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# Employer Toolkit

## New York Paid Family Leave

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## Overview of the Paid Family Leave Law

Effective January 1, 2018, the New York Paid Family Leave Law (PFL) will provide broad paid family leave benefits through the state's existing Disability Benefits Law. Under the PFL, which covers virtually all private sector employers, employers are required to maintain family leave insurance funded by employee payroll deductions. Employers can either obtain insurance coverage or self-insure for PFL.

In addition to paid benefits, eligible employees have the right to a leave of absence and guaranteed reinstatement even if they are not protected by the [Family and Medical Leave Act \(FMLA\)](#).

The law and regulations are complex and there are many traps for the unwary. This Employer Toolkit summarizes some of PFL's key provisions as clarified by the Final Regulations. It is designed to get you quickly up to speed on your compliance obligations and how ADP Resource assists you in complying with those obligations.

If you have any questions, please contact your Human Resource Business Partner.

To review an on-demand webcast of the PFL requirements and tips presented by Jackson Lewis P.C., [click here](#).



## Employee Eligibility Criteria

PFLL will cover employees whose regular employment schedule is at least 20 hours per week and have worked at least 26 consecutive weeks before the first full day of family leave.

In addition, employees with a regular work schedule of less than 20 hours per week are eligible after 175 days worked. The 175 days are not calendar days, but days worked.

## Excluded Occupations/Classes of Employees

Under the law there are excluded Occupations/Classes of Employees:

- Daytime students in an elementary or secondary school who work part-time:
  - High School Students: employees in regular attendance during the day as a student in an elementary or secondary school who work part-time during all or any part of the school year or regular vacation periods.
  - If the high school student is a full-time employee, he/she is automatically covered under the Covered Employer's policy.
- Minor children of the employer.
- "Extra Employees" (so identified because they are normally not in the labor market but are hired to do work for a limited, special period of time; after 45 days, however, they become eligible for DBL).
- "Casual Employees" (so-called because they normally work in a different occupation and are hired for a day or less).
- Railroad and maritime.
- Farm Laborers: employees that perform farm-specific duties such as planting or sowing.
- Golf caddies.
- Black car operators covered by the Black Car Operator's Fund.
- Livery drivers covered by the Independent Livery Disability Benefits Fund.
- Jockeys (including apprentice jockeys, exercise persons, or other employees of a licensed horse trainer/owner) who are covered by the NY Jockey Injury Fund.

- Certain classes of employees at incorporated non-profit 501(c)3 religious, charitable or educational institutions, such as day care centers, church preschools, charities, etc.:
  - Executive officers;
  - Employees in a teaching capacity (meaning creating lesson plans, classroom instruction);
  - Ex: Teacher Aids / Assistants and guidance counselors are not usually classified as working in a teaching capacity, so they would be covered;
  - Clergy (i.e., ministers, priests, rabbis, imams, sextons, Christian Science readers, or members of a religious order);
  - Persons participating in and receiving rehabilitative services in a sheltered workshop run by one of these specific non-profit institutions;
  - Uncompensated volunteers; or
  - Employees engaged in a professional capacity<sup>1</sup>.
- Owners/shareholders of Partnerships, LLCs, LLPs, Sole Proprietorships (“business owners”) with employees.
- True independent contractors and subcontractors are not considered employees for DBL/PFLL.
- Employers with employees subject to a collective bargaining agreement (CBA) are not required to provide employees with PFLL coverage when the CBA (1) provides PFLL benefits at least as favorable as the PFLL and (2) does not permit an eligible employee to waive his or her rights to

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<sup>1</sup> A person engaged in a professional capacity is one:

- (1) whose primary duty consists of the performance of work:
  - (i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual or physical processes; or
  - (ii) original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; and
- (2) whose work is not subject to routine supervision and which requires the consistent exercise of discretion and judgment in its performance; and
- (3) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- (4) who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (1) through (3) of this subdivision.

PFLC or otherwise opt-out except as permitted by the law. With exception of these two requirements, a CBA may provide rules related to PFLC that differ from the PFLC requirements. Where the collective bargaining agreement does not provide a different rule, the provision of the PFLC applies to the leave benefits. To notify ADP that an employee is covered by a collective bargaining agreement and should be excluded from coverage, employers should follow the steps in the Employee Waivers and Process section on page 6. Employers who would like to set up a deduction for the leave benefit provided under a CBA must also reach out to their Payroll Service Representative.

## Employee Waivers and Process

Employers must provide employees the option to sign a waiver if their regular work schedule will never achieve the period required (26 weeks or 175 days in a 52 consecutive week) to become eligible for PFLC.

Note: The waiver form is available on FormSource in the state appendix section. It is also available by clicking the link below:

<https://www.ny.gov/sites/ny.gov/files/atoms/files/PFLWaiver.pdf>

If an employee provides you with a waiver form, you should retain this in the employee's personnel file and notify ADP Resource of the waiver after you have confirmed that the employee does not meet the eligibility requirements. ***This is necessary in order to stop the employee deductions for the PFLC.***

Please note that if the waiver is later revoked by the employee or by a change in schedule making the employee eligible for PFLC then you may take deductions retroactively.

To notify ADP Resource that an employee is in any of the occupations or employee classes listed above and is [excluded from coverage](#) or is ineligible and has waived:

1. Log into MyResource on or after December 15, 2017.
2. Click the HR Tab.
3. Click Taxes from the left navigation panel.
4. Select State and Local taxes to indicate if the employee is part-time or otherwise meets the exclusion criteria.
5. Update the New York Paid Family Leave Section.

## ■ State

 Collect and retain updated tax forms for any changes made to this employee's tax withholdings.

