

# NEW YORK PAID FAMILY LEAVE

EMPLOYEE BENEFIT CONSULTING SERVICES  
LEGAL AND COMPLIANCE MANAGEMENT  
BENEFITS ADMINISTRATION SERVICES

ACTUARIAL AND CONSULTING SERVICES  
CUSTOM COMMUNICATION SOLUTIONS  
PHARMACY BENEFIT ANALYSIS



**Kinloch**  
CONSULTING GROUP  
An Optum Bank, F&W

## PAID FAMILY LEAVE



### The Need for Paid Leave:

- Many workers still cannot afford to take unpaid leave because of the loss of income it entails, or have to cut their leave short because of financial or workplace pressures.
- Millions of workers have caregiving responsibilities for both young children and aging parents.

### The Benefits of Paid Leave:

- Paid maternity leave can increase female labor force participation by making it easier for women to stay in the workforce after giving birth, which contributes to economic growth. When parents are better supported at work through paid family and medical leave, they are also less likely to rely on public assistance benefits.
- Paid leave leads to better outcomes for parents and children.
- Maternity leave improves child health outcomes, including increased birthweight, decreased premature births and decreased infant mortality. Paid leave encourages men to take paternity leave and serve as caregivers, which has a number of positive effects for families. Paid maternity leave increases worker retention and reduces turnover.

2015 DOL Pub- [www.dol.gov/wb/paidleave/PDF/PaidLeave.pdf](http://www.dol.gov/wb/paidleave/PDF/PaidLeave.pdf)

## PAID FAMILY LEAVE PROGRAMS

- California
- New Jersey
- Rhode Island
- NY- effective 1/1/18

Pending:

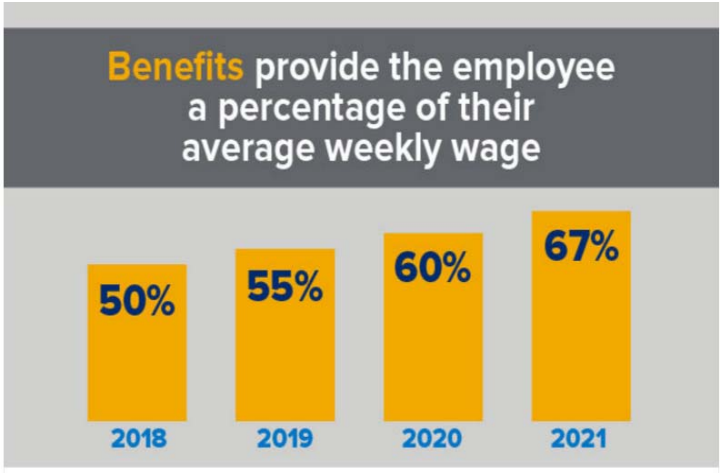
- Washington
- Washington DC
- Connecticut



# NY PAID FAMILY LEAVE BENEFITS EFFECTIVE 1/1/2018

When fully phased-in, NY will have the longest and most comprehensive paid family leave program in the nation.

Benefits will be phased in starting in 2018 and capped at 67% of the statewide \*average weekly wage when fully implemented in 2021.



\*The New York State Department of Labor's Research and Statistics Division has computed the New York State Average Weekly Wage (NYSAWW) for calendar year 2015 to be \$1,296.48.



## NY PAID FAMILY LEAVE (PFL) – EFFECTIVE 1/1/2018

- **Virtually every full-time or part-time private employee in New York State will be eligible for Paid Family Leave (PFL).**
- **Participation in the program is not optional for employees.** If you are a public employee, your employer may opt into the program. Public employees who are represented by a union may be covered if Paid Family Leave is collectively bargained.
- **Full-time Employees are eligible to participate after having worked for 26 or more consecutive weeks (6 months) or 175 consecutive days for part-time employees.**
- **Funded entirely through a nominal payroll deduction on employees.** A maximum rate of employees' contribution will be established each year.
- **Employers may begin payroll deductions July 1, 2017.**



## NY PAID FAMILY LEAVE – EFFECTIVE 1/1/2018

- **Provides wage replacement, Job protection and health benefits protection** (for employers subject to ACA rules) – If the employee contributes to the cost of their health insurance, they must continue to pay their portion of the premium cost while on Paid Family Leave.
- **Covers Employees who may not be covered under FMLA**
- **Unlike NYDBL – Intermittent Paid Family Leave is Allowed in 1 day increments**
- **Limited to a Total of 26 Weeks in a 52 week Period for Both NYDBL and NYPFL**
  - Entitlement to Paid Family Leave and Disability Benefits are dependent on each other, therefore tracking of time taken for each is critical to minimize overpayment



## NY PAID FAMILY LEAVE – EFFECTIVE 1/1/2018

Reason for leave under NYPFL include:

- **Care for a family member with a serious health condition** (including a child, parent, parent-in-law, grandparent, grandchild, spouse or domestic partner)
- **Bond with the employee's newborn or newly placed adoptive or foster child** during the first 12 months following birth or placement
- Address any **qualifying exigency** relating to a spouse, domestic partner, child or parent who is serving on active military duty.



