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 law152 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.

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 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).\(^{153}\) 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.\(^{154}\) 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.\(^{155}\) 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.\(^{156}\)

**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.
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](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](https://www.legalmomentum.org/get-help).
Endnotes

1 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.
3 N.Y. Exec. Law § 296-b.
7 Immigration and Nationality Act, 8 U.S.C. § 1324b.
11 N.Y. Exec. Law § 296-b.
16 N.Y. Lab. Law § 201-g.
18 N.Y. Lab. Law § 194 (prohibiting difference in rate of pay because of sex); 9 NYCRR § 466.13; N.Y. Exec. Law § 296. See also N.Y. Lab. Law § 190(3) (definition of “employer”).
21 N.Y. Labor Law § 194(a)-(d).
22 N.Y. Labor Law § 194(d).
26 N.Y. Lab. Law § 191.
27 N.Y. Lab. Law § 191.
28 N.Y. Lab. Law § 191.
29 N.Y. Lab. Law § 191.
31 N.Y. Lab. Law § 195.
32 N.Y. Lab. Law § 195.
33 N.Y. Lab. Law § 195.
34 N.Y. Lab. Law § 195.
35 N.Y. Lab. Law § 195.
36 N.Y. Lab. Law § 195.
37 N.Y. Lab. Law § 195.
38 12 N.Y.C.R.R. § 146-2.2.
39 12 N.Y.C.R.R. § 146-2.2.
40 N.Y. Lab. Law § 861-g.
41 N.Y. Lab. Law § 652.
43 N.Y. Lab. Law § 193.
45 N.Y. Lab. Law § 167.
47 N.Y. Lab. Law § 215.
48 N.Y. Lab. Law §§ 652, 673; 12 NYCRR § 190-1.3(b).
49 N.Y. Lab. Law § 673-a; 12 NYCRR § 190-6.1.
50 N.Y. Correction Law Art. 23-A.
51 N.Y. Correction Law Art. 23-A.
52 N.Y. Exec. Law § 296(16).
55 The Immigration and Nationality Act, 8 U.S.C. § 1324b.
56 N.Y. Exec. Law § 296(1-a).
57 Studies have found that women entrepreneurs in New York City have a more difficult time accessing credit to start their businesses—in fact, men are twice as likely to launch their
businesses with as much as double the capital. Women entrepreneurs find it harder to identify and assess potential mentors and business advisors. These challenges are more pronounced for women of color, many of whom must overcome language barriers when starting a business. Women with low-to-moderate income often highlighted lack of confidence and experience as a challenge. See Women Entrepreneurs NYC, Unlocking the Power of Women Entrepreneurs in New York City, (November 2015), [https://we.nyc/media/filer_public/97/a1/97a19bc2-261c-4168-b70d-4873f7bec894/wenyc_report_2015-11_2.pdf](https://we.nyc/media/filer_public/97/a1/97a19bc2-261c-4168-b70d-4873f7bec894/wenyc_report_2015-11_2.pdf).


59 N.Y. Exec. Law § 312. See also N.Y. Order 177 (covered state entities prohibited from entering into contracts with entities that have institutional policies or practices that fail to address harassment or discrimination based on sex and other protected classifications).


68 N.Y. Lab. Law § 200(1).

69 N.Y. Lab. Law §§ 200(1), 880.

70 29 U.S.C. § 657(c)(3); 29 C.F.R. § 1926 et seq.

71 29 U.S.C. § 657(c)(3); 29 C.F.R. § 1926 et seq.

72 N.Y. Lab. Law § 162.

73 N.Y. Lab. Law § 162(4).

74 N.Y. Lab. Law § 161.

75 N.Y. Lab. Law § 161.

76 N.Y. Lab. Law § 161.

77 N.Y. Lab. Law § 724.

78 N.Y. Admin. Code Ch. 8.

79 N.Y. Admin. Code Ch. 8.

80 N.Y. Admin. Code Ch. 8.

81 N.Y. Admin. Code Ch. 8.

82 Westchester Co. Laws, Ch. 700.

83 Westchester Co. Laws, Ch. 700.

84 The Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.

85 29 U.S.C. § 2601 et seq.


89 See N.Y. Admin. Code Ch. 8.


91 29 C.F.R. §§ 1904.35-36.


97 N.Y. Workers Comp. Law § 3, Group 14-b.

98 N.Y. Labor Law § 191.


100 Occupational Health and Safety Administration, OSHA Instruction CPL 02-00-051, Enforcement Exceptions and Limitations under the Appropriations Act (May 28, 1998), [https://www.osha.gov/enforcement/directives/cpl-02-00-051](https://www.osha.gov/enforcement/directives/cpl-02-00-051).


105 N.Y. Exec. Law §§ 292, 296.
107 Westchester Co. Laws §§ 700.02, 700.03(a)(8).
108 N.Y. Exec. Law § 296(1)(a).
111 N.Y. Exec. Law § 292(21).
112 N.Y. Admin. Code §§ 8-102(5); 8-107.1.
113 Westchester Co. Laws, §§ 700.02 (for definitions), 700.03.
119 N.Y. Real Prop. Law § 227-d.
120 N.Y. Real Prop. Law § 227-c. See also N.Y. Crim. Proc. § 530.12-13 (establishing that a court may issue orders of protection for victims of family offenses); N.Y. Dom. Rel. § 240 (describing, among other things, the court’s power to issue orders of protection); N.Y. Family Ct. Act §§ 446 (orders of protection), 656, 842, 1056.
124 11 NYCRR § 52.1(r)(i); N.Y. Ins. Law § 3221(16).
125 11 NYCRR § 52.1(r)(ii).
126 11 NYCRR § 52.1(r)(v).
127 11 NYCRR § 52.1(r)(vi).
128 11 NYCRR § 52.1(r)(vi).
131 11 NYCRR § 52.1(p)(1-2).
132 11 NYCRR § 52.71.
134 11 NYCRR § 52.16(o).
135 N.Y. Penal Law §§ 240.70-240.71.
137 N.Y. Ins. Law § 3217-c.
Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the federal government provides block grant funding to states to provide Temporary Assistance to Needy Families (TANF), under which states must operate temporary assistance programs for needy families. See 42 U.S.C. Ch. 7, Subchapter IV; 45 C.F.R. Part 260.
