New York State Paid Family Leave
Effective January 1, 2018
Brief Summary of Proposed Provisions
Updated for Revised Proposed Regulations Issued May 25, 2017

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Overview

In February 2017, NYS released its proposed regulations for implementation of the New York State Paid Family Leave law (PFL) which goes into effect on January 1, 2018. Employers with one or more employees are required to comply with PFL. Out of state employers with employees in New York State are also subject to the law for their New York employees.

The proposed regulations provided initial guidance to employers, insurance carriers, and employees about the leave’s benefits as well as procedures for each. The proposed regulations were subject to a public comment period which closed April 7th.

The comments were reviewed and revisions were made to the proposed regulations. “Revised proposed regulations” were issued on May 25, 2017. Another 30 day comment period then opened for the public to respond. The comment period will close on June 23rd. The anticipated release date for final regulations may not be released until late July or sometime in August 2017. This time frame should still allow all parties time to prepare in advance of the effective date.

A number of the revisions to the proposed regulations provide definitions and add clarity to the original document and are not included in this summary. Key items from the revised proposed regulations important for employers and employees to know are highlighted in red below.

What is Paid Family Leave?

NYS Paid Family Leave will provide eligible workers with wage replacement during time away from a job to:

- Bond with the employee’s new child during the first 12 months after the child’s birth, or the first 12 months after the child’s placement for adoption or foster care with the employee.

- Provide care for a family member with a serious illness. The definition of family member includes a biological or legal relationship and in “loco parentis” in definitions of child and parent. These include:
  - spouse/domestic partner
  - child (no age limit)
  - parent and parent-in-law
  - grandparent of employee
  - grandchild (child of employee’s child)

- Participate in “qualifying exigencies” as defined in federal Family and Medical Leave Act due to a spouse, domestic partner, child, or parent’s active duty military service or notice of a call or order to activity duty. Qualifying exigencies include:
  - attending certain military events
  - arranging for alternative childcare
  - caring for a military member’s parent who is incapable of self-care when the care is necessitated by the member’s covered active duty
  - addressing certain financial and legal arrangements
  - attending certain counseling sessions
  - attending post-deployment reintegration briefings
Paid Family Leave starts in January 2018 with eight weeks of coverage at 50% of an employee's salary capped at the state’s average weekly wage as defined annually by New York State. The 2016 average weekly wage is $1,305.92, which would make the cap $652.96 per week.

The leave benefit amounts will rise over four years to the maximum benefit of 12 weeks of leave at 67% of a worker's salary (with the cap at 67% of the state average weekly wage). The following chart explains how the benefit will increase until it reaches full implementation on January 1, 2021:

### Benefits Implementation Schedule

<table>
<thead>
<tr>
<th>Year</th>
<th>Weeks Available</th>
<th>Max % of Employee Salary</th>
<th>Cap % of State Average Weekly Wage*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/2018</td>
<td>8</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>1/1/2019</td>
<td>10</td>
<td>55%</td>
<td>55%</td>
</tr>
<tr>
<td>1/1/2020</td>
<td>10</td>
<td>60%</td>
<td>60%</td>
</tr>
<tr>
<td>1/1/2021</td>
<td>12</td>
<td>67%</td>
<td>67%</td>
</tr>
</tbody>
</table>

*The Average Weekly Wage (AWW) is set every year after a comprehensive analysis by the New York State Department of Labor and is typically announced around the end of March of the following year.

### Covered Employers and PFL Insurance Policy

The program is mandatory for all private employers with at least one employee. The Paid Family Leave rider will be added by the carrier to all current disability policies. However, in the revised proposed regulations, carriers will have 60 days after the employee deduction amount is announced (on or about June 1st) to decide whether to offer PFL insurance riders or withdraw from offering statutory short term disability insurance as well as the paid family rider. If this occurs, some companies may be “scrambling” to find new carriers for coverage in a relatively short timeframe.

Public employers (government entities) may opt in. Public employees who are represented by a union may be covered if PFL is collectively bargained. Employers who self-fund short-term disability benefits may elect to purchase a Paid Family Leave only policy from a carrier.

### Funding Paid Family Leave

New employee payroll deductions will fund the program with deductions starting as early as July, 2017. A maximum contribution rate will also be established each year starting on June 1, 2017 for the 2018 year and thereafter each September 1st.

On June 1, 2017, the NYS Department of Financial Services announced that the weekly employee deduction rate would be a percent of salary. The payroll deduction paid by an employee will depend on how much an employee earns: employees earning less will pay a lower deduction, and those earning more will pay a higher deduction as they are eligible for higher benefits as a percentage of their income, up to the maximum PFL benefits.
The rate for coverage beginning January 1, 2018 will be 0.126% up to the cap of the current state average weekly wage of $1,305.92. The calculation for payroll purposes for the capped amount would be: $1,305.92 x .00126 = $1.65 as the maximum per week per employee for 2018. Employers should consult with their payroll vendor if they have questions on employee contribution calculations for payroll purposes as it will vary by employee and earnings.