## NY PAID FAMILY LEAVE – EFFECTIVE 1/1/2018

- **Employer Paid Time Off (PTO) and NYPFL**
  - An employer may require an employee eligible for paid family leave benefits and who has accrued but unused “vacation or personal leave” available at the time of family leave to *choose* whether to charge their paid time off and receive their full salary, or to not charge their paid time off accrual and instead receive paid family leave benefits.
  - As written, and in the absence of clarifying regulations, PFL does not on its face permit employers to *compel* employees to use their available paid leave time towards the PFL benefit, as is permitted under the FMLA.
  - The employer that pays full salary during a period of paid family leave may request reimbursement by their insurance carrier for advance payment of benefits.
- **The employee will be entitled to reinstatement to the same or a similar position regardless of the option chosen for pay.**





## NY PAID FAMILY LEAVE FACTS

- Spouses who both work for the same employer and need leave at the same time to care for the same family member, or to bond with a child, the request may be denied for one of the spouses.
- If an eligible employee terminates employment and moves to another covered employer, they must re-qualify for paid family leave with that new employer.
- Employees may have multiple paid family leave claims open at the same time for intermittent PFL (care for ill child and care for ill parent).
- Employees receiving partial WC benefits may still qualify for PFL. However if they are not working and collecting WC they may not use PFL at the same time.
- 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.



## NY PAID FAMILY LEAVE UNKNOWNNS

- How much is the employee contribution?
- Can an employee with multiple employers waive contributions from one?
- Will the DBL Maximum Change in 2018?
- Financial impacts and clarification will be provided by the DFS.



## NY PAID FAMILY LEAVE FAQ'S

- **I'm having a baby, can I take PFL instead of DBL?** Yes, but only once the baby is born. PFL does not cover pre-birth activity, therefore if you go on leave prior to giving birth, you may need to apply for DBL first.
- **I was recently hired by my employer, will my employer begin to deduct my employee contributions from my paycheck prior to me having worked for 6 consecutive months?** Yes, your employer may begin deducting your contribution as of the first day of employment.
- **Will I be able to take Paid Family Leave on an hourly basis?** No, Paid Family Leave 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.
- **Can I have multiple Intermittent Paid Family Leave claims at the same time?** Yes, an employee may potentially need to care for multiple qualified family members but may not exceed the maximum combined benefit in a 52 week period.
- **I am receiving partial workers compensation but my wife and I are having a baby, can I apply for PFL benefits?** Yes, Employees receiving partial WC benefits may still qualify for PFL.



## NY PAID FAMILY LEAVE FAQ'S CONT.

- **Who is not eligible for Paid Family Leave?** Employees who are not considered a covered employee in NYS, any employee already receiving total disability or workers compensation is not eligible for paid family leave. Also, an employee on administrative leave or employees who work for an exempt employer. Employees who are excluded from coverage under Article 9 of the Disability Benefits Law (DBL) and the Paid Family Leave Benefits Law (PFL) are also not eligible.
- **I work outside of New York State am I covered for Paid Family Leave?** You are considered eligible for PFL if you are an: Employee who physically works in NYS, or, An employee who does not have a worksite in any specific state like a remote/telecommuter but you reside and work from your home in NYS , or, An employee who does not have a worksite in NYS (like remote/telecommuter which could include out of state employees) however your employer who directs or controls your work is within NYS
- **Are employers who offer DBL-like benefits to all employees throughout the U.S, even those who do not work in NYS, required to offer PFL as of 1/1/2018?** Employers who offer DBL-like benefits to all employees, even those who are not typically considered a covered employee for DBL are not mandated to offer PFL benefits to a non-covered employee as of 01/01/2018, it is their option.
- **I currently have child support deducted from my paycheck, if I file for PFL can my insurance carrier also deduct child support from my PFL benefit?** Yes, the carrier may deduct child support from your benefit check if notified by your employer.



## FMLA AND NY-PFL DIFFERENCES

### FMLA

- Employer with 50 or more employees.
- Employee FMLA and NY-PFL Differences must have worked 12 months and 1250 hours in the past 12 months from the date of leave.
- Covers Employee Own Serious Health Condition.
- FMLA does not cover grandparents, grandchildren, domestic partners or parent-in-law. (Absent in-loco parentis relationships for grandchild and grand parent).
- Unpaid, Job-protected leave.
- Intermittent Leave can be taken in 1 hour increments.
- Key-Employee rule – limited job restoration.
- Military Injured Service Member – Next of Kin allowed.
- Employer could require and employee to use accrued and unused PTO to substitute unpaid leave for paid leave.

### NY-PFL

- Employer with 1 employee.
- Employee must have worked for the employer for 26 consecutive weeks (6 months) or 175 hours for PT.
- Cannot be used for the employees Own Serious Health Condition (exceptions for maternity).
- Covers domestic partners, Parent-in-law, grandparent and grandchild.
- Paid, Job-protected leave.
- Intermittent Leave must be taken in full day increments.
- There is currently no similar provision for Key-Employees.
- There is currently no language comparable for Next of Kin care for an ill family member under PFL.
- Employer cannot require an employee to use accrued and unused PTO instead of paid family leave. The employee has the option.



## NEW JERSEY PAID FAMILY LEAVE LAW

- Paid leave benefits available July 1, 2009
- Paid by employee deductions, effective January 1, 2009 however benefits were not payable until July 1, 2009
- Runs concurrent to FMLA and/or NJFLA
- Not Job Protected by itself
- 2/3 of average weekly wage up to \$524 per week
- 6 week benefit duration

# QUESTIONS

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