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## Paid Family Leave

If you have worked enough days and hours, you have the right to paid, job-protected leave to care for a newborn, a newly adopted child, or a sick family member, or to address certain family needs that result from military deployment. You may also have the right to other forms of leave to assist you with caring for yourself and your family.



Whatever the case is, no working American should ever have to choose between their family members and a paycheck....But if you don't have paid leave, that's exactly the choice you have to make and this is especially true if you are working in a low-wage job."

— Kirsten Gillibrand,  
U.S. Senator, N.Y.

# Why is Paid Family Leave Important for Women?

Women have historically been expected to take on family care responsibilities and many women willingly choose to do this critical, difficult, and undervalued task. Whether by necessity or choice, it is essential that women no longer incur a financial penalty or sacrifice their economic security to care for their

families. Getting paid to take leave to care for your family is essential to your economic equality, and in New York State, you are now likely covered and have access to some degree of paid family leave.

## What is Paid Family Leave and When Can You Take It?

If you work for a private employer in New York State, you may be eligible under New York State law<sup>164</sup> to receive 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 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).


## Who is Protected by the Law?

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

Note that 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 are a member of a union, check with your union representative.

 **FARMWORKERS:** Farmworkers who meet program requirements are now eligible to receive paid family leave and disability benefits in New York State.<sup>165</sup>

 **IMMIGRATION STATUS:** You can claim benefits regardless of your immigration status and regardless of the number of workers employed by your employer.

 **DOMESTIC WORKERS:** If you meet the eligibility requirements, you are covered regardless of the size of your employer, which means you are covered even if you are a domestic worker who is the only person working for your employer.

# How Much Paid Leave Can You Take & How Much Will You Be Reimbursed?

Your employer may provide more comprehensive paid family leave. However, if it does not, it must provide paid family leave to eligible workers in compliance with New York State law.

The number of weeks of paid leave that an eligible employee can take will increase over a 4-year period (see below). Leave can be taken all at once or intermittently in smaller units such as in weekly or daily increments. 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 is currently \$652.96 and will be determined annually. Benefits are payable from the first day of paid leave.

- In **2018**, eligible employees can take up to **8 weeks** of paid leave and are entitled to receive **50% of their salary**, subject to the state cap (\$652.96/week).
- In **2019**, eligible employees can take up to **10 weeks** of paid leave and are entitled to receive **55% of their salary**, subject to the state cap (\$746.41/week).
- In **2020**, eligible employees can take up to **10 weeks** of paid leave and are entitled to receive **60% of their salary**, subject to the state cap (to be determined).
- As of **2021** onwards, eligible employees can take up to **12 weeks** of paid leave and are entitled to receive **67% of their salary**, subject to the state cap (to be determined).

Benefits are funded by employee contributions made by all employees (unless exempt) through a small payroll deduction. Your paystub will show if these contributions are being withheld from your paycheck. Employers cannot deduct more than what the law allows.

**HOW DO I REQUEST LEAVE?** If you think you are eligible and want to take paid family leave, you should try and request leave in writing as early as possible and you must provide 30 days notice for events that you are aware of in advance, such as childbirth.

If your employer requests documentation, you will need to submit it to verify your need to take leave.

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

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

**JOB PROTECTION & RETALIATION:** It is unlawful for your employer to discriminate or retaliate against you for taking the leave for which you qualify. You are entitled to job protection, which means that your employer is prohibited from firing you for taking paid family leave and you must be reinstated to the same or an equivalent position when you return.

## Eligibility for Other Related Benefits or Protections

**HEALTH BENEFITS:** If you were receiving health insurance benefits from your employer, you are entitled to the same health benefits under the same premiums.

**FAMILY & MEDICAL LEAVE:** 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 federal Family and Medical Leave Act (FMLA).<sup>166</sup> 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 **1** for the birth and care of a newborn child; **2** for the placement of a child through adoption or foster care; **3** to care for an immediate family member (spouse, child, or parent) with a serious health condition; **4** to recover from the employee's own serious health condition; or **5** to address certain military family needs.

**DISABILITY:** Under New York State Law, employers must provide disability benefits to eligible workers for off-the-job injury or illness, which includes pregnancy and child-birth related disabilities.<sup>167</sup> The typical period of pregnancy-related disability is four to six weeks prior to a woman's due date and four to six weeks after delivery. Eligible employees can receive 50% of their average weekly wage capped at the maximum benefit allowed. 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. That means that if you take disability leave, your employer is not required to bring you back once your leave has ended.

**SICK LEAVE - NYC:** Employers in New York City with **5 or more employees** employed for more than 80 hours a calendar year are required under the city's Earned Sick Time Act to provide paid sick leave to employees.<sup>168</sup> To be eligible you must have worked more than 80 hours during the calendar year. Employers must provide a minimum of 1 hour sick time for every 30 hours worked and the

employee can use time as of the 120th calendar day after commencing employment. Eligible employees can also take sick leave to care for a close family member.

**SICK LEAVE - WESTCHESTER:** If you are an employee in Westchester County and you work for an employer with 5 or more employees, as of April 10, 2019, you are entitled to 1 hour of paid sick time for every 30 hours worked. If you are a domestic worker, you are entitled to 1 hour for every 7 days worked.<sup>169</sup>

**COMBINING BENEFITS:** 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.



## What Can I Do to Assert My Rights?

If you have concerns or believe that your rights have been violated, there are various actions you can take to advocate for yourself. In addition to the general guidance in Section 1, consider the following:

**REQUEST LEAVE IF YOU NEED TO TAKE IT:** Set up a meeting with your employer to discuss your need to take leave. Make sure that you are giving your employer sufficient notice and be prepared to submit documentation to verify your need to take leave.

**CHALLENGE IMPROPER DENIALS:** You may wish to challenge your employer's determination if you believe you were improperly denied leave benefits, your employer retaliated against you for requesting leave, you were not restored to the same or comparable position after taking leave, or you were denied health benefits while on leave.

You may be entitled to certain remedies such as

reinstatement, lost compensation, and repayment of certain fees. Your employer may also have to pay fines or penalties to the state.

To seek reinstatement, you must first file a request with your employer and the New York State Workers' Compensation Board (WCB) and give your employer 30 days to reinstate you or respond to your request, 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 <http://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, <https://www.legalmomentum.org/get-help>.