

New York Paid Family Leave

High Level Overview, Resources & FAQ's

NY PFL Top 5 Implementation Challenges



Managing Shared Entitlements



Changing Entitlements



Pre-Filing



Future Approvals



Payments: Calculating Correctly



High Level NY PFL Information

Start date: 01/01/2018

Period: Any 52-week period

Period Begin: The 1st day the EE takes PFL

Length: Full day increments only

Funded: 100% EE payroll deduction

- Max rate of EE contribution will be estimated annually
- NOT optional. All eligible EE's must participate

Documented: ER Disability Policy – Required

Guarantees: Job security

Health insurance continuance

ER Requirements: Must pay ER portion of health insurance premiums while EE is on PFL

Eligibility:

Private: All FT/PT employees

- Full-time: Employed 26 weeks
- Part-time: Employed 175 days

Public: Employer may opt into the program. May be covered by a CBA.

Public EE: Works for the state, a public authority or any government agency or instrumentality.

Use of Paid Leave: EE's choice to take / use sick and/or vacation pay.

High Level NY PFL Information continued

- Reasons:**
- Bond w/ child
 - Biological, foster, adoptive
 - AFTER birth / placement only
 - Within first 12 months
 - Care of relative w/ serious health condition
 - Definition of Serious Health Condition: (similar to federal FMLA) Illness, injury, impairment, or physical or mental condition involving inpatient care in a hospital, hospice, or residential care facility or continuing treatment or continuing supervision by a health care provider
 - Relationship:
 - » Spouse » Parent in-law
 - » Domestic partner » Grandparent
 - » Child » Grandchild
 - » Parent
 - Active Duty Deployment
 - Same provisions as eligible for federal FMLA when a family member (spouse, child, DP, or parent of EE) is called to active duty or notified of impending call or order of active duty

Benefit Length & Amount:

NOTE: Maximum PFL benefit is based on New York State Average Weekly Wage (NYSAWW). This is updated annually on July 1. This may be found here: https://labor.ny.gov/stats/avg_wkly_wage.shtm

Year	Weeks Available	Max % of Employee Salary	Cap % of State Average Weekly Wage
1/1/2018	8	50%	50%
1/1/2019	10	55%	55%
1/1/2020	10	60%	60%
1/1/2021	12	67%	67%

EXAMPLE: in 2018, an employee who made \$1,000 a week would receive a benefit of \$500 a week (50% of \$1,000). Another employee who makes \$2,000 a week would receive a benefit of approximately \$648, because this employee is capped at one-half of New York State's Average Weekly Wage (NYSAWW) —currently \$1,296. Half of that amount is the \$648 benefit.

- Process:**
- Employee
 - Foreseeable: 30 days' notice
 - Unforeseeable: As soon as possible
 - Employers
 - Self-Insured / Administered: Employer receives documentation and makes payment from the Special Fund for Disability Benefits
 - Insured: Employer's insurance carrier will gather information and make payment
 - Documentation
 - Birth:
 - » Birth certificate or other documentation of birth including mother's name and due/birth dates
 - » Secondary parent must provide documentation of paternity or evidence of relationship with named parent
 - Foster Care / Adoption:
 - » Notice of placement / evidence of adoption process
 - COFM:
 - » Healthcare Provider Certification
 - Military Leave:
 - » US DOL Military Family Leave Certification
 - » Military Duty papers
 - » Other documentation supporting reason for the leave
 - Timing
 - Payment or denial w/ explanation MUST be made within 18 days of filing a claim
 - Funded
 - 100% EE payroll deduction
 - Max rate of EE contribution will be est. annually
 - NOT optional. All eligible EE's must participate

FAQs

1. Do I have to follow my employer's policies for leave when requesting Paid Family Leave?

If your employer's rules about taking time off are less strict than the rules to take Paid Family Leave, your employer may require you to follow them.

2. How will I be paid?

You will be paid by check, direct deposit or debit card. Not every carrier will offer all three, but the carrier must pay you by check if you request this on your Request for Paid Family Leave.

3. When will I be paid?

Within 18 days of filing a complete claim for benefits, the Paid Family Leave insurance carrier (or your employer if they self-insure) must pay you or deny the claim and provide an explanation of the denial.

4. Will I be able to take Paid Family Leave on an hourly basis?

No, Paid Family Leave is only available in full day increments, but it can be taken intermittently, so you can take only the full days off during the week when you are caring for your relative or bonding with a child.

5. My employer offers benefits that go beyond the state's program, such as more than 12 weeks leave or higher wage replacement. Can I use both?