Employers may be able to continue to deduct the employee contribution when an employee is receiving benefits.

A self-funded employer also has the option to self-fund PFL. However, if the premiums collected are less than the benefits paid, the employer must cover the shortfall out of operating funds.

**Employee Eligibility**

Eligibility is redefined in the revised proposed regulations instead of the generic “full-time” and “part-time”. To be eligible for the program, employees who work 20 or more hours a week must be employed for 26 weeks or if working for less than 20 hours a week on the 175th day by a covered employer at the time they apply for benefits. Any time worked during a day by an employee working less than 20 hours per week counts as a full day for the purpose of determining the 175 day eligibility period. Non-citizens who are covered by an employer for the required 26-week period are also eligible.

When fully implemented, employees will be capped at 12 weeks of PFL in a 52 week period, and 26 weeks of combined disability and PFL in any 52 week period.

PFL is tracked by the “look back” method; that is, when an employee requests PFL, the carrier will look back 52 weeks to see if the employee has taken any disability or PFL in that period to determine available benefit time.

**Employee Job Protection**

PFL is job protected. Employees on PFL are entitled to restoration to “the position of employment held by the employee when the leave commenced or to be restored to a comparable position with comparable employment benefits”. Employees are also protected from retaliation if they exercise their rights to PFL.

**Health Insurance Continuation**

Employees on PFL who participate in the employer’s health insurance plan are entitled to continue health benefits on the same basis as if actively working. Employees, however, must continue to pay their portion of the premium cost while on PFL in order to maintain uninterrupted health insurance coverage.

**Vacation/PTO Use During PFL**

Employees may request using available vacation time during PFL. However, the employer cannot require that the employee use vacation time.
Applying for Paid Family Leave Benefits

Employees are responsible for notifying their employer if they intend to apply for PFL benefits. If the PFL request is foreseeable, the employee must provide the employer with 30-days advance notice so they can plan for the employee’s absence. If the event was not foreseeable, the employee must notify the employer as quickly as possible.

Employees with multiple covered employers are not required to take PFL from each covered employer during a single period of PFL. An employee with multiple covered employers may not take PFL for a single qualifying event from different covered employers at separate intervals but must take family leave from all covered employers during the same family leave period.

To apply for PFL:

Note: Draft samples of the forms mentioned below are attached to this document. These forms are drafts and should not be used until final versions are released. Also, since employees are accustomed to going to the employer’s HR representative, we recommend employers have copies of the forms available to give to employees.

<table>
<thead>
<tr>
<th>Summary Chart</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PFL Event</strong></td>
</tr>
<tr>
<td>Bonding with newborn, adopted, foster child</td>
</tr>
<tr>
<td>Care for a sick family member</td>
</tr>
<tr>
<td>Qualifying Exigencies</td>
</tr>
</tbody>
</table>

1. **Employee’s PFL Request**

An eligible employee requesting PFL should obtain a copy of “Request for Paid Family Leave” (Form PFL-1) and complete Part A – “Employee Information”. After completing Part A, the employee submits Form PFL-1 to the employer to complete Part B- “Employer Information”. The employer will return the completed Form PFL-1 to the employee.

It is the employee’s responsibility to file the PFL application and required documentation directly with the insurance carrier whose mailing address will be provided by the employer on page 2 of Form PFL-1.

2. **Required Documentation**

In addition to Form PFL-1, the employee must complete one or more of the following forms along with required documentation noted below.

a. **Bonding Certification (Form PFL-2)**

   PFL only begins after birth and is not available for prenatal conditions. A parent may take PFL during the first 12 months following the birth, adoption, or fostering of a child.
For Birth - the birth mother will need the following documentation:

- Birth Certificate, or documentation of pregnancy or birth from a health care provider including the mother’s name and due/birth dates

A second parent will need the following documentation:

- Birth Certificate, or documentation of pregnancy or birth from a health care provider including the mother's name and due/birth dates; if the 2nd parent is not named on the birth certificate, the 2nd parent must provide an acknowledgement of paternity, an order of filiation or other evidence of relationship with the parent named by the medical provider or on the birth certificate
- Voluntary Acknowledgement of Paternity, or a Court Order of Filiation, or a copy of documentation for the birth mother (above), PLUS a second document verifying relationship to the mother

For Foster Care:

- Letter of Placement issued by a county or city department of social services or a local voluntary agency
- If a second parent is not named in the Letter of Placement, a copy of that document PLUS a second document verifying relationship to the parent named in the foster care placement

For Adoption:

- Legal evidence of adoption process
- If a 2nd parent is not named on the birth certificate, the 2nd parent must provide Voluntary Acknowledgement of Paternity, or Court Order of Filiation, or a second document verifying relationship to the mother or the child.

