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# New York Paid Family Leave Benefits Law Updates

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Beginning on January 1, 2018, employers in New York must offer family leave benefits to eligible employees under the New York Paid Family Leave Benefits Law (PFL), including partial wage replacement and job protection for up to eight weeks. Eligible employees may take PFL leave with a new child, to care for a family member with a serious health condition or to assist family members deployed on active military duty. Unless self-funded, employers must procure a PFL policy from a private insurer or the New York State Insurance Fund. However, the PFL policy premiums may be funded through employee payroll deductions.

### Employee entitlements:

1. **Time off** – Eight weeks of family leave.
2. **Salary supplementation** – Insurance funded salary supplementation during family leave.
3. **Job protection**
4. **Continued health insurance coverage during leave**

### Employer action items:

1. **Coverage** – Obtain PFL insurance coverage.
2. **Handbook** – Update employee handbooks to include written guidance on the PFL.
3. **Poster** – Post a notice concerning PFL.
4. **Payroll Deductions** – Ask your payroll provider to make the maximum allowable payroll deduction to offset insurance coverage costs (optional).

### Which employers are covered?

All employers covered by the New York Workers' Compensation Law are covered, regardless of the number of employees employed by the employer.

### How do employers obtain coverage?

The employer must either self-insure or obtain a paid family leave insurance policy through an insurance company. We anticipate that the vast majority of employers will obtain coverage through their existing disability insurer because self-insurance in New York requires a deposit with the State of New York, among other requirements.

### What handbook modifications and postings are required?

Employers must update their employee handbooks to include written guidance on the PFL, including employee rights and obligations and information on how to file a claim for paid family leave. If there's no employee handbook, employers must provide a standalone summary of the above information. Additionally, employers must post a notice concerning PFL, in a form approved by the Chair of the Workers' Compensation Board, in a conspicuous place visible to employees and applicants (similar to other required labor posters).

### How do payroll deductions work?

Payroll deductions to offset or satisfy PFL policy premiums are not required. However, employers may make deductions from employee wages in 2018 of the lesser of (i) 0.126% of an employee's weekly wage, or (ii) $1.65/week. The maximum contribution will be adjusted annually by the NYS Superintendent of Financial Services. Employers should coordinate with their payroll providers to ensure that the deductions are properly and timely administered.

### Which employees are eligible?

Employees with a regular schedule of 20 or more hours per week are eligible for PFL after 26 weeks of employment, and employees with a regular schedule of less than 20 hours per week are eligible after 175 days worked.

### What events trigger the leave eligibility?

Under the PFL, eligible employees may take leave for: (a) child bonding leave after birth/adoption/foster care placement; (b) caring for a close relative (e.g., spouse, child, domestic partner, parent, grandparent, grandchild) with a serious health condition; and (c) active duty deployment of a spouse, child, domestic partner or parent. Under the PFL, a "serious health condition" includes 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. Notably, the PFL does not cover the employee's own serious health conditions.

### What is the specific salary supplement available to covered employees?

| Year | Weeks Available | Max % of Employee Average Weekly Wage | Cap % of State Average Weekly Wage (currently $1,305.92) |
|---|---|---|---|
| 2018 | 8 | 50% | 50% |
| 2019 | 10 | 55% | 55% |
| 2020 | 10 | 60% | 60% |
| 2021 | 12 | 67% | 67% |

According to New York State: "For example, in 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."

### What is the job protection component of the law?

An employee taking PFL is entitled to be restored to the same position held prior to leave commencing or to a comparable position with comparable employment benefits, pay and other terms and conditions of employment. PFL may not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. PFL need not count towards the accrual of any seniority or employment benefits during any period of leave or any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

### What happens to employee health insurance coverage during PFL?

Employees are guaranteed continued health insurance during PFL, although the employee must continue to contribute to the cost of the health insurance premium cost while on PFL.

### Can the employer require employees to use paid time off during PFL? Or FMLA leave?

Employers can allow the use of paid time off but cannot require the use of paid time off, unless the leave runs concurrently with FMLA (subject to the provisions of the FMLA and the employer's FMLA policy). If an employee uses paid time off instead of paid family leave (remember, PFL is only a partial salary supplement), the employer can seek reimbursement from the insurer. With respect to FMLA leave, provided that the employer notifies the employee that the PFL is being designated under the FMLA and the employer provides the employee with the required FMLA notice and certification forms, an employer can require that an employee uses FMLA concurrently with PFL, if applicable. If an employee takes FMLA but does not apply for PFL, the employer and carrier can count the leave against the employee's PFL entitlement.

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