



New York Paid Family Leave Benefits Law

New York Paid Family Leave Benefits Law

- In 2016, as part of New York State's 2016-2017 Budget, Governor Andrew Cuomo signed into law a paid family leave policy, **New York Paid Family Leave Benefits Law (PFLBL)**.
- *The law will be phased in beginning on January 1, 2018.*

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New York Paid Family Leave Law

- When completely phased in, New York will have the most comprehensive paid family leave program.
- When fully phased in, New York's Paid Family Leave Benefits Law will provide up to 12 weeks of paid leave during a 52-week calendar period. Eligible employees will receive 67% of their average weekly wage, not to exceed the New York State Average Weekly Wage.

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Which Employers Must Follow PFL?

- **All private sector employers** employing one or more employees at least 30 days in any calendar year are required to provide **all eligible employees with paid job protected leave.**
- *Public employers are not required to provide coverage but may opt-in to the program.*

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Employee Eligibility for PFL

- Employees who work 20 hours or more per week become eligible after 26 consecutive weeks of work, and employees who work less than 20 hours per week become eligible after the 175th day of work.
- Once an employee is eligible for Paid Family Leave benefits, there is no waiting period.
- *January 1, 2018 is not the date that length of service is measured for NY Paid Family Leave eligibility.*

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Employee Eligibility

- An employee does not need to be a U.S. Citizen to be eligible for Paid Family Leave.
- An undocumented worker can take Paid Family Leave. Immigration status has no impact on Paid Family Leave eligibility.

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Employees Ineligible for NY PFL

- Independent contractors, as well as certain livery and black car operators, clergy and ministers, persons “engaged in a professional or teaching capacity in or for a religious, charitable or education institution”.
- Employees currently on administrative leave.
- Employee already receiving sick pay or paid time off from the employer.

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Qualifying Event for Paid Family Leave

1. Bond with the employee's newborn or newly-placed adoptive or foster child during the first 12 months following birth or placement.
2. Care for a family member (child, parent, parent-in-law, grandparent, grandchild, spouse or domestic partner) with a serious medical condition. This includes physical or psychological care. This can be provided for eligible family member outside of NY.
3. Employees with a spouse, child, domestic partner or parent who has been notified of an order of active military duty.

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Employee's Own Serious Condition Excluded

- *New York Paid Family Leave law does not apply to the employee's own serious medical condition.*
- Employee's own serious medical condition may be covered under NY Short Term Disability.

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Amount of Leave Available Under NY PFL



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

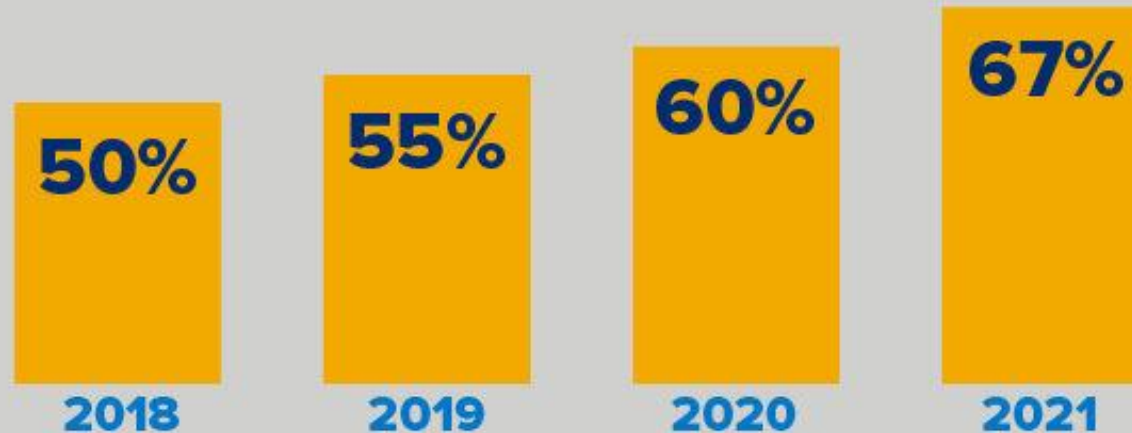
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Percentage of Weekly Wages

Benefits provide the employee a percentage of their average weekly wage



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

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Maximum Paid Family Leave Benefit

- The maximum Paid Family Leave benefit is based on the New York State Average Weekly Wage (NYSAWW).
- The average weekly wage is updated annually on March 31st by the Department of Labor.
- The New York State Department of Labor has computed the New York State Average Weekly Wage for 2016 to be \$1,305.92.

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How will Paid Family Benefits be Funded?



Paid Family Leave benefits will be funded exclusively through employee contributions deducted from payroll beginning on or about July 1, 2017 for coverage beginning January 1, 2018.

Employers may, but are not required to contribute.

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Payroll Deduction for 2018

- NYS Department of Financial Services has determined the weekly contribution rate is 0.126% of the employee's average weekly wage, or the statewide average weekly wage, whichever is less. Will be updated annually.
- Based on current statewide weekly wage of \$1,305.92, the maximum employee contribution amount is \$1.65 per week per employee for 2018.

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How Does the PFL Benefit Work?

