



< New York State Paid Family Leave

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# New York State Paid Family Leave: Employers

## Overview

Businesses play an important role in implementing Paid Family Leave. Starting January 1, 2018, nearly all private employees in New York State will be eligible for Paid Family Leave.

Insurance coverage for Paid Family Leave benefits generally will be added to an employer's existing disability benefits policy. Paid Family Leave coverage is funded by employee payroll contributions. Use the [ny.gov/pflcalculator](http://ny.gov/pflcalculator) to get an estimate of an employee's weekly deduction.

Through Paid Family Leave, employers may increase recruitment and retention as eligible employees are guaranteed:

- paid time off for 8 weeks in 2018, increasing to 12 weeks by 2021;
- job protection upon return from Paid Family Leave; and
- continuation of health insurance while out on Paid Family Leave.

## Employers' Checklist: What You Need to Do Now

### Ensure you have Paid Family Leave Coverage.

- Most private employers with one or more employees are required to obtain Paid Family Leave insurance. Contact your broker or insurer to get information about available policies
- Generally, Paid Family Leave insurance will be added to the disability insurance policy you already carry
- If you are self-insured for disability, you may purchase a separate Paid Family Leave policy or apply to self-insure

### Post a Workforce Notice.

- Your insurance carrier will provide a Notice of Compliance stating you have Paid Family Leave insurance
- If you are self-insured, you can get this notice by contacting the Board at [Certificates@wcb.ny.gov](mailto:Certificates@wcb.ny.gov) to obtain the required notice which is not available on this website
- Post and maintain this notice in a conspicuous place, like what is required for Worker's Compensation and Disability Insurance coverage

### Inform Your Employees About Paid Family Leave.

- Update appropriate written materials that you give your employees, such as employee handbooks, to include Paid Family Leave information
- If you do not have an employee handbook, provide written guidance to employees on their rights and obligations under Paid Family Leave, including information on how to request leave

### **Update Your Payroll Processes.**

- Update internal processes or work with your external payroll manager to collect the employee payroll withholdings or contributions that pay for the insurance. Use the [ny.gov/pfcalculator](https://www.ny.gov/pfcalculator) to get an estimate of an employee's weekly deduction.

### **Inform Non-Eligible Employees About Waivers.**

- Identify employees who will not qualify for the minimum amount of time required for eligibility ([see Employee Eligibility section](#)) and let them know they can choose to waive coverage
- Employees will need to complete a waiver and a template waiver form is available at [ny.gov/PaidFamilyLeave](https://www.ny.gov/PaidFamilyLeave)
- Keep a copy of completed waivers on file

### **Familiarize Yourself with Paid Family Leave Forms and Other Resources.**

- Paid Family Leave request and waiver forms are available in the forms section of this website
- For updates on Paid Family Leave, please [click here](#) to subscribe to updates

### **Contact Us For Assistance.**

- Call us 8:30am – 4:30pm ET at 844-337-6303, Monday – Friday

REMEMBER: An employer may not discriminate or retaliate against employees for requesting or taking Paid Family Leave.

## **Insurance Coverage**

Paid Family Leave coverage will typically be added to an employer's existing disability insurance policy.

Employers may deduct the premium cost for the Paid Family Leave insurance policy from employees through a payroll deduction or choose to cover the cost themselves.

The maximum employee contribution in 2018 is 0.126% of an employee's weekly wage capped at 0.126% of the annualized New York State Average Weekly Wage.

Employers should contact their current Disability Benefits insurance carrier to learn more about Paid Family Leave coverage, including when they should begin collecting payroll contributions for Paid Family Leave.

Coverage restrictions for Disability Benefits for employees of non-profit or religious institutions also apply to Paid Family Leave.

### **Out-Of-State Employers and Employees**

An employer with employees working in New York for 30 or more days in a calendar year must obtain Paid Family Leave coverage. Family Leave is a benefit for people who *work* in New York; it does not matter where the employer is headquartered or where the employee lives. For example:

- An employee who works from their home in New York is covered even if the employer is located outside of New York State.
- An employee that is required to travel occasionally into New York State to perform duties, such as a salesperson, will not be considered a New York State employee unless the employment is based in the state.
- An employer that is located outside of New York State does not need to cover employees who live in New York but work outside of New York.

