

NEW YORK PAID FAMILY LEAVE: A GUIDE FOR EMPLOYERS

NY PFL provides eligible employees with a quantity of paid family leave to bond with an infant (or newly adopted or fostered child), to care for a family member with a serious health condition, to assist with family obligations that arise when a family member is called into active military service, or due to an order of quarantine or isolation for employees (or their minor child) related to COVID-19.

The New York Paid Family Leave law (NY PFL) requires employers that are subject to New York Workers' Compensation law — generally all private employers with one or more employees in New York — to provide paid leave for employees under certain qualifying circumstances. NY PFL is designed to help employees maintain financial stability, health care benefits, and job security while taking time to care for a family member. Public employers are generally exempt from NY PFL.

NY PFL enhances the job and health care protection benefits under the federal Family and Medical Leave Act (FMLA) by providing partially paid leave (in contrast to FMLA's unpaid benefit) and by providing benefits earlier than the effective date of FMLA entitlements (generally after six months of employment rather than according to FMLA's 1,250 hours in a 12-month period rule). NY PFL also expands the definition of family members to include relationships that are not otherwise recognized under FMLA (specifically domestic partners, siblings, parents-in-law, grandparents and grandchildren; for information about establishing a working definition of domestic partner for the administration of NY PFL, see the PPI publication [Domestic Partner Benefits: A Guide for Employers](#)). NY PFL also applies to employers that are not covered by FMLA based on size or geographic proximity to a company headquarters.

Employers that are subject to NY PFL have compliance obligations regarding administration of the leave provisions, including employee notice obligations, calculation and remittance of premium payments, timely completion of the employer portion of the NY PFL claim form, and tracking of leave balances. This Guide for Employers provides background and administrative guidance on NY PFL to assist employers in their compliance efforts. It includes an **NY PFL Benefits Chart** (Appendix A) and a **Sample Employee Communication** for advising employees of the new NY PFL premium as of each January 1 (Appendix B). For a comprehensive state-by-state overview of statutory disability and leave programs, including possible wage withholding and notice requirements as well as provisions for paid time off for qualified reasons, see the PPI publication [Quick Reference Chart: Statutory Disability and Paid Family & Medical Leave Programs](#).

NY PFL BACKGROUND

Effective January 1, 2018, NY PFL requires covered employers to provide eligible employees with a quantity of partially paid family leave to bond with an infant (or newly adopted or fostered child), to care for a family member with a serious health condition, or to assist with family obligations that arise when a family member is called into active military service. NY PFL coverage was added as a mandatory rider to all fully insured New York statutory short-term disability plans (NY DBL) effective January 1, 2018. Employers that self-insure their statutory short-term disability plan should work with their actuaries and administrators to develop appropriate NY PFL processes and procedures. Unless otherwise indicated, this Guide focuses exclusively on fully insured NY PFL plans.

In March 2020, New York enhanced the application of NY PFL to extend job-protected leave and paid sick leave to covered employees who are unable to work due to a

mandatory or precautionary order of quarantine or isolation imposed on the employee or on the employee's minor child in connection with COVID-19. Certain pandemic-related enhancements to NY PFL remain in effect as of late 2023; for details, see the COVID-19 leave page of the New York Paid Family Leave website.

Except as permitted under certain narrow exceptions related to the COVID-19 pandemic (applicable only to covered employers with fewer than 100 employees), NY PFL is not available for an employee's own serious health condition. Employees with a serious health condition may be eligible for benefits under NY DBL or, for work-related illnesses and injuries, under New York's Workers' Compensation program.

EMPLOYERS SUBJECT TO NY PFL

NY PFL applies to all private employers, including out-of-state employers, with at least one employee working in NY. An employer's headquarter state and an employee's "Lived-In" state (as distinct from "Worked-In" state) are not relevant to NY PFL eligibility. Non-NY employers with employees who work from home (or other remote sites) in NY for thirty or more days in a calendar year should ensure that these employees are covered under statutory Workers' Compensation, NY DBL, and NY PFL policies. Employers should confer with their tax consultant as needed to determine the applicable state tax nexus for employees whose worksite of record is in New York but who predominantly work remotely from another state.

