

PAID FAMILY LEAVE



In 2016, New York State enacted a comprehensive paid family leave law that applies equally to women and men. This guide answers basic questions about the new law to assist eligible employees in asserting their rights to access this important benefit. Please note that this guide is for informational purposes and is not intended to provide legal advice. If you have additional questions, please contact Legal Momentum using the information provided on the last page.

WHEN DOES PAID FAMILY LEAVE GO INTO EFFECT IN NEW YORK STATE?

Eligible employees working for private employers in New York State can receive paid family leave benefits as of January 1, 2018. Employers are authorized to make payroll deductions as of July 1, 2017.

AM I ELIGIBLE & WHEN CAN I START TAKING PAID FAMILY LEAVE?

You should be eligible for benefits, regardless of your gender, if you **work for a private employer in New York State** and you are employed:

- full-time for 20 or more hours per week for 26 consecutive weeks (about 6 months); OR
- part-time for less than 20 hours per week once you have worked a total of 175 days.

If you are ineligible because you do not meet these requirements, you must be given the opportunity to opt-out of participation and payroll contributions.

You can claim benefits regardless of your immigration status and regardless of the number of workers your employer employs. For example, you can qualify for benefits even if you are an undocumented worker or if you are a domestic worker who is the only person working for your employer.

You may not be eligible if your employer is party to a collective bargaining agreement that provides benefits that are as favorable as or better than benefits provided under this program.

If you work for a government agency, you may not be covered. However, individual agencies can opt-in to the plan, so check with your employer.

UNDER WHAT CIRCUMSTANCES CAN I TAKE PAID FAMILY LEAVE?

If you are eligible, you can take paid family leave to:

- **Bond with a new child**, including adopted and foster children within 12 months of a child's birth or placement for adoption or foster care.
- **Care for a family member who has a serious health condition**, including a child, parent, parent-in-law,

spouse, domestic partner, grandchild, or grandparent. A serious health condition includes illness, injury, impairment, or a physical or a mental condition that involves inpatient care or continuing treatment by a health care provider.

- **Address certain military family needs** when a family member (spouse, domestic partner, child, or parent) has been called to active military duty (note: only “qualifying exigencies” are covered).

HOW MUCH PAID LEAVE CAN I TAKE?

The number of weeks of paid leave that an eligible employee can take will increase over a 4-year period, as per below. Leave can be taken all at once or intermittently in smaller units.

- In **2018**, eligible employees can take up to **8 weeks** of paid leave.
- In **2019 and 2020**, eligible employees can take up to **10 weeks** of paid leave.
- As of **2021 onwards**, eligible employees can take up to **12 weeks** of paid leave.

HOW MUCH WILL I BE PAID WHILE ON LEAVE?

Eligible employees are entitled to partial income replacement that is phased in over the course of four years, as per below. Payments are capped at the state’s average weekly wage, which will be determined annually (currently \$1,305.92). Benefits are payable from the first day of paid leave.

- In **2018**, eligible employees will be entitled to receive **50% of their salary**, subject to the state cap (\$652.96/week).
- In **2019**, eligible employees will be entitled to receive **55% of their salary**, subject to the state cap.
- In **2020**, eligible employees will be entitled to receive **60% of their salary**, subject to the state cap.
- **2021 onwards**, eligible employees will be entitled to receive **67% of their salary**, subject to the state cap.

WHO COVERS THE COST OF PAID FAMILY LEAVE?

Benefits are funded by employee contributions made by all employees (unless exempt) through a small payroll deduction of .126% of an employee’s weekly pay and capped at .126% of the state’s average weekly wage. Currently, the maximum deduction is \$1.65 per week. Employers will make payroll deductions through a disability policy and were authorized to start making deductions as of July 1, 2017. Your paystub will show if these contributions are being withheld from your paycheck.

WHAT IF MY EMPLOYER’S LEAVE POLICY PROVIDES MORE THAN THE LAW REQUIRES?

Employers can certainly provide more expansive paid family leave benefits than what the law requires. If this is the case, your employer is not required to provide additional leave but will still be required to make payroll deductions in accordance with the law. Employers cannot deduct more than what the law allows.

