

## FAQs – The Things You Want (And Need) To Know About New York's Paid Family Leave Law

If you work in human resources anywhere in New York, you have inevitably heard about New York's new paid family leave law (PFL). But other than what the law's name implies — that there will now be a form of paid family leave available to employees in this state — what are the administrative and practical implications that this new law will have on your workplace? You are not alone if you have questions, and more questions, about what this new law will entail. Although we are still waiting for final regulations to be issued by the New York State Workers' Compensation Board that would definitively answer many questions being raised, based on the statutory language and the proposed regulations that are currently pending, here are answers to some of the more frequently asked questions regarding New York's PFL.

### **1. Does this new law apply to my employer?**

Whether the PFL applies to a particular employer depends on whether the employer operates in the public or private sector. All private sector employers in New York that have one or more employees are subject to and have to comply with the PFL. In other words, this new law applies to virtually all private sector employers in New York State.

By contrast, however, the PFL does not apply to public sector employers unless the particular public employer has elected to opt in to provide benefits under the PFL. Public employers whose employees are not represented by a union may opt in to the PFL if those non-unionized employees are given 90 days' notice of the employer's decision to opt in. Public employers whose employees are represented by a union also have the option of opting in provided the employer and union negotiate the issue and agree to do so.

### **2. When does the PFL take effect?**

Covered employers are required to begin providing paid family leave benefits to eligible employees on January 1, 2018, and employees must contribute via payroll deduction to the cost of those benefits as of that same date. However, covered employers are permitted to, but do not have to, begin collecting deductions from employees as early as July 1, 2017.

### **3. For what reasons can an eligible employee take paid family leave?**

Unlike the federal Family and Medical Leave Act (FMLA), an employee's own serious health condition is not a qualifying reason under the PFL. Otherwise, the qualifying reasons for leave under the PFL are similar to those already provided under the FMLA — i.e., to bond with a new child (either the birth, adoption, or placement in foster care); to provide care for a child, parent, grandparent, grandchild, spouse, or domestic partner with a serious health condition; and for qualifying exigencies arising from military service of the employee's spouse, domestic partner, child, or parent. What qualifies as a "serious health condition" or a "qualifying exigency" under the PFL is consistent with what qualifies under the FMLA.

### **4. Are all employees eligible for this leave, or is there a threshold amount of time an employee needs to work before becoming eligible, like there is under the FMLA?**

Although the PFL and FMLA are similar in several respects, the eligibility requirements under the two laws are quite different. Under the FMLA, an employee must have actually worked a minimum of 1,250 hours in addition to being employed for a year preceding a period of leave before the employee becomes eligible for leave. However, under the PFL, the only eligibility criteria is the employee's length of employment. Employees who work more than 20 hours per week become eligible to receive benefits under the PFL after they have been employed for 26 consecutive weeks, whereas employees who work less than 20 hours per week become eligible to receive PFL benefits after 175 days. So long an employee meets the applicable 26-week/175-day threshold, there is no additional requirement that employees have actually worked a minimum number of hours in order to be eligible for benefits under the PFL.

### **5. How much paid family leave time are eligible employees entitled to?**

PFL benefits will be phased in over a 4-year period so that by 2021 when the PFL takes full effect employees in New York will be entitled to 12 weeks of paid family leave time annually for qualifying reasons. Effective January 1, 2018, an eligible employee will be entitled to receive 8 weeks of leave paid at a rate of either 50% of the employee's average weekly wage or 50% of New York State's average weekly wage, whichever is less. Effective January 1, 2019, an eligible employee will be entitled to receive 10 weeks of leave paid at a rate of either 55% of the employee's average weekly wage or 55% of New York State's average weekly wage, whichever is less. Effective January 1, 2020, an eligible employee will be entitled to receive 10 weeks of leave paid at a rate of either 60% of the employee's average weekly wage or 60% of New York State's average weekly wage, whichever is less. And finally, effective January 1, 2021, an eligible employee will be entitled to receive 12 weeks of leave paid at a rate of either 67% of the employee's average weekly wage or 67% of New York State's average weekly wage, whichever is less.

