

COMPLYING WITH NEW YORK'S PAID FAMILY LEAVE LAW
Including PFL model notice and policies

The New York Paid Family Leave law (PFL) requires all private employers in New York State, including nonprofits, to provide their employees with paid leave, during which group health insurance must be maintained, and after which the employee must be reinstated to the same or equivalent position. PFL is available for bonding with a new child, caring for a family member's serious health condition, and handling military exigencies. **This paid leave benefit is funded by employee contributions through payroll deductions**, and is included in the employer's statutory disability policy. The period of leave, and the amount of benefit, were phased in gradually after the law became effective on January 1, 2018.

Employers are required to maintain a written PFL policy and to give their employees information about the new law. The Workers' Compensation Board, which enforces PFL, has published a manual explaining what such policies should cover. The manual also contains model language with information about the new law which employers can distribute to fulfill this requirement (see pp. 3-7 of the Manual). A link to Model Language for Employee Materials can be found here: https://www.ny.gov/sites/ny.gov/files/atoms/files/PFL_Employer_Lang_hb_v1.pdf

What Benefits Does PFL provide?

The PFL provides partial income replacement, based on a percentage of average weekly pay. Employees are 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 (\$1,594.57 for 2022; this number is updated annually). **The maximum weekly benefit for 2022 is \$1,068.36.** Payroll deductions for 2022 are set at 0.511% of gross weekly wages.

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 private 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 (= at least 20 hours per week) after working 26 consecutive weeks
- Part-time employees (= fewer than 20 hours per week) after working 175 days are eligible for a prorated benefit.

- Employees who are unlikely to work the minimum number of hours to qualify for PFL must be permitted to opt out of the payroll deduction, but are then ineligible to receive the benefit. The waiver form is available here:
<https://www.ny.gov/sites/ny.gov/files/atoms/files/PFLWaiver.pdf>
- Noncitizen employees are eligible if otherwise eligible.
- 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 PFL to those employees.

What events are covered?

Several significant life events are covered by this leave. Paid leave is available to employees for

- caring for a new child during the first 12 months from birth, adoption or foster care placement,
- caring for a family member with a serious health condition (“family member” is defined more broadly than in the FMLA and means an employee’s child, parent, parent-in-law, grandchild, grandparent, spouse or domestic partner), or
- dealing with a “qualifying exigency” when a spouse, domestic partner, child or parent, is called to active military service.
- 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.

IMPORTANT: 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 and the employee is eligible.

- Unlike leave for an employee’s own disability, there is no seven-day waiting period.

How does leave under PFL interact with other leaves?

The organization can require that PFL and FMLA leaves run concurrently, but must notify the employee prior to the start of the leave. Otherwise, the employee must be allowed to take the leaves consecutively. The organization can permit, but not require, employees to use paid sick leave¹ or vacation benefits during a leave under PFL. However, if the employer requires employees to use paid sick leave or vacation benefits during FMLA, this will be allowed where an employee qualifies for both FMLA and PFL. If the organization’s policy permits, and the employee exercises,

¹ The New York City Department of Consumer and Worker Protection FAQ, Question 8, suggests that an employer can require sick days taken under the New York City Earned Sick Time Act to run concurrently with either PFL or FMLA. See <https://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeave-FAQs.pdf>.

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, but can receive disability benefits first and then go on to PFL benefits).

What notice provisions are required to take a paid leave?

Employees must provide:

- 30 days' notice for foreseeable absences.
- as much notice as practicable for unforeseeable absences.
- 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.
- for a serious health condition of a family member must submit a medical certification from the health care provider.
- 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 has issued forms (PLF-1), but organizations may use their own forms if they provide the same information. In addition to the employer's completing the PLF-1, the employee must complete the PLF-2 to request leave for bonding with a new child; the PLF-3 to request leave for the serious medical condition of a family member; and the PLF-5 to request leave for military exigency.

Instructions can be found here: <https://www.ny.gov/sites/default/files/atoms/files/military.pdf>

What employment protections are triggered by PFL?

Employers must give employees who have requested PFL leave, or have requested a leave that could also qualify for PFL leave, a Statement of Rights under the PFL, which can be found here: <https://www.ny.gov/sites/ny.gov/files/atoms/files/1711-PFL-271SFormFill.pdf>

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 must 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 comply with the PFL?

- Organizations should **contact their disability insurance carrier** to arrange for the payroll deductions and administration of this benefit. For ease of administration, the uniform annual periods should be coordinated among the PFL and other disability or other leave benefits, such as calendar year, fiscal year, etc.
- Organizations should include PFL **in their handbooks** and describe how that benefit coordinates with other paid time off benefits or leaves.
- In a handbook or otherwise, organizations are 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 is required. Posters are available from the disability insurance carrier.

Helpful Links

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

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