## Employee Eligibility

Employees must be employed by a covered employer at the time they apply for Paid Family Leave. Employee eligibility requirements are as follows:

- Employees with a regular work schedule of 20 or more hours per week are eligible after 26 weeks of employment.
- Employees with a regular work schedule of less than 20 hours per week are eligible after 175 days worked.

In limited circumstances, employees whose regular work schedules are temporary or seasonal may opt out of Paid Family Leave.

Employees who hold more than one job may take Paid Family Leave from both jobs, but they must do so with both employers at the same time.

Citizenship and immigration status do not impact a worker's eligibility for Paid Family Leave.

### *Bonding with a Child*

A parent may take Paid Family Leave during the first 12 months following the birth, adoption, or fostering of a child. This includes children born, fostered or adopted in 2017 as long as the leave is taken within the first twelve months of the birth, adoption, or fostering.

Spouses with different employers are both eligible to take Paid Family Leave at the same time. If both spouses work for the same employer, the employer can deny Paid Family Leave to one of the spouses if they have asked for the same period of time-off to bond with the same child.

### *Family Care*

If an employee's family member has a serious health condition, they are eligible to care for them under the Paid Family Leave program. Family members include:

- Spouses
- Domestic Partners
- Children
- Parents
- Parents-in-law

- Grandparents
- Grandchildren

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care in a hospital, hospice, or residential health care facility; or
- Continuing treatment or supervision by a health care provider.

Ordinarily, conditions such as the common cold, the flu, ear aches, upset stomach, minor ulcers, routine dental or orthodontia problems, periodontal disease, etc. do not meet the definition of a serious health condition.

### *Active Military Duty Deployment*

Paid Family Leave is available when a spouse, child, domestic partner or parent of the employee is on active military duty abroad or has been notified of an impending call or order of active military duty abroad.

Employees can take leave to help out with obligations arising out of a call to duty—for example:

- Making alternative child care arrangements for a child of the deployed military member;
- Attending certain military ceremonies and briefings; and
- Making financial or legal arrangements to address the military member's absence.

Paid Family Leave, which provides wage replacement and job security, can be taken by employees who are also eligible for time off under the military provisions in the federal Family Medical Leave Act.

## Employee Benefits

In 2018, employees are eligible to receive 50% of their average weekly wage (AWW) up to 50% of the New York State Average Weekly Wage (SAWW) for up to 8 weeks. When Paid Family Leave is fully phased in in 2021, the maximum benefits will increase to 67% of an employee's AWW up to 67% of the SAWW for up to 12 weeks.

### Paid Family Leave Benefit Schedule

| Year | Weeks Available | Max % of Employee Average Weekly Wage | Capped at % of New York State Average Weekly Wage |
|------|-----------------|---------------------------------------|---|
| 2018 | 8               | 50%                                   | 50%   |
| 2019 | 10              | 55%                                   | 55%   |
|      |                 |                                       |   |

|      |    |     |     |
|------|----|-----|-----|
| 2020 | 10 | 60% | 60% |
| 2021 | 12 | 67% | 67% |

For example, in 2018:

- An employee who makes on average \$1,000 a week would receive a benefit of \$500 a week (50% of \$1,000).
- An employee who makes on average \$2,000 a week would receive a benefit of \$652.96, because this employee is capped at one-half of the New York State Average Weekly Wage. The SAWW is \$ 1,305.92 in 2017. Fifty percent of the SAWW would mean the employee gets \$652.96 per week on Paid Family Leave.

Employers can offer more generous paid leave benefits than required by law. Employers may submit their more generous plan to the NYS Workers' Compensation Board for approval in lieu of obtaining the coverage required by law.

Within 18 days of filing a complete claim for benefits, the Paid Family Leave insurance carrier (or employer if self-insuring) must pay or deny the claim. If denying the claim, the insurer must provide an explanation in writing.

An employee will be paid directly by the Paid Family Leave insurance carrier.

## Claim Procedure

When an employee has a foreseeable situation, they should provide their employer 30 days advance notice of their intention to use Paid Family Leave. If the event was not foreseeable, the employee must notify their employer as soon as practical.