Once the employee completes Forms PFL-1 and PFL-2, the employee sends both forms with required documentation to the insurance carrier for review.

b. Caring for a Close Relative with a Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or continuing supervision by a health care provider. For example, employees who need one or more full days to care for a parent undergoing chemotherapy; or a parent is having surgery followed by extensive recuperation; or a child is undergoing intense psychotherapy and is unable to attend school for a period of time.

The family member being cared for must complete Form PFL-3 “Release of Personal Health Information under the Paid Family Leave Law”. PFL-3 must be submitted to the medical provider along with Form PFL-4 “Health Care Provider Certification for Care of Family Member with Serious Health Condition”. Once the medical provider completes Form PFL-4 and gives it to the employee, the employee sends both forms with required documentation to the insurance carrier for review.
c. Active Duty Deployment

PFL is available to eligible employees for situations listed under the “emergency exigency” provisions of the federal Family Medical Leave Act. In addition to Form PFL-1, the employee completes Form PFL-5 “Military Qualifying Event” and attaches the following documentation:

- US Department of Labor Military Family Leave Certification (Federal Military Leave Form)
- Copy of Military Duty Papers
- Other documentation supporting the reason for the leave (copy of meeting notice, ceremony details, rest and recuperation orders, etc.)

Once the employee completes Forms PFL-1 and PFL-5, the employee sends both forms with required documentation to the insurance carrier for review.

Filing a Claim with the PFL Insurance Carrier

Once all forms and documentation have been completed, the employee sends the information directly to the employer’s disability insurance carrier who reviews the claim. If the PFL insurance carrier permits, an employee may file the claim for PFL in advance if the leave is foreseeable. The insurance carrier will reply within 18 days. If the carrier approves the claim, it is processed and benefit payments begin. If the claim is denied, the carrier will provide the reason. An appeal process is available through the Worker’s Compensation Board. See “Employee FAQS - Using Your Paid Family Leave Benefit” on page 8.

If the employer self-insures PFL, the employee will give all forms and documentation to the employer to review and decide if the claim qualifies under PFL, process claims, and make benefit payments. Employers who self-ensure and use a third party administrator to process claims are required to use a third party administrator licensed by the Workers’ Compensation Board.

Employees can find more information about filing a claim by calling the PFL toll-free helpline at (844) 337-6303.

New York Paid Family Leave and Interaction with Other State/Federal Laws

**NYS Disability** – Since PFL is part of the disability law, eligible employees may not take more than a combined total of 26 weeks in any 52 week period. An employee’s own illness is not covered under PFL. However, in a maternity situation, a woman may elect to take PFL instead of disability leave; or, take disability leave for maternity and then PFL bonding leave.

**Federal Family & Medical Leave Act** – For employers with 50 or more employees subject to FMLA and where the employee is eligible for both leaves, they may run concurrently. If an employer fails to designate PFL as FMLA leave, where applicable, the employee will still have FMLA leave available to use for the PFL event. Employers should continue to follow normal FMLA documentation procedures to designate or deny FMLA. It is important to remember that while employers determine if a FMLA leave is approved, it is the insurance carrier who makes the determination to approve PFL, not the employer.

There will be challenges facing employers subject to FMLA as PFL differs significantly from FMLA but does have some similarities. Key points known at this time include:
### NYS Paid Family Leave vs. Federal FMLA

<table>
<thead>
<tr>
<th>NYS Paid Family Leave</th>
<th>Federal FMLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company with 1 or more employees</td>
<td>Company with 50 or more employees</td>
</tr>
<tr>
<td>Employee eligible after 6 months FT employment (or 175 days for PT)</td>
<td>Employee eligible after 1 year employment and must have worked 1250 hours in the 12-month period immediately preceding the need for leave</td>
</tr>
<tr>
<td>Up to 12 weeks paid leave (implementation starts at 8 weeks leave)</td>
<td>Up to 12 weeks unpaid leave in 1 FMLA tracking year period designated by employer.</td>
</tr>
<tr>
<td>By law, the required tracking year will be look back method.</td>
<td></td>
</tr>
<tr>
<td>Does not apply to employee’s own illness. Also applies to bonding with newborn/adoptive, foster child, caring for parent-in-law, employee’s grandparent, and employee’s grandchild (child of the employee’s child) as well as military exigency as defined in FMLA.</td>
<td>Applies to employee’s own illness as well as to care for a spouse, child, parent, military exigency, and servicemember care leave, many of which are similar events as NYS paid leave.</td>
</tr>
<tr>
<td>Job restoration guarantee</td>
<td>Job restoration guarantee</td>
</tr>
<tr>
<td>Health insurance continuation on same basis as if working.</td>
<td>Health insurance continuation on same basis as if working.</td>
</tr>
<tr>
<td>Employee may request using vacation as part of PFL, but the employer cannot require it.</td>
<td>Employer can require use of vacation during FMLA leave.</td>
</tr>
<tr>
<td>Employer’s short term disability carrier determines if leave request qualifies under Paid Family Leave Act.</td>
<td>Employer designates if leave qualifies under FMLA.</td>
</tr>
</tbody>
</table>

