

New York State Paid Family Leave (“PFL”) At A Glance

New York’s Paid Family Leave law went into effect on January 1, 2018. PFL provides pay, continued health insurance, and job protection, and covers more employers and employees than the federal Family and Medical Leave Act. PFL is complicated and compliance will be challenging. Employers who self-insure benefits face particular challenges. Below are brief questions and answers outlining some of the law’s major provisions.

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| What employers are covered? | All employers, irrespective of size, who are subject to the New York State Workers’ Compensation Law (“WCL”) must provide PFL benefits. |
| What employees are eligible to take PFL? | Employees who are regularly scheduled to work 20 or more hours a week must work at least 26 consecutive weeks, or be employed in the work period usual and available to them during such 26 week period, to be eligible for PFL. Employees regularly scheduled to work less than 20 hours a week become eligible for PFL after working 175 days. |
| For what reasons may eligible employees take PFL? | PFL may be used to: (i) care for a “family member” with a serious health condition; (ii) bond with a child during the first 12 months after the child’s birth or placement for adoption or foster care; and/or (iii) attend any qualifying military event, as covered by the FMLA. |
| Who is considered a “family member” under the PFL? | The employee’s child, parent (including parent-in-law), grandparent, grandchild, spouse, or domestic partner. |
| How much and for how long are employees paid when they are on PFL? | PFL will be phased in as follows: (i) January 1, 2018 – 8 weeks paid at 50% of the employee’s average weekly wage or 50% of the state average weekly wage, whichever is less; (ii) January 1, 2019 – 10 weeks paid at 55% of the employee’s average weekly wage or 55% of the state average weekly wage, whichever is less; (iii) January 1, 2020 – 10 weeks paid at 60% of the employee’s average weekly wage or 60% of the state average weekly wage, whichever is less; and (iv) January 1, 2021 – 12 weeks paid at 67% of the employee’s average weekly wage or 67% of the state average weekly wage, whichever is less. |
| What is the state average weekly wage for 2018? | \$1,305.92. When annualized, this equates to \$67,907.84. |
| Must employers continue health insurance for employees taking PFL? | Yes. Employers must maintain an employee’s existing health insurance benefits during leave, on the same terms as if the employees had continued to work. |
| Is the employee entitled to return to his/her job after PFL Leave? | Yes. In most circumstances, employees must be reinstated to the same or comparable job held immediately prior to taking PFL leave. |
| Can an employer run FMLA concurrent with PFL? | Yes. The employer must comply with the FMLA notice requirements. If the employer fails to comply with the FMLA notice requirements, then FMLA will not run concurrent with PFL. |
| May employees collect STD and PFL benefits concurrently? | No. |

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| Are there situations where an eligible employee is not entitled to PFL? | Yes. For example, PFL benefits may not be payable to an employee who is not employed or is on administrative leave from his or her employment or for any day when an employee works at least part of the day. |
| Are employers required to provide PFL benefits to employees covered by a CBA? | Yes. However, if the collective bargaining agreement provides benefits that are “at least as favorable,” the employer will be relieved from providing PFL benefits. |
| May an employee supplement his PFL benefits with Company-provided PTO? | Yes. |
| Can employers request reimbursement from an insurance carrier prior to the carrier’s payment of PFL benefits? | Yes. If the employee elects to supplement his benefits with PTO, and prior to the carrier’s payment of PFL benefits. |
| How will PFL be funded? | Through payroll deductions. An employer is permitted, but not required, to collect weekly employee contribution starting July 1, 2017 for PFL coverage beginning on January 1, 2018. |
| How much may employers deduct from an employee’s weekly wages for PFL benefits? | For 2018, employers may deduct up to 0.126% of an employee’s weekly wages not to exceed 0.126% of the state average weekly wage. The maximum annual payroll deduction for an employee is \$85.56. |
| Are employers required to provide employees with written guidance regarding PFL? | Yes. If employers have a handbook or other written guidance regarding employment policies, PFL guidance must be included. If employers do not have written policies, manuals, or handbooks describing employee benefits and leave provisions, they shall provide written guidance to each employee concerning the employee’s PFL rights and obligations. Employers must display/post a typewritten or printed notice concerning PFL in plain view where employees and/or applicants can readily see it. |
| Do employers need to translate the posting for workers who do not read/write in English? | Yes. If many employees do not read and write in English, the notice also must be in a language in which the employees can read and write. |
| Are medical certifications required for PFL? | Yes. The employer must notify the employee that medical certifications are required similar to FMLA. |
| Are employees required to give advanced notice of the leave? | Yes. Where PFL is foreseeable the employee shall provide the employer with not less than 30 days’ notice before the date the leave is to begin or as soon as practicable if unforeseeable. |
| How can employees request PFL leave? | Employees will generally be required to complete a Request for Paid Family Leave or PFL-1 form that the state has generated and made available. Alternatively, employees may give notice of a claim in another format designated by the carrier or self-insured employer. |
| Can employees request leave retroactively? | In certain situations, an employee may request leave retroactively. |
| How are claim-related disputes handled? | Claim-related disputes are subject to arbitration. |
| Who is required to pay the arbitration fees? | The employer and/or carrier. |
| Can an employee recover attorneys’ fees? | Yes. If the employee is successful at arbitration, the arbitrator can award attorneys’ fees. |
| Are employee claims of discrimination and retaliation for the use of PFL also subject to arbitration? | No. An employee who believes he or she has been discriminated or retaliated against for taking PFL may file a claim under Section 120 of the WCL. |

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