



NYS Paid Family Leave

Agenda

- NYS Paid Family Leave Law overview
- What you are required to do as an employer
- Eligibility for Paid Family Leave
- Bonding time
- Caring for a family member with a serious health condition
- Military Exigency Leave
- Interaction with FMLA, Disability and Workers' Compensation
- Question & Answer

NYS Paid Family Leave Law

Effective 01/01/2018, all employers with employees working in New York State are required to offer paid family leave benefits.

Employees will be allowed to take time off for designated qualifying reasons.

| Year | Amount of Paid Leave |
|----------------|----------------------|
| 2018 | 8 weeks |
| 2019 | 10 weeks |
| 2020 | 10 weeks |
| 2021 and later | 12 weeks |

Paid Family Leave will be a rider added to your current disability policy. Your insurance provider should automatically add this rider, you do not need to contact them to have it added.

NYS Paid Family Leave Law

The Paid Family Leave benefit is 100% employee paid.

All employees will have to pay 0.126% of their annual wages up to the annual cap* of \$85.56 (in 2018).

*The cap is determined based on the annual NYS Average Weekly Wage released by the Department of Financial Services of \$1305.92 for 2018 ($.126\% \text{ of } 1305.92 = \$1.645/\text{week} \times 52 \text{ weeks} = \85.56)

Eligible employees will be allowed to take time off for qualifying reasons such as:

- bonding with a child
- caring for a family member with a serious health condition
- support of a family member who is called to active duty.

NYS Paid Family Leave Law

Continuous leave – leave may be taken for the full time period (8 weeks in 2018) or in partial increments (1 week, 2 weeks, etc.) as necessary.

Non-continuous Leave – leave may also be taken intermittently or on a reduced leave schedule in increments of no less than 1 day (unlike FMLA that can be taken in 1 hour increments.)



NYS Paid Family Leave Law Protections

- 1) Employees must be returned to their former position when they return from leave. If that position has been filled, they must be given a position equivalent to their former position and with equivalent pay.
- 2) You must maintain the employee's health insurance coverage (if offered to employees). The employee will need to continue to pay their premium. If they drop coverage, it must be reinstated upon their return from leave.

Benefits that accumulate based on hours worked (i.e. vacation time) will not accumulate during the period of leave.

How do you prepare for PFL?

- 1) Determine how you pay for your current disability premium. This will help you determine when deductions should begin.
- 2) Communicate with your employees about the NYS PFL benefit and inform them about the deductions that will be coming out of their paychecks.
- 3) Update your handbook or policies with information about the NYS PFL benefit.
- 4) Posters will need to be posted in common areas (along with your Minimum Wage, EEOC, etc. posters.).
- 5) You may want to start cross-training employees or building a relationship with a local temp agency to fill vacancies.
- 6) Ensure HR staff or those administering PFL are trained on PFL.

Who is Eligible for PFL benefits?

PFL benefits must be offered to all eligible employees in NY State. Citizenship does not effect eligibility.

Employees become eligible if they have worked:

- Part-time (less than 20 hrs/wk) – 175 days
- Full-time (more than 20 hrs/wk) – 26 consecutive weeks

Employees will have to pay into the benefit even if they have not yet become eligible.

Employees that will NEVER reach eligibility (i.e. student workers) may sign a waiver to opt out of PFL. Employees cannot opt out of PFL for any other reason.

Eligibility : Seasonal Employees

For FT eligibility, this includes employees that work 26 consecutive weeks for an employer who may close periodically due to the nature of their business but the employee is not terminated from employment during those breaks.

If you have an employee that works for you every summer, and you do not terminate them at the end of the season, they will be able to earn eligibility for this benefit.

If you lay off an employee (so they can get unemployment) that is considered a termination of employment.

Bonding with a Child



Who: mother, father, spouse, domestic partner, legal guardian or those standing *in loco parentis*

When: to bond with a newborn child (up to 1 year from the child's birth date) or for a newly adopted or fostered child (any age).

It can also be used before the placement or adoption of a child for counseling sessions, appearing in court, consulting with attorneys or doctors representing the birth parent, physical examinations or traveling to another country to complete an adoption.

Caring for a family member with a Serious Health Condition

Who: spouse, domestic partner, child, parent (including biological, foster or adoptive parent, legal guardian, step parents, parent-in-laws or those who stood *in loco parentis*), grandparent or grandchild

The need for leave must be documented by the family member's treating health care provider on the medical certification form. This form will need to be completed and submitted by the employee with the PFL application form.



