GETTING TO KNOW:

FMLA VS PFL

We've set them next to each other so you can see what Paid Family Leave (PFL) provides at the state level in New York and what's available to you federally via the Family and Medical Leave Act (FMLA).

WHERE DO LAWS APPLY?

At the
FEDERAL
level

Passed in 1993, **FMLA** was the first piece of federal legislation to protect time off for major health and family leave events like bonding with a newborn or caring for a seriously-ill family member. It provides up to 12 weeks of unpaid yet protected time off.[1]

At the
STATE
level

PFL, passed in 2016, takes FMLA a step further by providing protected time off at partial pay in New York State beginning in 2018.[2]

WHAT BENEFITS DO I HAVE?

FMLA is

UNPAID

Provides **no** monetary benefits[1]

but FMLA **does** provide

JOB PROTECTION

All employees are entitled to return to their previous position, or its equivalent in pay and benefits

A salaried person in the employer's top 10% salary range and within 75 miles of the employer may be denied job restoration after FMLA leave if the restoration (not the absence) of the employee will cause substantial and grievous economic injury for the employer.

PFL is

PAID

Provides **67%** of the employee's Average Weekly Wage, capped at New York's AWW once fully implemented in 2021*

**Begins at 50% of the AWW capped at 50% of New York's AWW in 2018.*[2]

and PFL **also** provides

JOB PROTECTION

All employees are entitled to return to their previous position, or its equivalent in pay and benefits

HOW MUCH TIME OFF CAN I RECEIVE?

FMLA provides *up to*

12 WEEKS

of total leave time*

PFL provides *up to*

12 WEEKS

of total leave time*

in increments of

15 MINUTES

**In a 12-month period.*

Depending on the employer's established policy for bonding and care this can be based on: [3]

(1) Calendar year; (2) Any fixed 12 months; (3) 12-month period measured from the first day of care; (4) A rolling 12-month period measured backward from the first day of care

For military caregiver leave, the 12-month period always begins on the first day the employee takes leave.

in increments of

1 FULL DAY

**In a consecutive 52-week period measured from the first day of leave*

Begins at 8 weeks in 2018, increases to 12 weeks when fully phased in in 2021.[2]

PFL EXPERT TIP

If you are entitled to both PFL and FMLA, they will run concurrently – this means that PFL time can't be added to FMLA time to extend the overall leave. *Depending on your employer's leave policy, these leave periods may not line up directly, so check with your employer to find out how leave will work for your particular situation.[3]*

WHO IS ELIGIBLE?

FMLA is for employees working at **"any" organization in the US** *with*

50+

EMPLOYEES

PFL covers employees working in **New York at a "covered employer"** *with*

1+

EMPLOYEES

Employees must have been at their current employer for **12 consecutive months**, working *at least* **1,250 hours** in the months preceding FMLA leave[3]

Employees working 20+ hours a week must have been employed for *at least* **26 consecutive weeks** at their current employer

Employees working less than 20 hours per week must have worked *at least* **175 days** for their current employer

No minimum hour requirement[3]

WHAT CAN I USE IT FOR?

Caring for your own personal injury or illness

✓ **FMLA** ✗ **PFL**

Bonding with a newborn, adopted or foster child

✓ **FMLA** ✓ **PFL**

Caring for a seriously ill family member

✓ **FMLA** ✓ **PFL**

Time to attend to family matters due to a qualifying military exigency[4]

✓ **FMLA** ✓ **PFL**

WHO QUALIFIES AS A “FAMILY MEMBER?”[1]

CARE-GIVING

✓ FMLA	Spouse	✓ PFL
✗ FMLA	Domestic Partner	✓ PFL
✓ FMLA	Child*	✓ PFL
✓ FMLA	Parent*	✓ PFL
✗ FMLA	Grandparent	✓ PFL
✗ FMLA	Grandchild	✓ PFL

MILITARY CARE-GIVING

✓ FMLA	Spouse	✓ PFL
✗ FMLA	Domestic Partner	✓ PFL
✓ FMLA	Child*	✓ PFL
✓ FMLA	Parent*	✓ PFL
✗ FMLA	Grandparent	✓ PFL
✗ FMLA	Grandchild	✓ PFL
✓ FMLA	Next of Kin	✗ PFL

MILITARY EXIGENCY

✓ **FMLA**	Spouse	✓ **PFL**
✗ **FMLA**	Domestic Partner	✓ **PFL**
✓ **FMLA**	Child*	✓ **PFL**
✓ **FMLA**	Parent*	✓ **PFL**

WHO IS CONSIDERED A “PARENT” OR “CHILD”?[1]

*Both accept biological, adoptive, step, foster, or in-law parental relationships. Noteworthy differences:

✗ **FMLA**	In-Laws	✓ **PFL**
✗ **FMLA**	Domestic Partner’s Child	✓ **PFL**
✓ **FMLA**	18 or Older (but incapable of self-care)	✗ **PFL**

WHAT HAPPENS BEFORE I LEAVE?

30 DAY NOTICE

Employees must give 30-days notice for forseeable leave for both FMLA and for PFL[1]

DOES TAKING LEAVE AFFECT MY TIME OFF POLICIES?

Vacation and sick time accrual
during leave happens at the

EMPLOYER'S DISCRETION

for **both** PFL and FMLA

The key is that all employees are treated equally when it comes to leave policies, and that the employer has a clear policy in place [2]

Under FMLA, employers **have the option to require** an employee to use their existing sick or vacation time while they are on leave

With PFL, employers **cannot require** an employee to use any of their sick or vacation time while they are on leave [2]

HOW DOES LEAVE AFFECT MY BENEFITS?

Health insurance is

✓**FMLA** - - - - **MAINTAINED** - - - - ✓**PFL**

at the

EMPLOYEE'S USUAL CONTRIBUTION AMOUNT

as though not on leave

Employees also maintain rights to other benefits (Life, Dental, LTD, etc.)*

Even when maintained by an employer, benefit availability may vary from insurance policy to insurance policy [3]

**Continuation of existing benefits while on FMLA depends on the employer's established policies, so that benefits that are maintained during PTO, for example, must also be maintained during FMLA leave time.*

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1 - Department Of Labor (DOL): www.dol.gov/whd/fmla/index.htm

2 - New York State: www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-how-it-works

3 - Benetech: blog.benetechadvantage.com/fmla-and-ny-paid-family-leave-how-do-they-coincide?utm_campaign=FMLA&utm_content=51922174&utm_medium=social&utm_source=twitter

4 - Proskauer: www.lawandtheworkplace.com/2017/02/proposed-regulations-issued-for-new-york-state-paid-family-leave-law/

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