Employers that are subject to NY PFL are required to post a workplace notice (PFL-120, Notice of Compliance), which confirms the NY PFL coverage and includes the insurance carrier contact information. (While there is not direct guidance on providing this workplace notice to remote employees, a cautious approach calls for providing all such NY notices, including the NY DBL workplace notice, via electronic means.) When an employee files a claim for NY PFL, or when the employer deems an employee's leave to constitute a claim for NY PFL, the employer must provide the employee with a notice of the employee's entitlement to NY PFL (PFL-271S, Statement of Rights).

EMPLOYEES ENTITLED TO NY PFL

The definitions of "Employee" and "Employment" for purposes of benefits that are governed by New York Workers' Compensation Law (such as NY DBL and NY PFL) are set forth in Article 9, Section 201 of the statute and include an assessment of whether the employee's service is deemed to be localized in New York State. "Localized" means work is performed entirely within NY, or the work outside NY is merely incidental, temporary or transitory. Employees who are deemed eligible for NY DBL will likewise be deemed eligible for NY PFL. Employers are advised to consult with legal counsel as needed regarding the proper assessment of whether an employee is an employee of a specific state for purposes of compliance with the laws of that state.

Full-time employees (those scheduled to work 20 hours or more per week) become eligible for NY PFL after 26 weeks of employment. Part-time employees (those scheduled to work fewer than 20 hours per week) become eligible for NY PFL after 175 days of work. In determining hours worked, employers should count paid vacation or sick time, but should not count unpaid time off or time off under a short- or long-term disability plan.

All NY employees who otherwise meet eligibility requirements are eligible for NY PFL regardless of immigration or citizenship status. Employees who have multiple NY employers within the same calendar year, whether simultaneously or serially, must separately establish eligibility with each employer and are subject to the maximum annual NY PFL deduction on a per-employer basis. Also, if an employee is covered by a union agreement that provides paid leave benefits at least as favorable as NY PFL, the employer can exempt the union employee from NY PFL premiums and benefits. Religious leaders and individuals engaged in a profession or teaching capacity in or for a religious, charitable or educational institution are also exempt. (See the New York State Paid Family Leave website for additional employee exemptions.) Employers may choose to extend NY PFL coverage to an otherwise excluded class of employees by filing an *Employer Application for Voluntary Coverage* form.

Waiver of NY PFL Benefits: Employees who do not expect to meet the length of service eligibility requirement to take NY PFL leave, such as short-term, seasonal or temporary employees who expect to work less than 26 weeks or 175 days (as applicable) in a consecutive 52-week period, have the option to file a written NY PFL waiver form (*Employee Paid Family Leave Opt-Out and Waiver of Benefits*). Employers must keep a copy of the fully executed waiver on file for as long as the employee remains employed by the covered employer. Employers cannot force employees to waive NY PFL benefits and, importantly, cannot unilaterally exclude employees from NY PFL benefit deductions without the employee's consent. Employers should not process NY PFL payroll deductions for, and are not required to provide NY PFL benefits to, any "waived" employees. That said, if the employee's work schedule is increased or extended such that the applicable full- or part-time waiver criterion no longer applies, the employer must automatically revoke the waiver (within eight weeks) and the employee must pay NY PFL premiums retroactively back to the effective date of the waiver.

EMPLOYEE USE OF NY PFL

Employees may use NY PFL for the following reasons:

- To provide for a family member with a “serious health condition” as defined under Workers Compensation law (does not include minor illnesses, cosmetic treatments, or routine examinations). This includes a leave to care for a family member who has contracted COVID-19, which may qualify as a serious health condition. For purposes of administering NY PFL, the list of qualifying family members includes the following: spouse, domestic partner, child/stepchild, parent/stepparent, parent-in-law, grandparent, grandchild, biological and adopted sibling, half-sibling, and step-sibling.
- To bond with a child during the first 12 months following the birth, adoption or foster care placement of the child; to meet adoption or foster care placement obligations (such as court appearances or travel necessary for an adoption, including in advance of the adoption or foster care placement date).
- To attend to a qualifying exigency (as defined under the FMLA) arising from the service of a family member in the US Armed Forces.