An employee should submit a completed claim package to their employer's Paid Family Leave insurance carrier within 30 days of their first day of paid leave. The insurance carrier must process the claim and issue a determination within 18 days.

A claim form will be available from an employer, the employer's Paid Family Leave insurance carrier, or on the Paid Family Leave website.

Employers are also responsible for providing insurers with the dates that employees use Paid Family Leave.

### *Employee Documentation*

When filing a Paid Family Leave claim, an employee must submit supporting documentation to the insurance carrier, as detailed here:

#### *Childbirth*

The documentation requirement for a claim for Paid Family Leave to bond with a newly born child depends on whether the applicant is the birth mother or the second parent.

The birth mother must submit a birth certificate, if available, or documentation of pregnancy or birth from a health care provider. The document must include the mother's name and the child's due date or birth date.

The second parent must submit, if available, a birth certificate naming them as a parent. If a birth certificate naming the second parent is not available, the second parent may submit a Voluntary Acknowledgment of Paternity or a Court Order of Filiation naming them as a parent.

If those documents are not available, the second parent can submit birth documentation from the birth mother's health care provider **and** either a marriage certificate or evidence of a civil union or domestic partnership to demonstrate the relationship to the birth mother.

If none of these documents are available, the second parent may submit other documentary evidence of parental relationship to the child, to be evaluated on a case-by-case basis by the carrier.

### *Foster Care*

A claim for Paid Family Leave to bond with a fostered child requires the submission of a letter of placement issued by a county or city department of social services or local voluntary agency. If a second parent is not named in documentation, a copy of the document plus a document verifying the relation to the parent named in the foster care placement will be needed.

### *Adoption*

A claim for Paid Family Leave to bond with an adopted child requires a court document finalizing adoption, or, for Paid Family Leave taken before the adoption is complete, a document showing that the adoption process is underway. Examples of proof of a pending adoption include a signed statement from an attorney, adoption agency or adoption-related social service provider that the employee is in the process of adopting a child.

If the second parent is not named in that document, they must also file documentation verifying the relationship to the parent named in the adoption.

### *Serious Health Condition*

A claim for Paid Family Leave to care for a family member with a serious health condition requires a medical certification, completed by the care recipient's health care provider.

An authorization for personal health disclosure form is required by the HIPAA Privacy Rule and must be completed by the care recipient and retained on file with the health care provider in order to submit the required medical information.

### *Active Military Duty Deployment*

A claim for Paid Family Leave to assist loved ones when a family member is deployed abroad on active military duty generally requires either a PFL-5 "Military Qualifying Event" certification or a US Department of Labor "Certificate of Qualifying Exigency for Military Family Leave." Those forms include (1) military documentation of the family member's deployment or impending deployment (active duty orders or other notice from the military), and (2) documentation of the reason for leave.

## **Public Employers**

A public employer may opt into Paid Family Leave by submitting an application and plan to the New York State Workers' Compensation Board, along with providing notice to its employees at least 90 days before collecting employee contributions.

A labor union may collectively bargain with a public employer to offer Paid Family Leave benefits. The agreed-upon plan must then be submitted to the New York State Workers' Compensation Board for approval. The plan must be "at least as favorable" as the statutorily mandated Paid Family Leave benefits. Once an

agreement is reached, written notice must be provided to the Chair of the Workers' Compensation Board, including a list of employees and coverage information.

A collective bargaining agreement for Paid Family Leave may provide rules that differ from the Paid Family Leave regulations. Where the agreement does not provide a different rule, the Paid Family Leave regulations will apply.

### **For Employers Who Currently Provide Disability Benefits:**

#### **If you decide to opt in to Paid Family Leave:**

- Email the Workers' Compensation Board on or before December 1, 2017 at [PAU@wcb.ny.gov](mailto:PAU@wcb.ny.gov) stating that you plan to provide Paid Family Leave to employees in 2018.
- Notify your disability benefits insurance carrier (if you do not self-insure) of your decision.
- Notify your employees. If you have employees that are represented by a union, their participation is subject to negotiation. If you do elect to provide Paid Family Leave to such employees, you should engage their union(s) to negotiate the terms of their participation.

