

# PAID FAMILY LEAVE NEW YORK

## Need-to-Know PFL Information for Covered Employees

### What is Paid Family Leave?

Starting in January 2018, Paid Family Leave (PFL) becomes a mandatory benefit in New York, providing you with job protection and paid time off for these qualifying events:



To provide care for a family member with a severe health condition

**Providing care** for a family member with a serious health condition

The common cold or taking off for general doctor visits **don't qualify** – the person you care for must have a **“serious health condition.”**



To bond with a child after birth, adoption, or to welcome a child into foster care

**Bonding leave** after giving birth, adoption, or welcoming a child into foster care. You can use paid family leave benefits during the **first 12 months** after your baby's birth (including 2017 births!), adoption, or foster placement – and **yes, dads can go out on paid leave, too!** You may take paid leave even for events leading up to adoption, such as travel to another country to complete an adoption.



To cope with a military exigency leave event

**Qualifying military exigency**

You can take paid leave to attend to family matters if your family member (spouse, domestic partner, child, or parent) is on **active duty** or has been **notified of an impending call** or to active duty.

---

### Am I eligible for Paid Family Leave?

Your employer will be the one to provide PFL coverage. General rule of thumb: if you have DBL (NY's statutory disability insurance) now, you will automatically get PFL starting next year as – that's usually the case if you work in a private sector business in NY (with at least one employee) and don't fall into an excluded class of employees. If you're not sure, check with your employer to find out if the place you work at is considered a "Covered Employer."

Got the green light? Then here's what it takes to be eligible to go out on paid leave: You must make it through what's called a "qualification period," i.e:

- If you work 20 or more hours per week, you must have been employed at least 26 consecutive weeks at your current employer
  - If you work less than 20 hours a week, you must have completed at least 175 work days at your current employer
  - If you change jobs, your time worked at the previous employer does not count. In other words you start over with a new qualification period
  - Time out on DBL (statutory disability insurance) does not count towards your qualification period
-

## How much can I get?

PFL benefits phase in over 4 years with gradually increasing benefit amount and duration as follows (for leave taken in weekly increments):

Benefit Stage Effective Date*	Maximum Length of Paid Leave	Maximum Benefit Amount***		
		Payable % of Employee's Average Weekly Wage	To the Maximum % of NY Average Weekly Wage	\$ Max based on 2016 NYSAWW of \$1,305.92**
01/01/2018	8 weeks	50%	50%	\$653
01/01/2019	10 weeks	55%	55%	\$718
01/01/2020	10 weeks	60%	60%	\$784
01/01/2021	12 weeks	67%	67%	\$875

\*While this the anticipated phase-in schedule, New York State may delay implementation at its discretion.

\*\* Total for all qualifying events per 52-week period from the first day of paid leave (and regardless of requalifying at a new employer during that period).

\*\*\*NY Department of Labor releases the updated NYSAWW every March 31.

### Intermittent Leave

- The benefit for employees who take paid leave in daily increments is based on their average number of days worked per week during the last 8 weeks before taking paid leave.
- Number of hours worked during those days has no influence on the maximum benefit.
- The total number of intermittent days is capped at 60 days, even if you work more than 5 days/week on average.

## What does this actually mean for you?

In 2018, your weekly benefit is 50% of your “average weekly wage” as defined in Article 9 (AWW) capped at 50% of New York State’s Average Weekly Wage (NYSAWW). That means, if you earn more than the current NYSAWW of \$1,305.92 your maximum benefit is capped at \$653/week. For example, if you make \$2,000 per week, your PFL benefit will be \$653 (not \$1,000); and if you make \$1,000 per week, your PFL benefit will be \$500 (not \$653).

- The benefit amount that is in effect at the time your leave began applies to the full duration of your paid leave for that event, even if a new calendar year with increased benefit levels falls within that period.
- You can take intermittent paid leave even in daily increments, such as every other Monday