### Employee FAQs - Using Your Paid Family Leave Benefit

**When do I need to file a claim?**
If you have a foreseeable situation, you must give your employer 30-days advance notice so they can plan for your absence. If the event was not foreseeable, you must notify your employer as quickly as possible. If you fail to do so without unusual circumstances justifying the failure, your PFL can be delayed or partially denied.

**Do I have to follow my employer’s policies for leave when requesting Paid Family Leave?**
If your employer’s rules about taking time off are less strict than the rules to take PFL, your employer may require you to follow them.

**How will I be paid?**
You will be paid by check, direct deposit or debit card. Not every carrier will offer all three, but the carrier must pay you by check if you request this on your Request for PFL Form.

**When will I be paid?**
Within 18 days of filing a complete claim for benefits, the PFL insurance carrier (or your employer if they self-insure) must pay you or deny the claim and provide an explanation of the denial.

**Will I be able to take Paid Family Leave on an hourly basis?**
No, PFL is only available in full day increments, but it can be taken intermittently, so you can take only the full days off during the week when you are caring for your relative or bonding with a child.

**My employer offers benefits that go beyond the state’s program, such as more than 12 weeks leave or higher wage replacement. Can I use both?**
If your employer already has a PFL program that fulfills or exceeds New York State law, you will receive only those benefits. The provisions of the PFL law are a foundation and employers are free to exceed the minimum benefit required by law.

**If I receive 8 weeks of Paid Family Leave benefits to bond with my newborn and then one of my parents becomes seriously ill later in the year, will I be able to receive Paid Family Leave benefits again since it is for a different reason?**
No. An employee is only eligible for the maximum benefit for the year they apply.

**Can I take both temporary disability and Paid Family Leave?**
Your combined total disability leave and Paid Family Leave in any 52 week period may not exceed 26 weeks.

**Claims Denial and Discrimination**
If your claim for PFL is denied and you disagree with the denial reason, you may request to have the denial reviewed by an independent arbitrator. Your employer must send you information explaining how to file a request for arbitration of your denial of PFL benefits. For more information, you can check with your Human Resources department.

**If my employer does not complete or fully complete the Employer section on the Request for Paid Family Leave Form, can my claim be denied?**
No. Your claim may not be denied because the employer section of the Request for PFL Leave Form is incomplete.

**What are the protections for employees who take Paid Family Leave?**
An employer may not discriminate against employees for taking PFL. Employees are guaranteed job protection, with the same or a comparable job, upon return from PFL. Employees are also guaranteed continuation of health insurance while out on PFL, but an employee who contributes to the cost of health insurance must continue to pay his or her portion of premium cost while out on PFL.

**Can my employer take any action against me for taking Paid Family Leave?**
No. Your employer may not retaliate or discriminate against you because you have taken PFL. If your employer does not return you to your same or a comparable job, you must formally request reinstatement.
General FAQs

Does Paid Family Leave cost me anything?
New York’s PFL is entirely employee-funded. That is, the benefit is paid for by employees. Beginning on or after July 1, 2017, you will see a payroll deduction to pay for your PFL benefit. The amount of the deduction will be established before July 2017.

Do I have to participate in the Paid Family Leave program?
Yes, PFL 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 PFL, for example a seasonal worker.

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

I am an undocumented worker. Can I take Paid Family Leave?
Yes. Your immigration status has no impact on your PFL eligibility.

Will I be able to use Paid Family Leave if I work part-time?
In most instances, yes. You must work 175 days part-time to be eligible for a PFL benefit.

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 PFL.

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 PFL 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 PFL 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.

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 vacation time and allows you to receive your full salary, than 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 PFL at the same time. However, if you and your spouse work for the same employer, they can deny PFL 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 PFL benefit. When fully implemented, New York will have the longest and most comprehensive PFL program in the nation.

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Legal Disclaimer
This summary is compiled using information published on www.ny.gov/new-york-state-paid-family-leave and is designed to be a brief description of the proposed regulations of the NYS PFL law. It’s not a complete summary of all provisions nor does it contain any recommendations by GBS. It provides general information only on the current state of this legislation and regulation. It should not be construed as legal advice. Your general counsel or an attorney specializing in these areas should be sought for specific issues.

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