**6. How do we know what New York State's average weekly wage is?**

New York State's average weekly wage is currently \$1,305.92. On March 31st of each calendar year, the New York State Department of Labor calculates the State's average weekly wage based on statewide data from the prior calendar year.

**7. Whose obligation is it to pay for the paid family leave — employer or employee?**

Although employers are required to provide PFL benefits to eligible employees, employers are not required to pay anything towards the cost of those benefits. Paid family leave is intended to be 100% employee-funded. That is not to say that employees pay themselves the actual wages they would be entitled to during periods of leave, but rather employees are required to contribute, via payroll deductions, to either the premium cost associated with the employer's attainment of PFL insurance or to the employer's cost for self-insuring.

One question that still remains open is whether employers may pay for PFL themselves, without taking deductions from their employees' pay. This question may be answered when the Workers' Compensation Board issues final regulations later this year, so stay tuned.

**8. Is there a limit on how much can be deducted from an employee's paycheck for PFL benefits?**

Currently, 0.126% of the employee's weekly wage up to a maximum of 0.126% of the New York State average weekly wage can be deducted from an employee's paycheck for PFL purposes. For example, let's say that an employee earns \$1,250 per week, which is less than the State's average weekly wage (currently set at \$1,305.92). In that case, the maximum PFL deduction for that employee is 0.126% of that \$1,250 weekly earnings, or \$1.58 per week. But if the employee earns more than the State's average weekly wage, the maximum PFL deduction for that employee is 0.126% of the State average, or \$1.65 per week. In other words, regardless of whether the employee's weekly earnings are \$1,500 or \$10,000 or even more, so long as his/her weekly earnings exceed the State average (currently set at \$1,305.92), the most that can be deducted from that employee's pay is \$1.65 per week. Just remember that the State's average weekly wage is re-calculated each year (see Question 6 above), so the maximum amount that can be deducted from an employee's paycheck may change each year even if the employee's weekly wages remain the same.

**9. Is this mandatory or can employees opt out if they don't want to participate?**

This is mandatory. With only one exception, all employees are required to contribute to the cost of PFL and must have the appropriate amounts deducted from their pay — even if they have not yet been employed long enough to themselves be entitled to benefits under the PFL. The only exception to this is for employees (such as seasonal and temporary employees) who are hired for shorter periods of time than is necessary for them to be eligible to receive PFL benefits. So if, for example, an employee is only hired for a two-month period of time, and therefore less than either the 26 weeks or 175 days necessary to become eligible for PFL benefits (see Question 4 above), that employee can opt out of making payroll deductions towards the cost of PFL by filing a PFL waiver with the employer. But if that same employee's term of employment changes so that now he/she will be employed for longer than the 26-week/175-day eligibility threshold, a previously filed opt-out waiver will be deemed revoked within eight weeks of the change, and the employee will have to make PFL deductions and make a retroactive payment for the period back to the employee's date of hire.

**10. Can employees be required to take their accrued vacation/PTO time concurrently with this new family leave time?**

No. Unlike under the FMLA, under the PFL employees cannot be required to take vacation and other PTO time concurrently with their PFL leave. Employees can choose to have PFL time run concurrently with any vacation or other PTO time so that they receive their full pay during periods of leave, but they cannot be required to do so.

**11. Is there a deadline for employers to decide whether to get insurance or self-insure?**

Yes. If an employer wants to forego getting insurance and to self-insure PFL benefits, the employer must elect to do so no later than September 30, 2017, by filing appropriate paperwork with the State.

We hope these answers have helped in your understanding of New York's latest employee benefit. Stay tuned for additional information, particularly once the Workers' Compensation Board issues its final regulations later this year. In the interim, our Bond team is available to answer any other questions you may have, assist with policies to address these issues, and help you navigate the PFL requirements.

If you have any questions about this Information Memo, please contact [Jessica C. Moller](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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