

## New York State Paid Family Leave – Frequently Asked Questions

(Updated January 30, 2018)

### **Q:** *What is New York Paid Family Leave?*

**A:** Passed by the state legislature, and signed by Governor Cuomo in April 2016, New York’s Paid Family Leave Law will be administered through the state’s disability insurance program. Paid Family Leave, or PFL, is designed to provide wage replacement for employees who take time away from work for qualifying family-related reasons, such as bonding with a child, caring for a close relative with a serious health condition, or helping with family responsibilities when a family member is called to active military service.

### **Q:** *How will Paid Family Leave benefits be implemented?*

**A:** PFL benefits were effective January 1, 2018, and will be fully implemented by January 1, 2021, as follows:

Effective Date	Maximum Weeks of Leave	Weekly Income Replacement
January 1, 2018	Up to 8 weeks of leave	50% of the employees AWW*, up to 50% of the NYS AWW
January 1, 2019	Up to 10 weeks of leave	55% of the employees AWW, up to 55% of the NYS AWW
January 1, 2020	Up to 10 weeks of leave	60% of the employees AWW, up to 60% of the NYS AWW
January 1, 2021	Up to 12 weeks of leave	67% of the employees AWW, up to 67% of the NYS AWW

\*AWW = Average Weekly Wage

### **Q:** *Which employers are required to provide Paid Family Leave benefits?*

**A:** Private-sector employers with one (1) or more employees are required to provide PFL benefits. Public-sector employers, such as municipalities, may opt-in to the program.

### **Q:** *How will Paid Family Leave benefits be funded?*

**A:** New York’s Paid Family Leave program is funded entirely through employee payroll deductions. No employer contributions or funding is required at this time.

***Q: How much will the payroll deduction be for my employees?***

**A:** The payroll deduction rate (referred to as the “contribution” rate) is currently set at 0.126% of an employee’s weekly wages, up to a maximum equal to the New York State Average Weekly Wage (“NYSAWW”), currently \$1,305.92. For example, the deduction for an employee making a weekly wage of \$750.00 is \$0.95 ( $\$750.00 \times 0.126\%$ ). Likewise, the deduction for an employee making a weekly wage of \$1,500.00 is \$1.89 ( $\$1,500.00 \times 0.126\%$ ). Deductions for PFL continue for the entire year, or until the employee’s contributions equal the maximum annual contribution of \$85.56.

***Q: When should Paid Family Leave payroll deductions begin?***

**A:** Employers were able to begin PFL payroll deductions on July 1, 2017, with deductions required to begin no later than January 1, 2018, the date PFL benefits became effective and available to eligible employees.

***Q: Which employees are eligible for Paid Family Leave benefits?***

**A:** Generally, an employee becomes eligible for PFL benefits in one of two ways:

- i) An employee regularly scheduled to work 20 or more hours per week will be eligible to take PFL after working 26 consecutive weeks; or
- ii) An employee regularly scheduled to work less than 20 hours per week will be eligible to take PFL after working 175 days in a 52-consecutive week period.

***Q: Are employees required to participate in the Paid Family Leave program?***

**A:** Although there are very narrow exceptions, PFL is not an optional benefit.

***Q: What are the requirements for an employee to waive Paid Family Leave benefits?***

**A:** Certain employees are not eligible for PFL benefits:

- i) An employee enrolled as a student in an elementary or secondary school who works part-time during all or any part of the school year, or regular vacation periods;
- ii) An employee regularly scheduled to work 20 or more hours per week, and will not work at least 26 consecutive weeks; or
- iii) An employee regularly scheduled to work less than 20 hours per week, and will not work at least 175 days in a 52-consecutive week period.

***Q: How does an eligible employee waive Paid Family Leave benefits?***

**A:** As is the case with disability insurance coverage, it appears students are automatically excluded from PFL benefits. However, other non-student employees who meet the criteria for a waiver of PFL benefits will be required to complete a waiver form. Once a waiver is filed with the employer, no PFL deductions should be made from the employee's wages. However, if the employee's schedule changes, and they become eligible for PFL benefits, the waiver will be automatically revoked.

**NOTE:** New York State has prepared a PFL waiver form for employers to use (PFL-WAIVER 9-17). Go to [drivenhr.com/ny-state-paid-family-leave](http://drivenhr.com/ny-state-paid-family-leave), or contact driven HR at 585-350-7162, or [info@drivenhr.com](mailto:info@drivenhr.com), for a copy of this form.

