



GET READY FOR NEW YORK'S PAID FAMILY LEAVE LAW

Effective January 1, 2018, all New York employees will be eligible for paid family leave, with the right to reinstatement to the same or equivalent position, under the New York Paid Family Leave law ("PFL"). The period of leave, and the amount of benefit, will be phased in over the course of four years. During 2018, eligible employees will be entitled to up to 8 weeks of leave at fifty percent of pay. **This paid leave benefit will be funded by employee contributions through payroll deductions, which employers are permitted to start making on July 1, 2017**, and will be included in the employer's statutory disability policy. The Workers' Compensation Board has issued proposed regulations covering the implementation of this new leave benefit. This alert will be updated when those regulations become final.

The PFL provides partial income replacement, based on a percentage of average weekly pay according to phase-in table below. When the PFL law is fully implemented in 2021, employees will be eligible for 12 weeks of leave paid at 67% of the **lower** of (i) the employee's average weekly wage, or (ii) the state's average weekly wage (currently \$1,296 as of 2015; this will be updated in July).

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%

Note that these state family leave benefits are the maximum which an individual can receive in any one 52-week period, even if they have changed employers.

What employers are covered?

All employers with at least one employee on each of 30 days in any year are covered. Note, by contrast, that the federal Family and Medical Leave Act ("FMLA") covers employers with at least 50 or more employees and provides 12 weeks of unpaid leave.

Who is eligible?

Full-time employees, including noncitizens, who have worked for 26 consecutive weeks are eligible. Part-time employees employed for 175 days are eligible to participate in a prorated benefit. Unlike full-time employees, they are permitted to opt out of the payroll deduction, but are then ineligible to receive the benefit.

An organization that is a party to a collective bargaining agreement that provides at least as favorable benefits to covered union employees will be relieved of providing the PFL to those employees.

What events are covered?

Several significant life events are covered by this new leave. Paid leave is available to employees for (1) caring for a new child during the first 12 months from birth, adoption or foster care placement, (2) caring for a family member with a serious health condition (“family member” means an employee’s child, parent, parent-in-law, grandchild, grandparent, spouse or domestic partner), or (3) taking care of a “qualifying exigency” when a spouse, domestic partner, child or parent, is called to active military service. Unlike leave for an employee’s own disability, there is no seven-day waiting period.

Note, PFL does not cover leave for an employee’s own serious illness or disability. Rather, the PFL covers only leave related to the care of a family member. Employees who are seriously ill or disabled must rely on leave and benefits under the organization’s disability leave policy, paid sick leave program, or the FMLA if the organization has 50 or more employees.

A “serious health condition” under PFL, following the definitions under FMLA, includes illness, injury, impairment or a physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Similarly, the scope of “qualifying exigency” related to a family member’s active military duty also follows the interpretations under FMLA.

How does leave under PFL interact with other leaves?

The organization can permit, but not require, employees to use paid sick leave or vacation benefits during a leave under PFL. If the organization’s policy permits, and the employee exercises, options to receive full salary under another leave benefit while the employee is out on PFL, the organization can request reimbursement from the disability carrier before PFL benefits are paid by the carrier.

An employee cannot receive benefits under both disability leave insurance and the PFL at the same time (for instance, a birth mother cannot receive both disability and PFL benefits during the post-partum period).

What notice provisions are required to take a paid leave?

Employees must provide 30 days’ notice of foreseeable absences under the PFL, and as much notice as practicable for unforeseen events. The organization and employees will also need to adhere to the insurance carrier’s regular claims procedures.

How should PFL be documented?

Employees seeking PFL related to the birth, adoption or foster care of a child must submit the birth certificate and appropriate documentation of the adoption or foster care arrangement. Employees seeking PFL based upon a serious health condition of a family member must submit a medical certification from the health care provider. Employees

seeking leave for a qualifying exigency must provide a copy of the military orders of the family member, and other supporting documentation.

The insurance carrier will require forms for submitting claims. New York State will issue forms (PLF-1), but organizations may use their own forms if they provide the same information.

What employment protections are triggered by PFL?

Organizations cannot discriminate or retaliate against employees for taking paid leave under the PFL.

At the end of the paid family leave, the employees must be reinstated to the same or comparable position that they held prior to the leave. During the course of the paid leave, employees will continue to be covered under any employer group health insurance that they are participating in, provided that they continue to pay the applicable employee share of the cost of the health insurance benefit.

Dispute Resolution under PFL:

Disputes about claims (such as eligibility, benefit or duration) under PFL will be resolved in arbitration procedures under the Workers' Compensation Law. Disputes related to discrimination or retaliation will be heard by the Workers' Compensation Board.

What are the penalties for noncompliance?

An organization that fails to provide coverage for paid family leave will be liable for .5% of the weekly payroll during the lapse, and an additional penalty of up to \$500. If the organization fails to continue an employee's health insurance during the leave, it will be liable for the employee's medical costs during the leave.

How should nonprofits prepare for the PFL?

Organizations should contact their disability insurance carrier to prepare for the payroll deductions and administration of this benefit. For ease of administration, the uniform annual periods should be a coordinated among the PFL and other disability or other leave benefits, such as calendar year, fiscal year, etc.

Organizations should update their handbooks to include PFL and describe how that benefit coordinates with other paid time off benefits or leaves. In any event, in a handbook or otherwise, organizations will be required to provide written guidance to employees about their rights and obligations, including claims procedures, under the PFL. Posting of rights and obligations under the PFL will also be required.

Helpful Link

<https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-how-it-works>

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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