Definition of Serious Health Condition

A Serious Health Condition is considered an illness, injury, impairment or physical or mental condition that involves:

- 1) Inpatient care in a hospital, hospice or residential medical care facility.
- 2) More than 3 consecutive calendar days during which the family member is unable to work, attend school, perform regular daily activities and any subsequent treatment or period of incapacity relating to the same condition that involves
 - a) Treatment two or more times by a health care provider
 - b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment
- 3) Chronic conditions which continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (i.e. asthma, diabetes, epilepsy)



Military Exigency Leave



Who: spouse, domestic partner, child or parent that is a covered military member on active duty or has been notified of an impending call to active duty in the armed forces of the US.

Examples of Qualifying Exigencies:

- Military events and related activities, such as official ceremonies, programs or events sponsored by the military or family support or assistance programs.
- Certain childcare and related activities such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis.
- Making or updating financial and legal arrangements to address a covered military member's absence.

The request for Military Exigency Leave will also go through certification and a copy of the active duty orders may be required.

Employee Notification Requirements

Foreseeable Leave – If the employee knows in advance that they will need to take PFL, they are required to give 30 days' notice prior to taking leave. (i.e. bonding with a newborn child or a scheduled surgery)

Unforeseeable Leave – In cases of emergency, the employee should give verbal notice as soon as possible and the application form should be completed as soon as practical.

Failure to provide notice in the case of foreseeable leave may result in a delay of the leave benefit.

PFL Employee Application Process

- 1) Employee notifies you within 30 days or whenever reasonably possible that they will be utilizing PFL.
- 2) The employee will need to complete the PFL-1 application form. (not available yet, will be provided by NYS)
- 3) The employee will submit their application to you to complete the employer portion which must be completed within 3 business days and returned to the employee.
- 4) The employee will submit their completed form and certification documents to the carrier for approval.
- 5) PFL carrier will approve or deny the employee's claim.
- 6) You will need to track any PFL time taken by the employee.

Employee Payments

After the PFL Application has been approved, payment will be made to the employee within 18 days by the carrier.

| Year | % of employee AWW | NYS AWW (defined by NYS DFS) | Maximum benefit payment |
|-------|-------------------|------------------------------|-------------------------|
| 2018 | 50% | \$1305.92 | \$652.96 |
| 2019 | 55% | TBD | \$718.25** |
| 2020 | 60% | TBD | \$783.55** |
| 2021+ | 67% | TBD | 874.96** |

**Amounts shown are for example purposes only, maximum benefit amounts listed are calculated using the 2016 NYS Average Weekly Wage of \$1305.92.

If an employee chooses to use accrued leave to continue to receive their full paycheck, they will not receive PFL payments for that time. Instead, any approved PFL time should be recorded and the employer can request reimbursement for that time from the carrier.

PFL & FMLA

| | FMLA | NY PFL |
|--------------------|--|---|
| Covered Employers | 50 or more employees | 1 or more employees |
| Benefit | Unpaid, job-protected leave | Paid, job-protected leave |
| EE Eligibility | 12 months and 1,250 hours in previous 12 months | 26 weeks (FT) or 175 days (PT) |
| Qualifying Reasons | Own health condition, birth/placement of child, care for an immediate family member (spouse, child, parent), military exigency | Birth/placement of a child, care for family member also includes domestic partner, step parents, parent-in laws, grandparent, grandchild and military exigency *not for own health condition |
| Length of leave | Up to 12 weeks in a 12 month period | In 2018, up to 8 weeks within 52 weeks from first date of leave |

PFL & FMLA (Cont'd.)

| | FMLA | NY PFL |
|--------------------|--|---|
| Job Restoration | Restored to original job or equivalent job with comparable pay and benefits | Restored to original job or equivalent job with comparable pay and benefits |
| Intermittent Leave | Allowable for one's own or a family member's serious health condition, employer optional for bonding leave, Used in a minimum of 1 hr increments | Allowable for bonding leave, a family member's serious health condition, and military leave. Must be taken in 1 day increments or more (1/5 th the weekly benefit) |
| PTO Interaction | Employer can require an employee to use accrued and unused PTO to substitute unpaid leave for paid leave | Employer cannot require the employee to use accrued or unused PTO unless the practice exists for FMLA and PFL & FMLA are running concurrently. Otherwise employee can choose. |

PFL, Disability and Worker's Comp

PFL cannot be taken at the same time the employee is on Disability leave. The employee cannot receive PFL payments if they are receiving payment from the company or through another employee benefit.

If an employee is out on Disability leave and has not reached eligibility for PFL, deductions cannot be taken from the employee.