#### **If you are not opting in to Paid Family Leave:**

- Email the Workers' Compensation Board on or before December 1, 2017 at [PAU@wcb.ny.gov](mailto:PAU@wcb.ny.gov) stating that you do not plan to provide Paid Family Leave to employees in 2018.
- Notify your disability benefits insurance carrier (if you do not self-insure) of your decision.
- Notify your employees, or if they are represented by a union, you should advise any union(s) representing your employees of this decision.
- Even if you choose not to opt in by December 1, you may choose to do so at a later date.

**Important:** For most private employers, Paid Family Leave will be added to their existing disability insurance policies. If you are an employer who currently carries disability insurance, your insurer may automatically add Paid Family Leave coverage to your 2018 disability policy. However, as a public employer, you are not required to add Paid Family Leave insurance to your existing policy; you must actively elect to opt in.

### **For Employers Who Do Not Currently Provide Disability Benefits:**

#### **If you decide to opt in to Paid Family Leave:**

- Complete the opt in application available [here](#). You may do so at any time.
- Completed applications should be submitted to the Plans Acceptance Unit by email at [PAU@wcb.ny.gov](mailto:PAU@wcb.ny.gov).
- If you have employees that are represented by a union, their participation is subject to negotiation.

#### **If you are not opting in to Paid Family Leave:**

- No action is required.
- You can apply to provide voluntary Paid Family Leave coverage at any time.

### **Obtain Insurance Coverage**

If and when you decide to opt in, Paid Family Leave insurance coverage may be secured by:

- providing Paid Family Leave benefits through an existing disability benefits policy,
- obtaining a stand-alone Paid Family Leave insurance policy, or
- self-insuring for Paid Family Leave.

Public employers that offer disability benefits through an insurance policy **may not** self-insure for Paid Family Leave.

Coverage must be maintained for at least **one year** and may only be canceled after providing **12 months'** notice to all affected unrepresented employees and to the Workers' Compensation Board.

### **Paying for Paid Family Leave**

Employers may collect the insurance premium cost through employee payroll contributions or pay the premium themselves.

The payroll contribution rate is set every year to match the cost of insurance coverage. The contribution rate for 2018 is 0.126% of an employee's weekly wage, capped at 0.126% of the New York State Average Weekly Wage.

**A public employer must notify all employees who will be required to make contributions and the NYS Workers' Compensation Board 90 days before the first Paid Family Leave employee deduction is made.**

### **For More Information or Assistance**

If you have specific questions regarding the December 1 notification deadline or other questions about opting in, please write to [PFLinquiries@wcb.ny.gov](mailto:PFLinquiries@wcb.ny.gov). You can also contact the Paid Family Leave Helpline at (844) 337-6303.

## **Paid Family Leave & Human Resources**

An employee's average weekly wage is computed by adding his or her wages for the eight weeks prior to the start of Paid Family Leave, and dividing the total by eight. For a sole proprietor who has opted into Paid Family Leave, the average weekly wage will be the last 52 weeks of income divided by 52.

If an employee does not expect to work long enough to qualify for Paid Family Leave, the employee may opt out of paying Paid Family Leave payroll contributions by completing a waiver of benefits form. This waiver is optional, and an employer may not require that an employee sign a waiver. Employees who complete a waiver will not contribute to Paid Family Leave through payroll deductions and will not be eligible to take Paid Family Leave. If the employee's schedule changes and will be expected to qualify for Paid Family Leave, the waiver is automatically revoked and the employee is responsible for paying any required Paid Family Leave contributions from the first day of employment.

An employee is not entitled to continue to accrue Paid Time Off while out on Paid Family Leave, but the law and regulations do not prohibit the employer from allowing the employee to continue accruing leave.

When an employee changes employers, he or she must re-establish eligibility with the new employer.

If an employee has regularly worked 20 or more hours for 26 weeks for a covered employer, they meet the eligibility requirements for Paid Family Leave. If they have not worked 26 weeks for the covered employer and start regularly working less than 20 hours per week for that covered employer, they will become eligible after 175 days worked. The average weekly wage for the employee is calculated by adding up their pay for the last eight weeks and dividing by eight.