***Q: What happens if an employee's Paid Family Leave waiver is revoked?***

**A:** When an employee becomes eligible for PFL benefits due to a change in their work schedule, and the waiver they filed with the employer is automatically revoked, the employee is obligated to begin making contributions to the cost of family leave benefits, *including any retroactive amounts due from date of hire*, as soon as they are notified by the employer.

***Q: Is an employee who works outside New York State covered by Paid Family Leave?***

**A:** An employee is covered by PFL under the following circumstances:

- i) The employee physically works in New York State;
- ii) The employee does not have a worksite in a specific state (i.e. a remote employee or telecommuter), and resides and works from their home in New York State; or
- iii) The employee does not have a worksite in New York State (i.e. a remote employee or telecommuter, including out-of-state employees), but their employer is in New York State.

***Q: If a New York Employer has an employee who telecommutes from their home in a state with state-mandated family leave benefits (i.e. CA, NJ, and RI), is the employee covered by New York State Paid Family Leave, or the family leave benefits mandated by their home state?***

**A:** This question is pending with New York State.

***Q: When was Paid Family Leave effective, and when can employees begin taking Paid Family Leave?***

**A:** New York State PFL was effective January 1, 2018, and benefits for qualifying events have been available to eligible employees since January 1, 2018. For example, if an employee welcomed a new child into their family sometime during 2017, the employee may be eligible for PFL benefits up to the child’s first birthday (birth), or the one-year anniversary of the child joining the family (adoption or placement).

***Q: Is an employee required to provide their employer advance notice before taking Paid Family Leave?***

**A:** Generally, yes. When PFL leave is foreseeable, the employee must provide the employer notice of their intention to take leave at least 30 calendar-days before the date the leave is expected to begin. If 30 days’ notice is not possible, the employee must provide notice as soon as practicable.

***Q: How is Paid Family Leave related to Disability Leave insurance?***

**A:** The PFL law was an update to the state’s Disability Leave (“DBL”) laws. Therefore, any DBL insurance carrier providing coverage in NY will be required to issue a PFL policy rider. The insurance carrier will also administer PFL, approve/deny claims, etc.

***Q: What are the qualifying events for Paid Family Leave?***

**A:** Eligible employees may use PFL for the following:

- i) Parents can use PFL for bonding with their child during the first year after a child’s birth, adoption, or foster placement;
- ii) PFL may be taken to provide care—including physical or psychological care—to a family member with a serious health condition; and
- iii) PFL may also be taken because of any qualifying exigency—as interpreted under the federal Family and Medical Leave Act (“FMLA”)—because the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces.

***Q: What is the definition of “family member” as it applies to Paid Family Leave?***

**A:** A family member is defined as a child, parent, grandparent, grandchild, spouse, or domestic partner as each is defined by the PFL law.

***Q: What is the definition of a “serious health condition” as it applies to Paid Family Leave?***

**A:** A serious health condition is defined as 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 continuing supervision by a health care provider.

***Q: Is an employee allowed to use both Disability Leave and Paid Family Leave?***

**A:** Because PFL is not available for the employee’s own medical conditions, it cannot be used concurrently with DBL benefits. However, there may be scenarios where a single event will result in leave benefits under both programs. For example, an employee may collect DBL benefits due to pregnancy and the birth of a child. Then, the employee could transition directly into PFL benefits for an additional period of paid, job-protected leave.

***Q: Is an employee who has already collected disability insurance benefits for maternity leave allowed to claim Paid Family Leave benefits for additional time with their newborn child?***

**A:** Generally, yes, as long as the employee has not exceeded their combined maximum DBL and PFL benefit of 26 weeks in a 52-week period.

***Q: Please explain the use of accrued vacation time, or PTO to supplement Paid Family Leave.***

**A:** If an employee uses accrued paid leave to supplement their PFL benefits, the employer should deduct the paid leave in full-day increments, and also request reimbursement from the PFL insurance carrier for the percentage of the employee’s wages covered by PFL. For example, for an employee, Ellie, to receive her full wages of \$130.00 for a day away from work for a PFL-qualifying reason, she submits a request for PTO. Her employer approves the request and pays Ellie her PTO of \$130.00 for the day. Because Ellie’s time away from work was covered by PFL, her employer should request a reimbursement from the PFL insurance carrier for Ellie’s PFL benefit of \$65.00 ( $\$130.00 \times 50\%$ ).