If an employee is receiving workers' comp payments but are not 100% disabled, they may still be eligible to utilize PFL.

Question & Answer

Questions?

For additional questions, please contact me at:

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Appendix

- 1) Tips to calculate premium rates
- 2) PFL Toolkit contents
- 3) Serious Health Conditions
- 4) Qualifying exigency reasons

Appendix

To estimate your premium, split your workforce into two groups:

Employees **that make less than** an annual salary of \$67,907.84 or less than \$1305.92 per week. There is no cap to be concerned about, so their full weekly wages are subject to the 0.126% contribution rate. To calculate, you can combine the total estimated annual salaries of all of these employees and multiply by 0.126% to determine premium amount.

Employees **that make more than** an annual salary of \$67,907.84 or \$1305.92 per week. For this group, no matter how much they make, you simply use \$85.56 annual cap (0.126% of \$1,305.92). Multiply the number of employees in this category by \$85.56.

The combined total of these two groups of employees will be your estimated premium rate.

Appendix

Example PFL rate calculations:

Employee 1: \$50,000 annual wages, set weekly rate of \$961.54 -
.126% = \$1.21 per pay period – or $.00126 * 50000 = \$63$ annually

Employee 2: \$50,000 variable wages, differing weekly wage – each
calculated at $.00126 * \text{weekly wage}$ (\$1200 - \$1.51; \$800 - \$1.00;
\$1600 - \$2.01, etc) but employee will not pay more than \$63 total
per year (based on \$50,000 annual salary)

Employee 3: \$85,000 annual wages, set weekly rate of \$1635 –
depending on your payroll provider, they may take \$1.65/week or
may take \$2.06 for 41 weeks and \$1.10 for 1 week, then 0
deductions for remainder of the year.

Employee 4: \$85,000 variable wages, differing weekly wage –
depending on your payroll provider, they may take \$1.65/week or
may take 0.126% of wages until employee reaches maximum
deduction of \$85.56, then deductions will stop.

*If an employee receives a bonus or commission, this may be subject to
the 0.126% deduction (depending on payroll provider practices) but
the employee will not exceed the \$85.56 annual maximum deduction.

Appendix

The Flanders Group PFL Toolkit Includes:

- Employee Communication Template
- PFL Executive Summary
- PFL Policy Template
- PFL Tracking File (Excel)
- PFL Supervisor Handout
- PFL Frequently Asked Questions
- PFL HR Reference Guide
- PFL Payroll Stuffer
- PFL/FMLA Flow Chart (for HR or PFL Administrator)

Contact Kerry Steenburgh for additional information.

Appendix

A Serious Health Condition is considered an illness, injury, impairment or physical or mental condition that involves:

- Inpatient care in a hospital, hospice or residential medical care facility.
- Continuing treatment or continuing supervision by a health care provider - a period of incapacity of more than three consecutive calendar days during which the family member is unable to work, attend school, perform regular daily activities and any subsequent treatment or period of incapacity relating to the same condition that involves
 - 1) treatment two or more times by a health care provider
 - 2) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider

Appendix

- Chronic conditions requiring periodic treatment by or under the supervision of a health care provider, which continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (i.e. asthma, diabetes, epilepsy)
- Permanent or long-term conditions requiring supervision for which treatment may not be effective (i.e. Alzheimer's, a severe stroke or the terminal stages of a disease)
- Multiple treatments by or under the supervision of a health care provider either for restorative surgery after an accident or other injury for a condition that would likely result in a period of incapacity of more than three (3) calendar days in the absence of medical intervention or treatment (i.e. cancer – chemotherapy, severe arthritis – physical therapy or kidney disease – dialysis)

Appendix

Examples of Qualifying Exigencies:

- Military events and related activities, such as official ceremonies, programs or events sponsored by the military or family support or assistance programs.
- Attending to certain post-deployment activities including attending arrival ceremonies, reintegration briefings and events and other official ceremonies or programs sponsored by the military
- Addressing issues arising from the death of a covered military member.
- Certain childcare and related activities such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility or attending certain meetings at school or day care facility.

Appendix

Examples of Qualifying Exigencies Cont'd:

- Making or updating financial and legal arrangements to address a covered military member's absence.
- Attending counseling provide by someone other than a health care provider for oneself, the covered military member or the child of the covered military member, the need for which arises from the active duty.
- Spending time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment.
- Certain parental care activities for the parents of the covered military member such as arranging for alternative eldercare or providing eldercare on an urgent, immediate need basis or to admit or transfer a parent to a care facility.