In addition to the above uses, NY PFL job protection and financial compensation extends to certain covered employees in the event they, or their minor dependent child, are under an order of quarantine or isolation due to COVID-19. However, NY PFL benefits are not available to employees who are able to work through remote access or other means.

Note that NY PFL is not available for prenatal care or for an employee’s own serious health condition or military service (although other federal or state provisions may apply). However, as mentioned above, NY PFL is available for an employee’s quarantine or isolation due to COVID-19 if the employee is unable to work through remote access or other means.

Employees may take their entire NY PFL entitlement in an uninterrupted block of time or may take portions of the entitlement intermittently in daily or weekly increments. (The NY PFL claim form distinguishes between “continuous” and “periodic” leave.) Employees are not permitted to take NY PFL in less than full-day increments. The NY PFL claim form includes explicit instructions for calculating an employee’s average gross weekly wage for purposes of determining the NY PFL benefit payment. Intermittent leave benefits are calculated by multiplying the average number of days per week that the employee works by twelve weeks. This enables employees who work more than five days per week to receive a proportionate number of intermittent leave days in a 52-week period.

Employers may permit employees to use sick or vacation leave (PTO), as applicable, prior to or concurrent with NY PFL, but they cannot require employees to do so. Employers may also elect to supplement NY PFL benefits, up to an employee’s full salary or wages. Employers that provide their own salary supplement (or full replacement) benefits to employees for some or all of a qualified NY PFL absence may seek direct reimbursement from the NY PFL carrier.

Employers should update employee handbooks as needed to inform employees of their rights and obligations under NY PFL and to provide accurate information about the employer’s policies and procedures for requesting and using NY PFL. Employers should ensure that NY PFL information is fully integrated into their overall leave policies and absence management tracking systems, including interaction with PTO, disability, salary continuation, FMLA, and other applicable benefits. The New York State Paid Family Leave website includes model language for employee handbooks and other employee-facing materials. In addition, see the **Sample Employee Communication** for advising employees of the new NY PFL premium as of each January 1 (Appendix B).

EMPLOYEE NOTICE AND CLAIM FILING OBLIGATIONS

When the need for NY PFL is foreseeable, such as for baby bonding related to an expected birth, adoption or foster care placement, or for care of a family member in connection with a planned medical treatment, employers can require employees to provide a minimum of 30 days’ advance notice of the projected start date of the leave. When the qualifying need arises more suddenly, employers should expect employees to provide notice as soon as practicable. Employers may require employees to provide notice as soon as practicable before each separate day of leave when leave is taken intermittently rather than in blocks of consecutive days.

NY PFL claim forms are available on the New York State Paid Family Leave website and are typically also available through the NY PFL insurer. Employees initiate a claim by completing the employee section of the *Request for Paid Family Leave* (Form PFL-1) and submitting it to the employer. Employers are required to complete the employer section of the form and return it to the employee within three days of receipt. Employees are then required to complete one or more additional forms (Form PFL-2, -3 and -4, or -5, depending on the type of leave) and submit the forms along with supporting documentation to the insurer. The type of documentation required depends on the type of leave, but includes items such as proof of birth, adoption or foster placement, proof of parental relationship, a health care provider’s certification of a family member’s serious illness, and active duty orders.

For an employer with a fully insured disability plan, the carrier will process and pay the claim. For an employer with a self-insured disability plan, the employer must process and pay the claim.

NY PFL BENEFITS AND TAXATION

There is no NY PFL waiting period or elimination period; eligible employees may take leave as soon as they experience a qualifying event. NY PFL can be taken for bonding with a child within one year of the child's birth or placement for foster care or adoption. The maximum NY PFL duration and benefit payment formula are determined by the applicable benefit factors as of the start date of the leave (regardless of the NY PFL-qualifying event date). However, if there is a break of more than three months between two segments of the leave, the benefit factors for the later segment of NY PFL are based on the start date of the later segment. In all cases, the maximum duration of NY PFL is reduced by any quantity of NY PFL taken within the prior 12-month look-back period (on a rolling basis).