- In 2018, an employee who makes \$1,000 a week would receive a benefit of \$500 a week (50% of \$1,000).
- An employee who makes \$2,000 a week would receive a benefit of approximately \$653, because this employee is “capped” at collecting only a maximum of 50 percent of New York State’s Average Weekly Wage.

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When is an Employee Ineligible for NY PFL?

- Employees may not receive both disability and Paid Family Leave benefits for the same period of time.
- Employee who is eligible for both disability and Paid Family Leave benefits during the same period of 52 consecutive calendar weeks shall not receive more than 26 total weeks of combined disability and Paid Family Leave Benefits.

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Waivers for Employees Ineligible for NY PFL

- Employers must provide employees whose regular schedules (work less than 26 weeks or 175 days in a year) will render them ineligible for Paid Family Leave benefits with the option to file a waiver to exempt them from the required deduction.
- Employers may make deductions from the pay of those who do not opt to file a waiver.

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Continuation of Health Insurance

- Employer must continue health insurance for an employee out on Paid Family Leave.
- An employee who contributes to the cost of health insurance must continue to pay his or her portion while out on paid family leave.

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Job Restoration

- New York Paid Family Leave requires employers to reinstate an employee to his or her position, or a comparable position, upon return from leave.

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Maximum Benefits

- When completely phased in, eligible employees will receive benefits capped at 67% of the statewide average weekly wage.
- If weekly earnings are greater than the state weekly average, the earnings will be capped at 67% of the state average weekly wage level.

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How is NY Paid Family Leave Provided?

- Beginning January 1, 2018, the Disability insurance policy will be required to automatically provide NY Paid Family Leave included with the policy.
- Employers that self-insure their disability policy can purchase a standalone NY Paid Family Leave policy. They will have the option to self-insure their NY Paid Family Leave plans.

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NY Paid Family Leave & FMLA

- NY Paid Family Leave will run concurrently with FMLA if applicable, provided the employee is entitled to FMLA leave and the employer has provided FMLA designated notice to the employee.
- Employee cannot stack NY Paid Family Leave and FMLA time.

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NY PFL vs. FMLA

SUBJECT	FMLA	NY Paid Family Leave
Covered Employers	50 or more employees	All employers subject to Worker's Compensation Law
Eligible Employees	Employees employed for 12 months and worked 1,250 hours in the preceding 12 months	Employed 26 weeks (Work 20 or more hours/week) Employed 175 days (Work less than 20 hours/week)
Length of Leave	Up to 12 weeks in a 12 month period	Up to 12 weeks (Schedule to be phased in from 2018-2021)
Maintenance of Health Insurance	Maintain health insurance as though actively employed	Maintain health insurance as though actively employed
Job Restoration	Entitled to position held at time of leave or an "equivalent" position	Entitled to position held prior to leave or comparable position with comparable benefits and pay

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Family Member Definition

- **FMLA** “family member” definition includes:
 - Child
 - Parent
 - Spouse
- **NY Paid Family Leave** “family member” definition includes:
 - Child
 - Parent & Parent-In-Law
 - Spouse
 - Grandparent
 - Grandchild
 - Domestic partner

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Can Employees Use Sick/Vacation Time?

- Employee can **voluntarily** choose to use sick and vacation time to allow employee to receive full salary.
- Unlike FMLA, employer **cannot** require an employee to use sick or vacation time before Paid Family Leave.

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FMLA & NY Paid Family Leave

- Revised proposed regulations allow an employer to require an employee to use accrued leave when FMLA and Paid Family Leave run concurrently.

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FMLA & NY Paid Family Leave

- Revisions make clear if an employer designates a period of FMLA leave for a reason covered under the Paid Family Leave and notifies the employee of his/her eligibility under Paid Family Leave but the employee declines to apply for payment, the employer may count the period of leave against the employee's maximum Paid Family Leave benefit.

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FMLA & NY Paid Family Leave

- Proposed revised regulations indicate FMLA leave taken by an employee due to his or her own serious health condition which is not a qualifying event under Paid Family Leave may not reduce the employee's PFL leave.

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Can Both Spouses Use PFL at the same time?

- If the spouses have different employers, both are eligible to take Paid Family Leave at the same time.
- If both are employed with the same employer, Paid Family Leave can be denied to more than one employee at the same time to care for the same family leave recipient, or to bond with a child.

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Notice for Intermittent Leave

- Employers are permitted to require employees needing intermittent paid leave provide notice to the employer as soon as practicable *before each day* of intermittent leave.
- Regulations still do not provide for leave to be taken in increments smaller than a day.

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Employee Takes Leave Prior to 1/1/18

- If an employee takes leave pursuant to company policy prior to the effective date of Paid Family Leave, this leave will not count against the employee's maximum benefit, and the employee may take an additional 8 weeks of leave in 2018 for any qualifying reason.

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Collective Bargaining Agreement

- Revised regulations provide an employer who provides paid family leave under a collective bargaining agreement (CBA) is relieved from providing Paid Family Leave if the CBA provides benefits at least as favorable as the benefits under Paid Family Leave.
- A CBA may provide that the union, acting as the employer, may be responsible for all time records and payroll deductions related to the administration of Paid Family Leave.

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Regulations Are Not Finalized

- The proposed regulations are not finalized but the effective date of NY Paid Family Leave is January 1, 2018.

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Questions?



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