CAN I BE FIRED FOR TAKING LEAVE & WILL I LOSE MY HEALTH BENEFITS WHILE ON LEAVE?

Under the law, your employer cannot discriminate or retaliate against you for taking the leave for which you qualify. You are entitled to job protection, which means you cannot be fired for taking paid family leave and you must be reinstated to the same or an equivalent position when you return.

You are also entitled to maintain existing health benefits, but your employer can continue to deduct any applicable health insurance premium contributions during your leave.

HOW DO I REQUEST LEAVE FROM MY EMPLOYER?

Employees must provide 30 days notice for events that are foreseeable. Sometimes 30 days notice is not possible. In those situations, an employee must give notice as soon as practicable.

When requesting leave, you must (1) make your employer aware of the qualifying event, (2) the anticipated timing and duration of the leave, and (3) identify the type of family leave you are requesting. Once you have provided this information, it is your employer's responsibility to seek any additional information they need.

Your employer should provide you with an application, which will be submitted to your employer's paid family leave insurance carrier.

DO I NEED TO PROVIDE NOTICE OR DOCUMENTATION TO MY EMPLOYER TO TAKE PAID LEAVE?

You may be required to submit substantiating documentation. For example, for bonding leave, you can be required to submit a birth certificate or documentation of the adoption or foster care arrangement. To request leave to care for a family member's serious health condition, you may have to submit a medical certification from a health care provider. For leave for a military exigency, you can be required to submit a copy of the military order and other supporting documentation.

AM I ENTITLED TO ANY OTHER RELATED BENEFITS OR PROTECTIONS?

If you work for a private employer with 50 or more employees, a public employer, or a public or private elementary or secondary school, you are likely covered under the Family and Medical Leave Act (FMLA). The FMLA provides covered employees with up to 12 weeks of **job protected, unpaid** family or medical leave for employees who worked for their employer for at least 12 months and worked at least 1,250 hours over the past 12 months. An eligible employee can take leave for the birth and care of a newborn child, placement of a child for adoption or foster care, to care for an immediate family member (spouse, child, or parent) with a serious health condition, to recover from an employee's own serious health condition, or to address certain military family needs.

Additionally, under New York State Law, employers must provide disability benefits to eligible employees for off-the-job injury or illness, which includes pregnancy and child-birth related disabilities.

While Paid Family Leave and FMLA both provide job protection, leave for disability does not guarantee job protection unless you are also covered by FMLA.

CAN I TAKE PAID FAMILY LEAVE, FMLA, AND DISABILITY AT THE SAME TIME?

Employees can receive disability benefits to recover from childbirth and also take paid family leave for bonding with the child, but they cannot receive both benefits at the same time. Based on needs, an employee can make arrangements to receive benefits consecutively.

If you are covered by New York State's Paid Family Leave and federal FMLA, you can take leave under both laws; however, an employer can require you to take time off for the same event at the same time, provided they notify you of this requirement prior to the start of your leave.

CAN I DISPUTE MY EMPLOYER'S DETERMINATION REGARDING PAID FAMILY LEAVE?

Yes. You may wish to challenge your employer's determination if you believe you:

- Have been improperly denied paid family leave benefits
- Your employer has retaliated against you for exercising your right to paid family leave
- You have not been restored to the same or a comparable position after taking leave
- You were improperly denied health benefits while on leave

You may be entitled to certain remedies such as reinstatement, lost compensation, and certain fees. Your employer may also have to pay fees or penalties to the state.

To seek reinstatement, you must first file a request with your employer and the New York State Worker's Compensation Board (WCB) and give your employer 30 days to reinstate or respond before filing a complaint with the WCB. To initiate other actions, you must file a complaint with the WCB, which will hold a hearing.

Additional information on how to file a complaint with the WCB is available at www.wcb.ny.gov. You can contact the WCB at: 877-632-4996. Language assistance services are available.

If you need further assistance, you can contact Legal Momentum's Helpline: 212-925-6635, ext. 650, peo@legalmomentum.org.