NY PFL benefits paid to an employee are taxable to the employee, regardless of whether the premium is paid by the employee (as is presumed by NY PFL legislation) or by the employer. NY PFL insurers will not automatically withhold taxes from NY PFL benefit payments, although employees can request voluntary tax withholding when requesting the leave.

NY PFL FUNDING

NY PFL law provides that premium payments for all covered employees can be funded through employee payroll deductions (post-tax) at a contribution rate and up to a maximum limit set annually by the Department of Financial Services (DFS). The DFS expresses the NY PFL premium rate as a percentage of actual earnings (including overtime, commissions, and bonuses) up to a percentage of the applicable annual New York State Average Weekly Wage (NYSAWW). Employees who earn less than the NYSAWW will contribute less than the maximum NY PFL premium cap, consistent with their actual earnings. The NY PFL rates are non-negotiable.

NY PFL premiums are payable as of an employee's date of hire, not as of the earliest eligibility date for taking a qualified leave. Employers are not required to refund NY PFL deductions that were taken from employees who terminate employment prior to becoming eligible for NY PFL. Employers should work with their HR database administrator and payroll provider to set up proper NY PFL deduction codes and to ensure that deduction formulas are updated annually as of each January 1. See the **NY PFL Benefits Chart** (Appendix A) for the annual NY PFL rates and contribution limits.

Employers are not required to contribute toward NY PFL premiums on behalf of employees but are permitted to do so at their sole discretion. Employers are responsible for remitting NY PFL premiums (whether employee-paid or employer-paid) to the insurer according to the insurer's remittance schedule.

EMPLOYEE BENEFIT AND JOB PROTECTIONS DURING NY PFL

Employers are required to maintain an employee's existing health benefits for the duration of any period of NY PFL. That is, any medical, dental, vision or other health benefits enrollments that existed immediately prior to the leave must be continued during the leave with no change to the employee cost share contribution (other than changes due to annual Open Enrollment or mid-year qualifying events). Employers may terminate benefit coverages for non-payment of premium after thirty days, provided the employer has given at least fifteen days of advance notice to the employee (similar to FMLA).

Upon the employee's return from NY PFL, the employer must reinstate the employee to their prior employment position (or a comparable position with comparable pay, benefits and other privileges of employment). The NY PFL leave should not reduce any of the employee's accrued benefits as of the commencement of the leave. That said, employers are not required to continue to accrue benefits for the employee – including sick or personal days and accrual of any seniority rights – during an employee's NY PFL leave.

Employers may not discriminate or retaliate against employees for requesting or using NY PFL.

COORDINATION OF NY PFL WITH OTHER STATE AND FEDERAL LEAVE PROTECTIONS

Employees are not entitled to receive NY PFL and NY DBL benefits simultaneously (that is, for the same calendar day of leave). However, employees are permitted to waive NY DBL benefits in order to receive the richer NY PFL benefit as of an earlier date. For example, an employee can waive the NY DBL claim triggered by childbirth in order to commence the NY PFL baby bonding claim immediately upon the birth of the child. For employees who are eligible for both NY PFL and NY DBL during the same 52-week

period, the combined protection of both benefits cannot exceed 26 weeks during that period.

Employers that are subject to both NY PFL and FMLA need to establish whether individual employees are eligible for one or both leave entitlements as of the leave date based on all of the relevant factors, including the qualifying event, the definition of the employee's family member under the respective leave provision, the employee's tenure-based eligibility for the respective leave, and the employee's available leave balances. When an employee's leave reason co-qualifies as both NY PFL and FMLA as of the leave date, and assuming the employee has available balances under both leave entitlements, NY PFL must be used concurrently with FMLA unless the employer expressly permits otherwise. Similarly, the employer's policies governing use of PTO during an FMLA-qualified leave will govern the use of PTO during the concurrent PFL-FMLA leave.

POTENTIAL PENALTIES FOR NONCOMPLIANCE

Employers that fail to provide NY PFL coverage are liable for a fine of up to 0.5% of weekly payroll for the period during which the employer was without coverage, and a fine of up to \$500 per employee (to be paid into a special fund for disability benefits). In addition, employers that fail to provide NY PFL coverage will be directly liable to employees for the payment of NY PFL benefits and employee contributions for the duration of the violation. For failure to maintain health insurance benefits while an employee is out on NY PFL leave, the employer will be directly liable for the employee's applicable health care costs during the NY PFL leave.

