

Employer Alert

Are You Prepared for New York's Paid Family Leave Law?

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New York's Paid Family Leave law (PFL) will go into effect on January 1, 2018. Although that date is still several months away, there are things employers can *and should* do now to prepare.

PFL provides wage replacement, benefits continuation and job security to employees who take time off to bond with a child, care for a close relative with a serious health condition, or assist with family obligations when a family member is called to active military service. The law requires employers to maintain an employee's health insurance coverage during the leave and reinstate the employee at the conclusion of the leave period. All private employers, regardless of size, are covered by PFL.

To comply with the law, employers must obtain paid family leave insurance coverage by January 1, 2018 as part of their disability policy, or self-insure. The cost of the insurance premiums will be funded by employee payroll deductions. Employers may begin taking those deductions now. The maximum rate of employee contributions will be established each year. The current maximum employee contribution is .126% of an employee's weekly wage, up to a maximum deduction of \$1.65 per week.

Some additional details about the law and steps employers can take now are outlined below.

Employee Eligibility

Employees who are regularly scheduled to work 20 or more hours per week are eligible for PFL benefits 26 weeks from their date of hire.

Employees who are regularly scheduled to work fewer than 20 hours per week become eligible for PFL benefits after working for 175 days.

Employers must offer a waiver of family leave benefits to those employees who will not meet the PFL eligibility thresholds (26 weeks or 175 days of employment). However, once the employer becomes aware of a change in the employee's schedule that would result in the employee becoming eligible for PFL, the employer is required to notify the employee and begin deducting contributions, including any retroactive amounts due from the date of hire.

Reasons for Leave

(1) New Child Bonding

Maternity or paternity leave can be taken during the 12 months following the birth, adoption or fostering of a child.

If an employee has, adopts or fosters a child this year (before the PFL goes into effect), they will be eligible for PFL once the law does go into effect, during the 12-month period following the child's birth or placement.

(2) Care for Relative

PFL leave can be taken to care for a close relative with a serious health condition.

A close relative includes a spouse, domestic partner, child, parent, parent in-law, grandparent, or grandchild.

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves (i) inpatient care in a hospital, hospice, or residential health care facility; or (ii) continuing treatment or continuing supervision by a health care provider.

(3) Qualifying Military Event

Leave is available under a number of circumstances to help relieve family pressures when a spouse, child, domestic partner or parent of an employee is on active duty or has been notified of an impending call or order of active duty.

Notably, PFL cannot be used for one's own disability or qualifying military event.

Amount of Leave and Pay

Paid Family Leave benefits will be phased in over four years, as set out in the following schedule:

| Year | Weeks of Leave Available in 52-Week Period | Paid Leave Benefits |
|-------------|---|---|
| 1/1/2018 | 8 | 50% of employee's average weekly wage, up to 50% of the New York State average weekly wage ("SAWW") |
| 1/1/2019 | 10 | 55% of employee's average weekly wage, up to 55% of SAWW |
| 1/1/2020 | 10 | 60% of employee's average weekly wage, up to 60% of SAWW |
| 1/1/2021 | 12 | 67% of employee's average weekly wage, up to 67% of SAWW |

The [ny.gov website](http://ny.gov) sets out the following example:

“[I]n 2018, an employee who makes \$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 \$652.96, because this employee is capped at one-half of New York State's Average Weekly Wage — currently \$1,305.92. Half of that amount is the \$652.96 benefit.”

The SAWW will be set each year by the New York State Department of Labor.

Leave can be taken in a minimum of full-day increments. It can be taken either in blocks of time or intermittently. When an employee takes leave in daily increments, the maximum number of days an employee working 5 or more days per week can take in a 52-week period is 60 days.

Job and Benefits Protection

A covered employee who has received family leave benefits must be reinstated to his or her same or comparable employment upon conclusion of the leave.

An employee who receives health insurance from his or her employer is entitled to the continuation of that insurance coverage during paid family leave on the same terms as if he or she had continued to work. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

Employers may not discriminate against employees for taking PFL.

Employee Notice

An employee seeking to take PFL must notify his or her employer with at least 30 days' advance notice if the need for leave is foreseeable, or otherwise as soon as practicable.

Although an employee must provide notice sufficient to make the employer aware of the qualifying event and the anticipated timing and duration of the leave, the employee need not explicitly reference the PFL or family leave. It is the employer's responsibility to seek further information from the employee to determine whether PFL is being sought.

Other Leave

Paid Family Leave may overlap with an employee's right to leave under other laws or pursuant to company policy.

Employers may permit, but cannot compel, employees to use their sick, vacation or other paid time off during PFL so that they can receive full pay. If an employer offers, and the employee chooses to use paid time off to receive full pay during the leave, the employer may request reimbursement out of any family leave benefits due or to become due by filing a claim for reimbursement with the insurance carrier prior to the carrier's payment of such family leave benefits.

When an employee qualifies for leave under both the PFL and FMLA, the leave under both laws will run concurrently. It remains the employer's responsibility to provide the employee with the required FMLA notice.

Employees may not receive state disability benefits and family leave benefits during the same time period.

Employer Policy and Posting Requirements

Employers will be required to provide employees with written guidance concerning the law. Those employers that maintain a handbook or written policies on benefits and leave must include information concerning the PFL within such handbook or policies. The guidance must include information concerning employees' rights and obligations under PFL, and how to file a claim.

In addition, employers must display or post, and keep posted, a typewritten or printed notice concerning PFL in a form prescribed by the Chair of the Workers' Compensation Board. The notice must be displayed in plain view where all employees can readily view it.

The New York Workers Compensation Board will continue to issue guidance concerning the PFL to its PFL website - <https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-how-it-works>.

What to Do Now

As an employer, you may be wondering what you can do to prepare for this new law. Here are some steps you should take now:

- Contact your current New York Disability Benefits carrier to learn about adding Paid Family Leave coverage.
- Begin taking payroll deductions for PFL, or prepare to start deductions by January 1.
- Draft your PFL policy and determine how you will distribute or notify employees of the new policy.
- Begin to train your human resources, benefits and management teams concerning how to identify, respond to and manage requests for leave and how to handle the interplay between PFL and your current company policies.
- Consult with your employment counsel to ensure that you are fully prepared to comply with the new law.

For more information about this topic or other employment-related issues, contact Sara Kula at sdk@ddw-law.com or 914-607-3223.

This Employer Alert has been prepared for general informational purposes only and does not, and is not intended to, constitute legal advice.