

New York's Paid Family Leave Law

New York's new Paid Family Leave ("PFL") law will go into effect on January 1, 2018. It will provide both male and female employees with partial wage replacement for 8 weeks, job security and continued health insurance while they bond with a new child, care for a close relative with a serious health condition, or assist with family obligations when someone is called for active military duty. Virtually all private sector employers in New York are covered and must provide PFL coverage beginning on January 1, 2018, as part of their existing disability benefits policy. Employers based outside of New York are required to comply with the law provided that they have employees working in New York for 30 or more days in a calendar year.

Beginning January 1, 2018, employees may take up to 8 weeks of PFL for eligible purposes.¹ Employers must pay an employee 50% of his or her average weekly wage, up to a maximum of 50% of the state average weekly wage while on leave.² Full time employees, those who work a regular schedule of 20 hours or more, are eligible for PFL after 26 weeks of employment. Part time employees, those with a regular schedule of less than 20 hours per week, are eligible for PFL after 175 days of work.

Employers will carry PFL insurance coverage as part of their existing disability benefits policy, and may elect to use employee wages to fund the PFL benefit. As of July 1, 2017, employers can begin to collect PFL payroll deductions from employees pursuant to New York State PFL guidelines.

Employees should provide their employers with 30 days advance notice if they intend to utilize PFL. If an employee plans to use PFL for an unforeseeable event, the employee must notify the employer as soon as possible. Employees should then fill out and submit a completed claim form to their employer's PFL insurance carrier. Employees should be able to get a claim form from their employer, insurance carrier or at the following site: <https://www.ny.gov/programs/new-york-state-paid-family-leave>. Insurance carriers have 18 days from receipt of the claim to pay or deny a claim.

¹ The benefit period increases to 10 weeks in 2019 and 2020 and to 12 weeks in 2021.

² This percentage will increase as the program continues to roll out over the next 3 years. Employees will be eligible for 55% of their average weekly wage in 2019, 60% in 2020 and 67% in 2021.

Employers must now consider how the new PFL law will interact with the federal Family and Medical Leave Act (“FMLA”). Under the FMLA, employees at companies with 50 or more employees are eligible for 12 weeks of unpaid leave to bond with a new child or care for an immediate family member with a serious health issue. Beginning January 1, 2018, and as long as an employee gives an employer proper notice, FMLA benefits can be used concurrently or in some circumstances in addition to Paid Family Leave for certain qualifying events.³ Under both policies, employees are entitled to job protection and are able to maintain their health insurance.

Required and Best Practices:

1. Employers should contact their disability insurance carrier about PFL benefits as soon as possible prior to January 1, 2018.
2. Employers should educate management about PFL. Management cannot discriminate against or retaliate against employees for taking PFL.
3. Employers should disseminate information to employees about the new PFL law. For example employers are required to put up a poster about PFL. This poster can be obtained from an employer’s disability insurance carrier.
4. Employers should update their employee handbooks to include information on PFL prior to January 1, 2018.
5. Employers must allow their employees to continue their health insurance while on PFL. Employers may mandate that employees continue to pay health insurance premium contributions while out on PFL.
6. Employers may not require employees to exhaust all of their paid time off prior to taking PFL.
7. Employers should not fill or eliminate the job positions of any employees who are out on PFL. Employees are entitled to reinstatement in their same position post PFL.
8. Employers should plan now for employees to take PFL as early as January 1, 2018. This includes beginning to collect employee payroll deductions to fund the PFL benefit.

If you would like additional information regarding New York’s PFL law, please contact partners Mark W. Lerner (212-506-1728) or Jessica T. Rosenberg (212-506-1789) in Kasowitz’s Employment Practices and Litigation Group. The PFL law is available at the following website links:

<https://www.ny.gov/programs/new-york-state-paid-family-leave>

https://www.ny.gov/sites/ny.gov/files/atoms/files/PFL_Employer_Fact_Sheet.pdf

³ As FMLA can be used for disability due to pregnancy complications and tending to one’s own serious health condition, and Paid Family Leave has a more expansive definition of “family member” than FMLA, leave benefits under both FMLA and Paid Family Leave may not always be used concurrently.