***Q: Can the employer designate Paid Family Leave to run concurrent with leave under the Family and Medical Leave Act (“FMLA”)?***

**A:** The regulations do allow PFL and FMLA leave to run concurrently. However, for the leave to be designated as such, there are a few important points to cover:

- i) The employer must be covered by FMLA (i.e., private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year);
- ii) The employee must meet the eligibility requirements for both PFL and FMLA leave;
- iii) The reason for the leave must qualify under both the PFL and FMLA regulations; and

- iv) The employer must provide the employee with the required written FMLA designation notice. Remember, acceptance of a claim for PFL benefits by the insurance carrier does not automatically mean the leave qualifies under the FMLA, or that the leaves run concurrently.

Employers should also know that there are differing eligibility standards for PFL and FMLA. This may create a situation where a new employee is eligible for, and takes, job-protected PFL leave after 26 weeks. Then, after returning to work and reaching the FMLA threshold of working 1,250 hours in a 12-month period, the employee will be eligible for another 12 weeks of job-protected FMLA leave. Further, an eligible employee may take job-protected PFL leave for a reason not covered under FMLA (i.e. to care for a grandparent), then after returning to work, take up to an additional 12 weeks of job-protected FMLA leave for an FMLA-qualifying reason.

**Q:** *Can I require employees to use accrued vacation, or other Paid Time Off (“PTO”) along with Paid Family Leave?*

**A:** The short answer is, maybe. Most employers can allow—but not require—employees to use accrued vacation time or PTO in order to receive their full wage during some, or all, of their PFL. Otherwise, the employee may choose to keep their accrued vacation time or PTO for use before and/or after PFL, in some cases extending the total time they are out.

However, when an employer covered by the federal Family Medical Leave Act (“FMLA”) designates a period of PFL and FMLA to run concurrently, the employer may require the employee use accrued paid time off to cover some, or all of the FMLA leave taken. There are four (4) important points to remember; first, only employers covered by the federal Family and Medical Leave Act (i.e., private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year) are permitted to require the use of accrued but unused paid time off. Secondly, the employer should have written policies stating that employees must exhaust all available accrued and unused paid leave before taking unpaid FMLA leave. Next, the employee must be eligible for both PFL and FMLA, and the reason for the leave must qualify under both PFL and FMLA. Lastly, the employer must designate the leave as running concurrently, and provide the employee with all required notices.

***Q: What are an employer's obligations under the Paid Family Leave law?***

**A:** The following are employer obligations under the PFL law:

- i) As with other laws providing job-protected leave, employers are required to hold the employee's position until they return to work; reinstate the employee to the same position, or offer a comparable position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment;
- ii) Employers are required to maintain the employee's existing health benefits for the duration of PFL as if the employee had continued to work;
- iii) Employers cannot discriminate or retaliate against an employee because they file a claim for, or receive PFL benefits;
- iv) As discussed above, employers are generally not allowed to require an employee to use accrued paid leave benefits while out on PFL, the law does not appear to require employers to continue the accrual of benefits, such as PTO, or seniority rights while an employee is out on PFL;
- v) Employers are required to notify employees and applicants about their rights under the PFL law; and
- vi) Employee handbook policies should be revised to include information about PFL, or, if an employer does not have an employee handbook, separate written guidance must be provided to employees about their rights and obligations under the PFL law.

***Q: Can employees take intermittent Paid Family Leave?***

**A:** Intermittent PFL will be allowed in full-day increments only.

***Q: Can employees take Paid Family Leave on an hourly basis?***

**A:** No, PFL must be taken in full-day increments only.

***Q: Can an employee have multiple Paid Family Leave claims at the same time?***

**A:** Yes, an employee may potentially have multiple PFL claims based on the need to care for multiple qualified family members during a benefit period. However, the employee may not exceed the maximum combined benefit in a 52-week period.

***Q: If a pregnant employee is out of work on medically-required bedrest, would the employee file a disability claim for the bedrest and postpartum periods, then take additional time as Paid Family Leave?***

***A:*** Any periods of disability prior to the birth of the child would be covered under DBL, including medically-required bedrest. Then, following the birth of the child, the mother will have two options:

- i) Continue DBL for the available 6 to 8 weeks of postpartum recovery (which may run concurrent with FMLA leave if applicable). Then, the employee may take PFL (8 weeks in 2018, 10 weeks in 2019 and 2020, and 12 weeks in 2021 and beyond) within 12 months following the birth. Or,
- ii) Following the birth of the child, the mother may forego DBL for the 6 to 8 weeks of postpartum recovery, and take PFL (8 weeks in 2018, 10 weeks in 2019 and 2020, and 12 weeks in 2021 and beyond) within 12 months following the birth.