SUMMARY

Employers should review their family and medical leave policies, benefits claim procedures and processes, and employment agreements (including collective bargaining agreements, as applicable) to ensure that they comply with NY PFL requirements. Employers should work with payroll and HR system administrators to ensure accurate calculation and processing of NY PFL premiums and tracking of NY PFL in the employer's absence management system. Employers should train HR staff, managers and supervisors on NY PFL rules so that they can identify situations where employees may be entitled to NY PFL protections. Employers should involve outside counsel as needed to develop appropriate policies and procedures or when specific questions or situations arise.

RESOURCES

New York State Paid Family Leave

NY PFL Helpline: 844.337.6303

APPENDIX A

NY PFL was phased in over four years from 2018 through 2021. Effective for NY PFL leaves that commence in calendar year 2022 and thereafter, the Weeks of Leave and PFL Benefit Formula variables will remain at the 2021 levels unless otherwise modified by legislation.

The Statewide Average Weekly Wage and the PFL Premium % (premium rate) are confirmed annually prior to the start of each successive calendar year. The NY PFL benefits chart will be updated annually as new rate information becomes available.

NY PFL Benefits Chart

| Year | Weeks of Leave | PFL Benefit Formula | Statewide Average Weekly Wage (SAWW)* | PFL Premium % (Rate)** | Max PFL Premium | Max Weekly Benefit | Max 12-Month Benefit |
|------|----------------|--|---------------------------------------|------------------------|-----------------|--------------------|----------------------|
| 2023 | 12 weeks | 67% of employee's AWW, up to 67% of SAWW | \$1,688.19 (\$87,785.88/year) | 0.455% earnings | \$399.43/year | \$1,131.09 | \$13,573.08 |
| 2024 | 12 weeks | 67% of employee's AWW, up to 67% of SAWW | \$1,718.15 (\$89,343.80/year) | 0.373% earnings | \$333.25/year | \$1,151.16 | \$13,813.92 |

*NYSAWW is the average weekly wage paid in New York State during the previous calendar year as reported by the Commissioner of Labor to the Superintendent of Financial Services on March 31 of each year.

**The PFL Premium % (Rate) is established by the NYS Department of Financial Services; it is published annually by September 1 for the policy period beginning on the following January 1.

APPENDIX B

Sample Employee Communication for Calendar Year 2024

Date: [Month DD, YYYY]
To: New York Employees
From: Human Resources
Re: New York Paid Family Leave Premium and Benefits for 2024

The New York Paid Family Leave law (NY PFL) was enacted to provide job-protected, paid time off so New York employees can:

- Bond with a newly born, adopted or fostered child.
- Care for a family member with a serious health condition.
- Assist loved ones when a family member is deployed on active military duty.

In addition to the above uses, NY PFL job protection and financial compensation extends to certain covered employees in the event they, or their minor dependent child, are under an order of quarantine or isolation due to COVID-19. However, NY PFL benefits are not available to employees who are able to work through remote access or other means.

NY PFL benefit premiums are funded by employees through after-tax payroll deductions. The premium rate is set annually by the Department of Financial Services.

Effective January 1, 2024, the premium for NY PFL is 0.373% of earnings to a maximum of \$333.25/year. Employees who earn less than the applicable wage cap (\$89,343.80/year in calendar 2024) will be subject to less than the maximum premium.

[Add as applicable: As a benefit to you, [Name of Company] has chosen to pay the NY PFL premium for you in 2024.]

The maximum NY PFL benefit in a 52-week period is 12 weeks, paid at 67% of an employee's average weekly wage to a maximum of 67% of the New York State Average Weekly Wage. An employee's NY PFL entitlement is offset by any NY PFL time taken within the prior rolling 12 months.

For further information about NY PFL, including how to calculate your NY PFL benefits or file a claim, please contact Human Resources or visit the New York Paid Family Leave website at www.paidfamilyleave.ny.gov.