

# NYS Paid Family Leave Act



Where everything checks out.

As of January 1, 2018, New York requires that employees receive paid family leave time. The law is part of the state worker's compensation laws and essentially treats paid family leave the same way as off-the-clock disability benefits. Employers must maintain family leave coverage in the same way that they are required to purchase disability benefits coverage under state law and may obtain coverage by self-insuring or purchasing a policy from a private insurer or from the State Insurance Fund.

### **The Paid Family Leave Law requires employers to provide paid leave to employees at the following schedule:**

- Effective January 1, 2019: 10 weeks during any 52-week calendar period at a benefit of 55% of the employee's average weekly wage, but not to exceed 55% of the state average weekly wage.
- Effective January 1, 2020: 10 weeks during any 52-week calendar period at a benefit of 60% of the employee's average weekly wage, but not to exceed 60% of the state average weekly wage.
- Effective January 1, 2021, and beyond: 12 weeks during any 52-week calendar period at a benefit of 67% of the employee's average weekly wage, but not to exceed 67% of the state average weekly wage.

### **Family leave is defined as any leave taken by an employee from work:**

- to participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member
- to bond with the employee's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the employee; and
- because of any qualifying exigency as interpreted under the Family and Medical Leave Act arising out of the fact that 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 Armed Forces.

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## The bonding leave is not intended nor permitted for prenatal conditions.

The New York family leave is intended to be funded by employee payroll deductions not to exceed 0.153% of the employee's average weekly wages, not to exceed 0.153% of the state average weekly wage, and the law explicitly states that employers are not required to fund any portion of the family leave benefit—though employers may choose to fund the benefit themselves without seeking payroll deductions. The Department of Financial Services sets the maximum employee contribution annually on September 1st.

The benefits are payable on the first full day family leave is required, unlike disability benefits that are payable as of the eighth day of disability. Employers may elect to self-insure and must communicate this to the Department of Financial Services.

An employee may not collect disability benefits and family leave benefits concurrently and may not collect family leave benefits when the employee is on administrative leave or is collecting sick pay or paid time off from the employer. Employees also may not receive family leave benefits during periods when the employee is receiving total disability benefits through a workers' compensation claim or a claim for volunteer firefighters' or ambulance workers' benefits, but may receive family leave benefits at the same time as partial disability benefits under those laws, so long as the combined benefits do not exceed the employee's average weekly wage. The state also advises that an employees' total disability leave and paid family leave may not exceed 26 weeks in any 52-week period.

Employees will be eligible for the leave after 26 consecutive weeks of employment where an employee works more than 20 hours per week or 175 days where the employee works less than 20 hours per week. Where an employee will not reach these eligibility requirements, they may complete a waiver to exempt them from having to contribute payroll deductions. An employer must contact any employee they believe is eligible to waive the coverage to offer them the option of completing a waiver and must retain these waivers on file. Waiver forms are available on the New York State website.

As with the federal Family Medical Leave Act, employers must maintain health insurance benefits in force for the employee during the duration of the leave and state family leave may be taken concurrently with federal FMLA leave where the employer notifies the employee that the leave will be concurrent. However, unlike the FMLA, while employers may offer the employee the option of using accrued vacation or personal leave time and receive their full salary, they may not require employees to use sick or vacation leave for full pay first. Where an employee

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chooses to take paid time off during the family leave, an employer can request reimbursement from their insurance carrier. Additionally, unlike the FMLA, state family leave is only available in full-day increments.

When the need for leave is foreseeable, employees must provide 30 days' notice to their employers of the intent to take leave or as much notice as is practicable and employers are not required to allow more than one employee to use the same period of family leave for the same family member.

An employer's insurance carrier (or the employer, if self-insured) receives and processes claims and is responsible for making the benefit payments. In order to request leave, an employee completes an initial request for leave and submits it to the employer to complete the employer section. The employer must return its completed portion within three business days and after this happens an employee can submit the completed request to the insurance carrier. Employees are also required to provide varying types of documentation depending on the reason for the leave request and an insurance carrier or employer must pay or deny the claim within 18 days of when an employee files a completed claim. Copies of the request forms for each type of leave are available online, on the State's website.

Employers are required to reinstate employees upon return from their leave to their previous position or a comparable position with comparable benefits, pay and other terms of employment, and they are also prohibited from discriminating or retaliating against employees who take leave.

Where an employer maintains a handbook or written guidance for leave policies in a handbook, they must now include a section advising employees of their rights under this law. The New York State Department of Labor recommends that guidance to employees covers:

- the name of the employer's paid family leave insurance carrier or if the employer is self-insuring for coverage
- whether employees are permitted to use accrued time to supplement family leave benefits
- whether the leave must be taken concurrently with any other type of leave (i.e., maternity leave)
- employees' responsibility to cover health insurance premiums while on leave
- instructions on how to request leave

- where the employer will subsidize the cost of employees' family leave premiums.

Finally, employers are required to post a notice of family leave coverage. More information about the law, including frequently asked questions for employers, links to regulations on the law promulgated by the state Workers' Compensation Board and Department of Financial Services and draft forms that employees should use to request different types of leave, is available at: <https://paidfamilyleave.ny.gov/>

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