***Q: Why would an employee choose to forego DBL following the birth of a child and take Paid Family Leave?***

***A:*** Statutory short-term disability insurance in New York State provides 50% of the employee's wage, to a maximum benefit of \$170 per week. In 2018, PFL benefits are calculated at 50% of the employee's wage, to a maximum benefit of \$1,305.92 per week. In cases where the employee's wages are greater than \$340 per week, the employee may decide to forego statutory DBL for the available 6 to 8 weeks following birth and decide to take PFL to receive a greater weekly benefit. If DBL benefits remain the same in 2019 and beyond, the percentage used to calculate the employee's PFL benefit will be greater than the 50% used to calculate the DBL benefit, and the maximum PFL benefit will be greater than the maximum DBL benefit, so the choice to forego DBL following the birth of a child may be more attractive to some employees.

***Q: Since an employee isn't eligible for Paid Family Leave benefits when they are hired, when should we begin the employee's payroll deductions?***

***A:*** Deductions should begin immediately at the time the employee is hired.

***Q: If both spouses work for the same employer, are they allowed to take Paid Family Leave at the same time?***

**A:** No. If both spouses work for the same employer and qualify for PFL, the employer may deny PFL for one of the employees if the leave is to care for the same family member, or to bond with the same child. However, if the leave is to care for separate family members (i.e. one employee to care for their mother and the other employee to care for their father-in-law following a motor vehicle accident), or to bond with separate children (i.e. the couple has twins, or more than one child is adopted or placed with the couple), the employer may not deny either request for PFL.

***Q: If an employee took 12-weeks of Family and Medical Leave Act leave at the end of 2017 (for example, to bond with a newborn child), are they now eligible to take eight-weeks of Paid Family Leave beginning January 1, 2018?***

**A:** Yes, an employee eligible for PFL on January 1, 2018 may take the leave, regardless of whether they've taken any other type of leave for the same or a different reason prior to January 1, 2018.

***Q: When are Paid Family Leave benefits paid?***

**A:** The PFL insurance carrier (or the employer, if self-insured) must pay or deny the employee's claim, and provide an explanation of the denial, within 18 calendar days from the date a completed claim form is received.

***Q: Are benefits paid to the employee or the employer?***

**A:** Benefits are paid to the employee directly, unless a request for reimbursement is submitted by the employer because the employer has already paid the employee (usually using accrued PTO).

***Q: If an employer provides full salary continuation to the employee for a covered period of Paid Family Leave, can the employer request reimbursement directly from the carrier?***

**A:** Yes, if the employer pays the employee their full salary (usually from available PTO) for PFL, the employer can request reimbursement from the carrier for up to the PFL benefit level (i.e. 50% of the employee's eligible wages in 2018, 55% in 2019, 60% in 2020, 67% in 2021 and beyond). There is a place to request the reimbursement on the Leave Request Form.

**Q:** *If an employee currently has child support payments deducted from their paycheck, will the child support payment be deducted from their Paid Family Leave benefit?*

**A:** Yes, the employer should notify the PFL insurance carrier of the obligation, and the carrier should deduct the child support payment from the PFL benefit payment.

**Q:** *What Paid Family Leave forms are currently available from New York State?*

**A:** New York State released all the necessary forms, which are available on the driven HR website at [drivenhr.com/ny-state-paid-family-leave](http://drivenhr.com/ny-state-paid-family-leave). We will continue to update this site as additional information is available.

**Q:** *Are Paid Family Leave benefits taxable income to the employee?*

**A:** Yes, Paid Family Leave benefits are taxable. Taxes will not automatically be withheld from benefits, but employees can request voluntary tax withholding.

**Q:** *How will Paid Family Leave benefits be reported?*

**A:** Benefits should be reported by the State Insurance Fund on Form 1099-G, and by all other payers (private DBL/PFL insurance carriers) on Form 1099-MISC. Copies of these tax documents will be sent directly to the employee.

**Q:** *Is there a penalty associated with non-compliance with the Paid Family Leave Law?*

**A:** Yes, under the proposed regulations, employers failing to provide coverage for PFL benefits will be subject to a penalty not to exceed 0.5% of their weekly payroll, plus an additional amount of up to \$500.

**Q:** *Do other states currently have Paid Family Leave Laws?*

**A:** Yes, New York follows California, Rhode Island, and New Jersey in providing PFL benefits. In addition, other states and municipalities have either passed PFL legislation with future effective dates or have PFL legislation pending.

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Thank you for taking the time to review, *New York State Paid Family Leave, Frequently Asked Questions*, provided by driven HR – A USA Payroll Company.

If you have additional questions, or a question you believe would be helpful to add to this list, please contact Frank Cania, president of driven HR, at [frank@drivenhr.com](mailto:frank@drivenhr.com), or **585-350-7163** (toll free 855-682-4142).