---

## Top 10 things to know about using Paid Family Leave:

1. For **foreseeable events** (such as birth or scheduled treatments/therapy), you should provide your employer with a **30-day notice** of intent before using Paid Family Leave benefits. If you are not able to provide this notice due to the **sudden** nature of the qualifying event (such as a family member’s stroke, emergency delivery, or short-notice deployment), you are still entitled to the leave but have to notify the employer **as soon as reasonably practicable** (typically within 2 days).
2. If you take intermittent leave, your employer has the right to require you to provide notice before each day of leave – even if it is a regular schedule.
3. There is no **“waiting period.”**
4. Once on leave, you will receive a monetary PFL benefit (partial income replacement) from your employer’s DBL/PFL insurance carrier.
5. You can’t take DBL and PFL at the same time, i.e, receive benefits for both concurrently. They have to be taken in sequence. And if you qualify for both DBL and PFL, the combined duration cannot exceed 26 weeks in a consecutive 52-week period (whether using those benefits for the same or different qualifying event).
6. Your employer **cannot require you to use up your accumulated paid time off** (such as sick/vacation days) before letting you go out on paid family leave.
7. You have, however, the option to use accrued vacation days during your Paid Family Leave, thereby receiving your full salary as opposed to the percentage provided for by PFL. However, if you do this:
  - a. you will not be able to collect both paid time off (such as vacation pay) and monetary Paid Family Leave benefits simultaneously.
  - b. In this case, PFL provides only the job protection aspect.
8. If the business you work for has 50 or more employees, it has to honor Family Medical Leave Act (FMLA) – this also means your PFL benefits must be coordinated and used concurrently with FMLA benefits.
9. Paid Family Leave provides more than just a monetary benefit – it provides job security similar to unpaid leave under FMLA, but regardless of the size of the employer.
  - a. When returning from PFL, you are entitled to return to your same or comparable position
  - b. If your employer declines to reinstate you when returning from PFL, you have the right to report this to NY State
10. If you have health insurance through your employer, it’s continued at your usual coverage level and contribution amount as if you weren’t on leave.



## Paid Family Leave for providing care

The person you provide care to must be a family member with a serious health condition.

### Qualified types of care include:

Physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, personal attendant services, traveling to pick up medication

### Who counts as a care-receiving person (family member) for PFL purposes?

Spouse, domestic partner, child, parent, grandparent, grandchild

### The definition of parent is very generous under PFL and includes:

Biological, foster, or adoptive parent, a legal guardian (or other person who stood *in loco parentis* to the employee when the employee was a child) as well as step parents and in-laws.

### What counts as a serious health condition?

The family member you care for must be incapacitated for at least 4 consecutive days with either

- at least 2 doctor treatments or
- 1 doctor treatment and a doctor-supervised regimen thereafter
- PFL regulations provide **specific examples of serious health conditions**, including: Chronic serious health condition (such as asthma, diabetes, and epilepsy); long-term illness, injury, impairment, or physical or mental condition (such as such as Alzheimer's, a severe stroke, or the terminal stages of a disease); treatments for cancer (e.g., chemotherapy and radiation), severe arthritis (physical therapy), or kidney disease (dialysis)

### What does not qualify as treatment for a serious health condition:

- Regimen or treatment that can be and is initiated without a visit to a health care provider (such as taking of over-the-counter medications, bed-rest)
  - Conditions such as the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems – unless complications arise
  - Routine exams; cosmetic treatments (such as most treatments for acne or plastic surgery)
-



## ***Paid Family Leave for bonding***

During what time can you take paid leave to bond with your new baby? Your bonding window under paid family leave for a birth expires at the end of the consecutive 52-week period beginning on the date of your baby's birth – this goes for dads, too!

Depending on what's best in your situation, you may start with statutory disability benefits from your DBL policy during the immediate post-partum period first and then transition into paid leave benefits.

DBL and PFL, however, cannot be taken together and cannot exceed 26 weeks total within the consecutive 52-week period beginning on the date of your baby's birth.

What does that mean for babies born in 2017?

Since the entitlement period stretches over the course a whole year from your baby's date of birth, this includes babies born in 2017. The amount of paid time off you can take next year, is determined as follows:

- If the baby was born more than 8 weeks into 2017, you can qualify for the maximum benefit duration
- If the baby was born earlier than that, January 17, for example, you could take paid family leave between January 1 and 16 next year.

How does it work for adoptions or foster care?

Your entitlement to paid family leave for adoption or foster care expires at the end of the consecutive 52-week period beginning on the date of the placement or first day of leave you took.

Do any events related to the adoption or foster placement qualify?

Yes, you can take paid family leave before the actual placement or adoption of a child if an absence from work is required as part of the process, such as counseling sessions, appearing in court, consulting with attorneys or doctors representing the birth parent, physical examinations, or traveling to another country to complete an adoption.



---

## ***Paid Family Leave for military exigencies***

You can take paid time off to attend to family matters if a family member is on active duty, called to active duty status, or has been notified of an impending call to active duty in the armed forces of the United States:

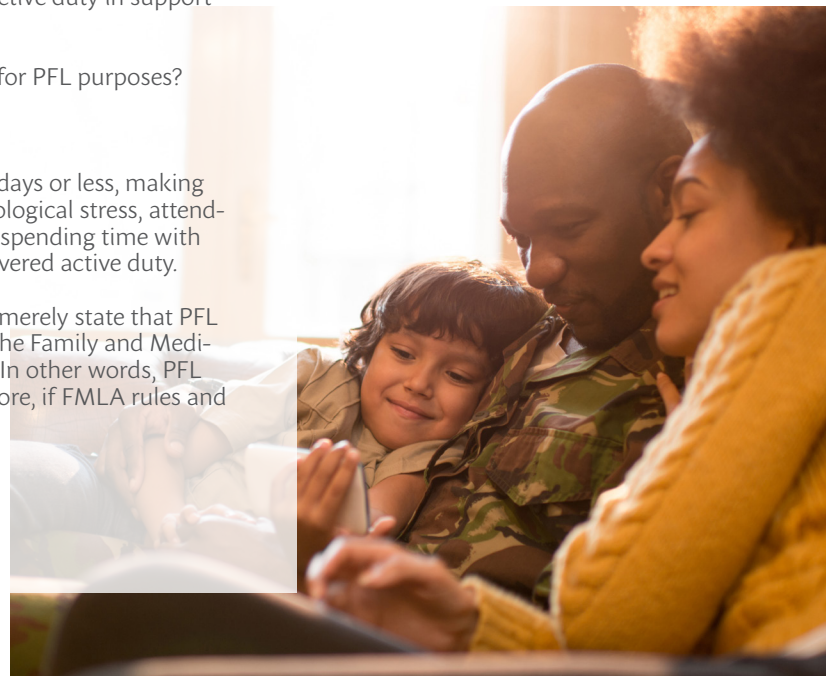
- For members of the **Regular Armed Forces**, this means duty during deployment with the Armed Forces to a foreign country.
- For members of the **Reserve and National Guard**, this means duty during deployment with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation, which includes national emergencies.

Who counts as a qualified family member under a military exigency for PFL purposes? Spouse, domestic partner, child, parent

Examples of military exigencies that qualify for Paid Family Leave:

Addressing issues that arise from the short-notice deployments of 7 days or less, making financial and legal arrangements, counseling to cope with the psychological stress, attending military events, arranging for alternative childcare/parental care; spending time with the family member who is on Rest and Recuperation leave during covered active duty.

Please note: PFL regulations don't provide their own definition, they merely state that PFL benefits "are based upon a qualifying exigency as interpreted under the Family and Medical Leave Act, 29 U.S.C.S 2612(a)(1)(e) and 29 C.F.R. 825.126(b)(1)–(9)." In other words, PFL uses FMLA as the chassis for military exigency-related leaves. Therefore, if FMLA rules and definitions change, the same changes apply to PFL.



## How much does it cost?

Paid Family Leave is typically referred to as an employee-funded benefit, but it is up to your employer to decide if and how much to deduct from you. If your employer takes contributions from you, here are a few key things to know:

### Based on the law and regulations that govern Paid Family Leave, employers . . .

- can start taking payroll deductions from you as early as July 1, 2017, although the benefit doesn't go into effect until January 1, 2018.
- don't have to refund any early deductions to you if you leave the company before January 1, 2018.
- can start taking deductions from you as soon as you start a new job, even during your qualification period.
- cannot retroactively collect payroll deductions for PFL if they start later than January 1, 2018 (for example, if your employer misses to start deductions in January 2018, they can't take a catch-up contribution in February)
- most importantly, **cannot exceed your specific maximum contribution**. If they do, they will have to **return the excess** amount to you.

### Here's how the maximum contribution is calculated:

**Your maximum contribution is 0.126%\*** of your weekly wage capped at New York's average weekly wage (NYSAWW), which is currently \$1,305.92 = 67,907.84 per year\*\*

**This translates into a 2018 maximum contribution of \$1.65/week (averaged over the year) for employees earning the current NYSAWW or above.**

The PFL rate is set by NY State and can be adjusted on an annual basis effective every January 1. The 2018 rate had to be set by June 1, 2017. Thereafter, updated rates are set and announced by the New York State by September 1 of each year for the following calendar year.

\*Determined each year by September 30 by the NYS Department of Financial Services - starting 2018

\*\*NY Department of Labor releases the updated NYSAWW every March 31.

Of the world's 185 developed countries, the United States stands alone as the only industrialized nation that doesn't provide some form of paid family leave for its citizens.

New York's Governor Andrew Cuomo signed Paid Family Leave legislation that passed in 2016. This makes New York one of few states (following California, New Jersey, and Rhode Island) to pass Paid Family Leave legislation. With regulations released by the State of New York, insurance carriers, employers, and brokers all need to gear up and implement PFL capabilities before the phase-in of PFL begins in January 2018.

## We're ready – are you ready?

Check our website frequently to stay in the know as we release more details on Paid Family Leave administration in the next weeks and months to come.

# www.PaidLeaveNY.com

*This material is for informational purposes only; it is not to be considered in the same light as official statements of position contained in the regulations, and is not intended to provide legal counsel. ShelterPoint Life is not an FMLA and/or group benefit and FMLA advisor. Please consult with an appropriate professional for legal and compliance advice. Any PFL information as of June 1, 2017, is based on the applicable statutes and draft regulations and may change when final Paid Family Leave regulations are issued by the State of New York. All DBL/PFL policies are New York-only products and are underwritten by ShelterPoint Life Insurance Company, a NY-domiciled carrier.*

