

## **Legislative Blast** **August 2017\***

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### **NEW YORK STATE PAID FAMILY LEAVE BENEFITS LAW UPDATE**

In April 2016, New York State enacted its paid family leave benefits law (“Paid Family Leave”) to provide employees with wage replacement in order to help them “bond with a child, care for a close relative with a serious health condition, or help relieve family pressures when someone is called to active military service.” Employees also receive job protection guarantees under New York’s Paid Family Leave law.

The law is being implemented in phases over four (4) years. Effective January 1, 2018, wage replacement is capped at eight (8) weeks at fifty percent (50%) of an employee’s salary up to a maximum of fifty percent (50%) of the State Average Weekly Wage for employees.

On February 22, 2017, proposed Paid Family Leave regulations were issued by the New York State Workers’ Compensation Board (“Board”). On May 24, 2017, the Board issued additional proposed regulations. Finally, on July 19, 2017, the Board issued final regulations.

In enacting the legislation, New York State issued the following series of Frequently Asked Questions (FAQs) for Employers and Employees on Paid Family Leave.

#### **EMPLOYER FAQs:**

##### **What are an employer’s obligations under Paid Family Leave?**

Employers will be required to purchase a Paid Family Leave insurance policy or self-insure. The premium of the policy will be paid for by your employees. *[Editor’s note: the maximum contribution in 2018 is \$1.65 weekly, which is calculated as 0.126% of an employee’s weekly wage up to \$1,305.92, which is the State Average Weekly Wage for 2018].*

An employer may not discriminate against employees for taking Paid Family Leave. Employees are guaranteed job protection upon return from Paid Family Leave. For purposes of the Paid Family Leave program, job protection is defined as returning your employee to the same or a comparable job. Employees are also guaranteed continuation of health insurance while out on Paid Family Leave. *[Editor’s note: these requirements are similar to requirements imposed on employers who are subject to the federal Family and Medical Leave Act].*

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**When does a new employer have to provide Paid Family Leave insurance coverage?**

A new employer that has had one (1) or more employees on each of at least 30 days in any calendar year is required to provide Paid Family Leave insurance coverage upon the expiration of four weeks after that 30th day of such employment. Employers may collect employee contributions prior to obtaining the insurance policy or self-insured approval.

**When will new employees be eligible for Paid Family Leave?**

A new employee becomes eligible for Paid Family Leave benefits 26 weeks from the date they were hired. If the new employee is part-time, they become eligible after working 175 days. .  
*[Editor's note: employees with a regular work schedule of 20 or more hours per week are eligible after 26 weeks of employment; employees with a regular work schedule of fewer than 20 hours per week are eligible after 175 days worked].*

**Where do I obtain a Paid Family Leave policy?**

Employers should contact their current New York Disability Benefits carrier to learn more about adding Paid Family Leave coverage. If you renew or start New York State Disability Benefits in 2017, benefits won't start any earlier than January 1, 2018.

**How much will Paid Family Leave cost a business?**

The Paid Family Leave insurance premium will be funded in full by your employees. *[Editor's note: costs for administering Paid Family Leave are funded by employers, not employees].*

**Will employers have to pay an employee's salary while the worker is on leave?**

No. The employee will receive the Paid Family Leave benefit through the insurance policy.

**What information do I need to communicate to my insurer when an employee requests Paid Family Leave?**

As an employer, you are responsible to complete the employer portion of the claim form and provide detailed information to the insurance carrier regarding the exact dates an employee has used Paid Family Leave.

**EMPLOYEE FAQs:**

**Does Paid Family Leave cost me anything?**

New York's Paid Family Leave is entirely employee-funded. That is, the benefit is paid for by employees. Employers may collect the cost of Paid Family Leave through payroll deductions. The maximum employee contribution in 2018 shall be 0.126% of an employee's weekly wage up to the annualized New York State Average Weekly Wage. *[Editor's note: the New York State Average Weekly Wage is currently \$1,305.92 and will be recalculated each year.]*

**Do I have to participate in the Paid Family Leave program?**

Yes, Paid Family Leave is not optional for most employees. The exception is if you are in a job that will not allow you to attain the 26 continuous weeks or 175 days needed to qualify for Paid Family Leave (for example a seasonal worker). *[Editor's note: employees whose regular work schedules are temporary may also opt out of Paid Family Leave in limited circumstances].*

**I am pregnant. Will I be able to receive Paid Family Leave during my pregnancy?**

Paid Family Leave only begins after birth. It is not available for pre-natal conditions.

**Will I be able to use Paid Family Leave to take care of an eligible relative living outside New York?**

Yes, as long as you are caring for an eligible family member, and provide the medical certification.

**I am not a US citizen. Will I still be eligible for Paid Family Leave?**

Yes. Your citizenship status has no impact on your Paid Family Leave eligibility.

**I am an undocumented worker. Can I take Paid Family Leave?**

Your immigration status has no impact on your Paid Family Leave eligibility.

**Will I be able to use Paid Family Leave if I work part-time?**

Yes. If you work less than 20 hours a week you will become eligible after 175 days of work. If you work 20 or more hours a week you will become eligible after 26 consecutive weeks of work.

**I am collecting workers' compensation. Will I be able to use Paid Family Leave?**

If you are not working and are collecting workers' compensation, you may not use Paid Family Leave.

**I am a freelance worker. Am I eligible for Paid Family Leave?**

If you do not have a regular employer and work as an independent contractor, you will not have Paid Family Leave benefits unless you purchase coverage for yourself.

**I am a farm laborer. Am I eligible for Paid Family Leave?**

If you work in service as a farm laborer, you are not eligible for disability or Paid Family Leave benefits.

**Will I have to take all of my sick time and/or vacation before I use Paid Family Leave?**

An employer may permit you to use vacation or sick leave for full salary, but may not require you to use either. *[Editor's note: employers may be reimbursed by PFL carriers for paid leave].*

**Can I take Paid Family Leave and use my sick and/or vacation time together so that I receive my full salary?**

Yes, if your employer allows you to use your sick and/or vacation time during Paid Family Leave, so that you receive your full salary for all or part of the leave, then you can do so.

**Will my spouse and I be able to use Paid Family Leave at the same time?**

If you and your spouse have different employers, you are both eligible to take Paid Family Leave at the same time. However, if you and your spouse work for the same employer, they can deny Paid Family Leave to more than one employee at the same time to care for the same family leave recipient, or to bond with a child.

**Do other States have Paid Family Leave?**

New York will now join California, Rhode Island, and New Jersey as the only States in the nation that provide a Paid Family Leave benefit. When fully implemented, New York will have the longest and most comprehensive Paid Family Leave program in the nation. *[Editor's note: just another of the many joys and burdens of employing workers in the State of New York! ☺].*