



## New York Paid Family Leave

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Last year Governor Andrew Cuomo signed the New York Paid Family Leave (“NYPFL”) law as part of the 2017 State Budget. On February 22, 2017, the State of New York filed proposed regulations to implement NYPFL. The proposed regulations were subject to a 45-day notice and comment period, which ended April 8, 2017. On May 24, 2017, the State of New York filed revised proposed regulations, which are subject to a 30-day notice and comment period scheduled to end June 22, 2017.

### ■ Overview

The NYPFL is a wage replacement program fully funded by employees to bond with a child, care for a close relative with a serious health condition, or ease family obligations when a family member is called into active military service. However, NYPFL is not available to care for the employee’s own condition; rather the employee may use leave available under the Family Medical Leave Act (“FMLA”). Both full-time and part-time employees are eligible for the benefits after meeting the eligibility requirements. As proposed, a full-time employee becomes eligible after working 26 weeks and a part-time employee becomes eligible on the 175th day of work. While part-time employees are eligible for the benefits, a part-time employee will receive a prorated percentage of the amount available to full time employees.

Beginning in 2018, an employee will be able to receive benefits at 50% of the average statewide weekly wage. By 2021, an employee will receive 67% of his/her average weekly wages, capped at 67% of the average statewide weekly wage. For 2016, the New York State Average Weekly Wage (“NYSAWW”) was approximately \$1,305.92 (the amount is determined each year by 3/31).

Paid Leave - Phases		
January 1, 2018	8 weeks	50% of AWW
January 1, 2019	10 weeks	55% of AWW
January 1, 2020	10 weeks	60% of AWW
January 1, 2021	12 weeks	67% of AWW

### ■ Employer Requirements

Private employers of any size doing business in the State of New York are required to comply with the NYPFL and public employers are exempt, but may opt into the law. Public employers are defined as the state, any political subdivision of the state, a public authority or any governmental agency or instrumentality. Private employers will not be required to make contributions towards the NYPFL, but are required to withhold employee contributions beginning on or after July 1, 2017. Simultaneously, private employees will be required to make contributions and cannot opt out. The 2018 employee contribution limit will be established by June 30, 2017 and will be updated annually in June.

Administratively, applicable employers will be required to provide a notice relating to NYPFL that includes eligibility and procedure requirements. Furthermore, employers must continue health benefits during NYPFL so long as the employee continues to pay for benefits. Otherwise, health benefits and the employee's job must be reinstated upon return to work. Employers should update leave policies to include NYPFL and properly describe how NYPFL functions with other leave. Finally, employers are required to insure benefits through a carrier or self-insure through the State. Fully insured benefits will be handled by the carrier that administers state-mandated disability benefits. However, employers must contact insurers; the NYPFL coverage will not be automatic. An employer that currently insures the state-mandated disability benefits may self-insure the NYPFL and vice versa.

## ■ Leave Coordination

An employee eligible for multiple leave programs may be limited in his/her use of NYPFL, as follows:

- **New York State Disability** - An employee eligible for NYDBL may not concurrently use NYPFL. An employee must choose between NYDBL and NYPFL at any one time. Combined benefits for NYPFL and NYDBL cannot exceed 26 weeks in a 52-consecutive calendar period.
- **Worker's Compensation Claim** - An employee that is receiving disability benefits under a worker's compensation claim is not eligible for NYPFL.
- **Employee not currently employed or on administrative leave** - An employee that is taking unpaid administrative leave is not eligible for NYPFL.
- **Employee working part-time for another employer** - An employee that is working part-time for one employer may not take NYPFL under another employer. The employee cannot be working for either employer.
- **FMLA Leave** - Leave under the NYPFL runs concurrent to FMLA.
- **Sick Pay or PTO** - An employee eligible for NYPFL may be required to take paid leave to supplement NYPFL, at the employer's discretion.



## ■ Pending Amendments

The following amendments have been added to clarify requirements and implementation of the NYPFL:

- **Benefit Standards** - defines the benefits that are required for an employer-provided benefit to meet the NYPFL requirements;
- **Definitions** - defines the terms used throughout the regulation;
- **Eligibility and Qualifying Events** - clarifies the qualifying events necessary to take NYPFL; defines the employee eligibility requirements:
  - Part Time - an employee working less than 20 hours per week;
  - Full Time - an employee working 20+ hours per week;
- **Optional Waiver** - provides an optional waiver for employers to permit employees who would not otherwise meet the eligibility requirements to obtain benefits under NYPFL;
- **Employee Notice Requirements** - provides a carrier or self-insurer may partially deny benefits (up to 30 days) if the employee is required to provide advance notice and fails to do so;
- **Medical Certification and HIPAA Authorization Requirements** - provides when each must be provided to the carrier or self-insurer;
- **Substantiation** - proposes the documents required to be provided by an employee to meet NYPFL requirements;
- **Employer Requirements** - enumerates the employer requirements, including the requirement of an individual business owner to maintain NYPFL coverage;
- **Discrimination** - provides the Worker's Compensation Board will schedule a hearing to discuss employee discrimination upon the request of the employee;
- **Dispute Resolution** - provides that any disputes will be resolved through arbitration;

- **Self-Insurance** - provides the requirements an employer must meet to self-insure, including:
  - Employer's responsibility to cover cost of PFL if statutory maximum is exceeded;
  - Security deposit requirement;
  - Employer reporting; and
  - Restriction on third party administrator use.

## ■ Employer Next Steps

Employers should expect final regulations or additional delays to be released in mid-to-late July. In the meantime, employers should determine their obligations related to NYPFL and implement proper policies and procedures to ensure a smooth transition. In addition, employers should contact their NY disability carriers to determine the cost, administrative requirements, and additional information necessary to implement NYPFL. Employers that want to self-insure should review the proposed requirements and contact a Worker's Compensation Board certified third party administrator for additional requirements.