If your employer already has a Paid Family Leave program that fulfills or exceeds New York state law, you will receive only those benefits. The provisions of the Paid Family Leave law are a foundation; employers are free to exceed the minimum benefit required by law.

6. If I receive 8 weeks of Paid Family Leave benefits to bond with my newborn and then one of my parents becomes seriously ill later in the year, will I be able to receive Paid Family Leave benefits again since it is for a different reason?

No. An employee is only eligible for the maximum benefit for the year they apply.

7. Can I take both temporary disability and Paid Family Leave?

Your combined total disability leave and Paid Family Leave in any 52 week period may not exceed 26 weeks.

8. Does Paid Family Leave cost me anything?

New York's Paid Family Leave is entirely employee-funded. That is, the benefit is paid for by employees. Beginning on or after July 1, 2017, you will see a payroll deduction to pay for your Paid Family Leave benefit. The amount of the deduction will be established before July 2017.

9. Do I have to participate in the Paid Family Leave program?

Yes, Paid Family Leave is not optional for most employees. The exception is if you are in a job that will not allow you to attain the 26 continuous weeks or 175 days needed to qualify for Paid Family Leave (for example a seasonal worker).

10. I am pregnant. Will I be able to receive Paid Family Leave during my pregnancy?

Paid Family Leave only begins after birth. It is not available for pre-natal conditions.

11. Will I be able to use Paid Family Leave to take care of an eligible relative living outside New York?

Yes, as long as you are caring for an eligible family member and provide the medical certification.

12. I am not a US citizen. Will I still be eligible for Paid Family Leave?

Yes. Your citizenship status has no impact on your Paid Family Leave eligibility.

13. I am an undocumented worker. Can I take Paid Family Leave?

Yes. Your immigration status has no impact on your Paid Family Leave eligibility.

14. Will I be able to use Paid Family Leave if I work part-time?

In most instances, yes. You must work 175 days part-time to be eligible for a Paid Family Leave benefit.

15. I am collecting workers' compensation. Will I be able to use Paid Family Leave?

If you are not working and are collecting workers' compensation, you may not use Paid Family Leave.

16. I am a freelance worker. Am I eligible for Paid Family Leave?

If you do not have a regular employer and work as an independent contractor, you will not have Paid Family Leave benefits unless you purchase coverage for yourself.

17. I am a farm laborer. Am I eligible for Paid Family Leave?

If you work in service as a farm laborer, you are not eligible for disability or Paid Family Leave benefits.



FAQs continued

18. Will I have to take all of my sick time and/or vacation before I use Paid Family Leave?

An employer may permit you to use vacation or sick leave for full salary, but may not require you to use either.

19. Can I take Paid Family Leave and use my sick and/or vacation time together so that I receive my full salary?

Yes, if your employer allows you to use your sick and vacation time to allow you to receive your full salary, then you can do so.

20. Will my spouse and I be able to use Paid Family Leave at the same time?

If you and your spouse have different employers, you are both eligible to take Paid Family Leave at the same time. However, if you and your spouse work for the same employer, they can deny Paid Family Leave to more than one employee at the same time to care for the same family leave recipient, or to bond with a child.

21. Do other states have Paid Family Leave?

New York, California, Rhode Island, New Jersey and Washington are the only states in the nation that currently provide a Paid Family Leave benefit.

22. If my employer does not complete or fully complete the Employer section on the Request for Paid Family Leave, can my claim be denied?

No. Your claim may not be denied because the employer section of the Request for Paid Family Leave is incomplete.

23. What are the protections for employees who take Paid Family Leave?

An employer may not discriminate against employees for taking Paid Family Leave.

Employees are guaranteed job protection, with the same or a comparable job, upon return from Paid Family Leave. Employees are also guaranteed continuation of health insurance while out on Paid Family Leave.

Note: An employee who contributes to the cost of health insurance must continue to pay his or her portion of premium cost while out on Paid Family Leave.

24. Can my employer take any action against me for taking Paid Family Leave?

No. Your employer may not retaliate or discriminate against you because you have taken Paid Family Leave. If your employer does not return you to your same or a comparable job, you must formally request reinstatement.

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Helpful Websites for NY PFL

<https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-information-employers>

NY State website for Employer Answers

<https://www.ny.gov/sites/ny.gov/files/atoms/files/PFL%20Employer%20Presentation.pdf>

NY Employer Presentation Overview

https://www.ny.gov/sites/ny.gov/files/atoms/files/PFL_Employer_Lang_hb_v1.pdf

NY PFL

<http://www.hr.blr.com>

Legal Research

