounts from employee paychecks to fund paid family leave benefits. The earliest date that payroll deductions could begin is July 1, 2017.

For 2019, employers can collect premiums by withholding 0.153% of every wage dollar paid until the \$107.97 annual cap is met, then stop withholding. This means that 0.153% of an employee's weekly wage may be higher or lower depending on payments, such as, for example, commissions, bonuses, or overtime in some weeks.

An employee's annual contribution cannot exceed the employee's per capita share of the actual annual premium charged for the same year. An employee's annual contribution must be determined consistent with the principle that employees should pay the total costs of the family leave premium.

- **Policies:** New York employers and employers with employees in New York should review their existing paid time off, leaves of absence and family and medical leave policies. These policies may need to be revised to comply with the new paid family leave program.
 - **Post a notice:** Employers will be required to conspicuously post a notice in the workplace to indicate their compliance with the NY PFL requirements.
 - **Written notice:** Employers must provide employees who take eight or more consecutive days of family leave with a written notice of their rights under the new law.
- **Employee absence costs:** Employers should prepare for the potential costs related to employee absences during their paid family leaves.
- **Comply with the new law or possibly face penalties:** An employer that fails to comply with the requirements of the NY PFL law is guilty of a misdemeanor and may face penalties, including fines and imprisonment.

What should an employer keep in mind when crafting a leave policy?

Employers should work with their poster provider and counsel involved in preparing the employee handbook to include information regarding NY PFL. Additionally, here are some considerations an employer should keep in mind when crafting their organization's leave policy:

- Decide if you are paying for the benefit or if your employees need to pay for the benefit.
- Develop a process for short-term employees to give them an opt-out right.
- Understand when leave must be granted (and when it can be denied).
- Employees out on NY PFL are legally entitled to continue to participate in benefit plans as if they had not taken leave. The employee is required to make normal contributions to keep benefits in force. Employers will need to develop a process for collecting contributions.
- Develop a process to receive payment directly from the carrier if you already provide generous leave benefits.
- Understand when you can force an employee to use vacation for their leave under FMLA and NY PFL.
- Ensure that all written materials regarding NY PFL and other leave policies are consistent. For example, the employee handbook, summary plan descriptions and leave policy should not contain any conflicting information regarding leave rights and/or benefits continuation while on leave.

What are the paid family leave benefits?

When fully implemented in 2021, eligible employees may receive up to 12 weeks of paid family leave within a 52-week calendar period at 67 percent of their average weekly wages. The amount of paid family leave benefits will be phased in as follows:

Date	Maximum Benefit within 52-week Period	Paid Family Leave Benefit
January 1, 2018	8 Weeks	50% of the employee's average weekly wage
January 1, 2019	10 Weeks	55% of the employee's average weekly wage
January 1, 2020	10 Weeks	60% of the employee's average weekly wage
January 1, 2021	12 Weeks	67% of the employee's average weekly wage

An employee's paid family leave benefits are also capped at the state average weekly wage. For example, effective January 1, 2018, eligible employees may receive up to 50 percent of their average weekly wage during family leave, not to exceed 50 percent of the state average weekly wage. The [New York State average weekly wage](#) is updated annually on July 1st. When an employee is eligible for paid family leave, there is no waiting period before employees are eligible to receive paid family leave benefits.

In addition, the [New York Department of Financial Services](#) has discretion in delaying the increases to family leave benefits if there are concerns about the stability of the program or potential negative effects on the economy.

How may family leave be used?

An employee may receive paid family leave benefits to:

- Provide care, including physical or psychological care, to a family member with a serious health condition
- Bond with their child during the first 12 months after the child's birth or after the placement of the child for adoption or foster care
- Address needs arising out of active duty in the U.S. Armed Forces

For purposes of family leave, "family member" is defined as a child, parent, grandparent, grandchild, spouse or domestic partner. The definition of a "serious health condition" is similar to the definition under the FMLA.

Multiple Employees Eligible for Same Family Member

If there are two employees of the same employer that are eligible for leave for the same family member, an employer may implement rules to limit employees from receiving paid family leave benefits at the same time. For example, an employer may restrict spouses (who both work for the employer) from taking family leave at the same time to care for their child.

Intermittent Leave

Paid family leave benefits may be received on an intermittent basis (less than a full workweek), in increments of one full day (that is, one-fifth of the weekly benefit).

Employee Notice and Certification

When the need for family leave is foreseeable, an employee may be required to provide his or her employer with 30 days' advance notice of the intention to take family leave. If the need for leave is not foreseeable, the employee must provide notice as soon as practicable.

An employee may be required to provide medical certification completed by a health care provider to support the need for family leave.

Interaction with Other Laws and Benefits

An employee is **not** able to receive both full disability benefits and paid family leave benefits at the same time. However, an employee may be able to supplement partial disability benefits with paid family leave benefits, up to the family leave benefit maximum, when combined with the partial disability benefit. No employee is entitled to more than 26 weeks of combined disability and family leave benefits during a 52-consecutive calendar week period.

In addition, any paid family leave benefit must run concurrently with an employee's available entitlement under the federal FMLA, unless an employer chooses to permit otherwise. No employee is entitled to more than 12 weeks of paid family leave benefits within a 52-week calendar period.

Also, an employee may choose, but cannot be required, to use accrued and available vacation or other paid time off to receive a full salary while on family leave (in lieu of the paid family leave benefit).

Employee Protections

An employee who takes time off for a permitted paid family leave reason must be reinstated to his or her original position upon return to work, or reinstated to a comparable position with equal pay, benefits and other terms and conditions of employment. In addition, an employer may not retaliate against an employee who takes paid family leave.

An employer must maintain an employee's group health plan benefits for the duration of paid family leave as if the employee had continued to work. Additionally, an employee may not lose any benefits accrued during employment prior to taking family leave.

Form Documents

- **Model Paid Family Leave Request (Form PFL-1)**. This document is to be completed by the eligible employee who is requesting time off. The employer must complete certain information on the form as well (Part B) and return the form to the employee within 3 days. The employee must submit the completed form and related documentation to the PFL carrier.
- In addition to the Leave Request and supporting documentation, the employee must also complete and submit a leave certification form, relevant to the type of leave:
 - **Bonding Certification Form (Form PFL-2)** to provide care to a newborn, adopted child or foster child
 - **Release of Personal Health Information (Form PFL-3) and Health Care Provider Certification (Form PFL-4)** to provide care to a family member with a serious health condition
 - **Military Qualifying Event Certification (Form PFL-5)** to address needs arising out of active military deployment

Links to Form Packets

The State has issued packets that include the necessary forms related to the type of leave request:

[Bond with a Child](#), [Care for Family Member with Health Condition](#) and [Assist Family Due to Active Deployment](#)

Waiver Form

Employers must give employees who do not expect to work long enough to qualify for PFL (e.g., a seasonal or temporary worker) the right to opt out of the program. If the employee chooses to opt out, they are to complete the following waiver form: [Employee Opt-Out of Paid Family Leave Benefits Form \(PFL Waiver\)](#)

Additional information is available on the [ny.gov website](#).

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