Work in State  [work-in state tax form](#)

Live In State  [live-in state tax form](#)

I will manually submit a paper form for State taxes to Total Source

Individuals who reside in the following five counties are subject to New York City resident income tax.

\* Kings County (Brooklyn) \* Bronx County \* New York County (Manhattan) \* Richmond County (Staten Island) \* Queens County

If you reside in one of the above counties, please add the appropriate Local Tax Code.

Employees who do not live in one of the five counties above are not subject to this local tax. You may verify if employees are subject to NYC tax by visiting: <http://www8.nystax.gov/WTLR/wtlrHome>. For more information on this local tax, please contact your Payroll Service Representative.

## ■ New York State Paid Family Leave

We assume that this employee is (1) not exempt from the law and (2) is an eligible employee and therefore deductions will automatically be taken from the employee's pay in accordance with the law unless one of the boxes below are checked:

This employee is exempt from the New York Paid Family Leave Law ([see excluded occupations/classes of employees](#))

This employee: (1) regularly works 20 hours or more per week, but will not work 26 consecutive weeks (6 months) or regularly works less than 20 hours per week, but will not work 175 days in 52 consecutive weeks (a year) and (2) has provided you with a signed waiver form ([download the waiver form](#)).

\* Please note that you must keep a copy of the fully executed waiver on file for as long as the employee remains employed. Pursuant to law, the waiver will become invalid should the employee continue to work beyond the above-stated timeframes and the employee will be subject to retroactive deductions.

For more information on the law see the New York Paid Family Leave Employer toolkit on FormSource in the state appendix section.

**NOTE:** For eligible employees, ***no action is needed***. ADP will activate the automated Family Leave ("FLI") deduction routine effective with the first pay date of 2018. Employees currently coded with New York State Unemployment Insurance (SUI) codes 09, 19, or 78 will automatically have the Family Leave contribution withheld.

An employers who will pay the PFL premiums on behalf of their employees and will not take the employee deduction, should contact their Payroll Service Representative if they would like to track the leave on payroll via a memo code.



## Reasons for Leave

### Bonding with a Child

A parent may take Paid Family Leave during the first 12 months following the birth, adoption, or fostering of a child. This includes children born, fostered or adopted in 2017 as long as the leave is taken within the first twelve months of the birth, adoption, or fostering.

Spouses with different employers are both eligible to take Paid Family Leave at the same time. If both spouses work for the same employer, the employer can deny Paid Family Leave to one of the spouses if they have asked for the same period of time-off to bond with the same child.



### Family Care

If an employee's family member has a serious health condition, they are eligible to care for them under the Paid Family Leave program. Family members include:

- Spouses
- Domestic Partners
- Children
- Parents
- Parents-in-law
- Grandparents
- Grandchildren

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care in a hospital, hospice, or residential health care facility; or
- Continuing treatment or supervision by a health care provider.

Ordinarily, conditions such as the common cold, the flu, ear aches, upset stomach, minor ulcers, routine dental or orthodontia problems, periodontal disease, etc. do not meet the definition of a serious health condition.



## Active Military Duty Deployment

Paid Family Leave is available when a spouse, child, domestic partner or parent of the employee is on active military duty abroad or has been notified of an impending call or order of active military duty abroad.

Employees can take leave to help out with obligations arising out of a call to duty—for example:

- Making alternative child care arrangements for a child of the deployed military member;
- Attending certain military ceremonies and briefings; and
- Making financial or legal arrangements to address the military member's absence.



## Benefits During Leave

### Paid Benefits

Under PFL, eligible employees can apply for paid leave, the amount of which will be increased annually until January 1, 2021. (The State Superintendent of Financial Services will have discretion to delay the increases in the family leave benefit level if such increases will have a negative impact on the state's economy.) Once effective, for any 52-week calendar period, the length of maximum available leave benefits, and the amount of weekly benefits, to the employee will be as follows:

- January 1, 2018: 8 weeks paid at 50% of the employee's average weekly wage or 50% of the state average weekly wage, whichever is less;
- January 1, 2019: 10 weeks paid at 55% of the employee's average weekly wage or 55% of the state average weekly wage, whichever is less;
- January 1, 2020: 10 weeks paid at 60% of the employee's average weekly wage or 60% of the state average weekly wage, whichever is less; and
- January 1, 2021: 12 weeks paid at 67% of the employee's average weekly wage or 67% of the state average weekly wage, whichever is less.

The New York State Average Weekly Wage (NYSAWW) is set every year after a comprehensive analysis by the New York State Department of Labor (NYSDOL). The NYSDOL's Research and Statistics Division computed the NYSAWW for calendar year 2016 to be \$1,305.92. The determination is made based on the prior calendar year wages reported by the Commissioner of Labor to the Superintendent of Financial Services on March 31 of each year.

### **How to Determine the Average Weekly Wage (AWW)**

For purposes of computing PFL benefits, an employee's AWW is determined by selecting the higher of two wage calculations provided in the NYPFL regulations and then dividing the total wages by the number of weeks or portion thereof that the employee worked in the employment relationship usual to and available to the employee.

To determine the AWW, the PFL regulations instruct employers to calculate the 8 week period two different ways and to use the 8 week period that yields the higher AWW. The two different methods for calculating the AWW reporting period are as follows:

- Method A:
  - Identify the 8 weeks, or portion thereof, that the employee was in his/her regular period of employment (employees normal work schedule even if employee has a variable work schedule) immediately preceding and including the employee's last day of work during the 52 weeks immediately preceding the first day of paid family leave.
- Method B:
  - Identify the 8 weeks, or portion thereof, that the employee was in his/her regular period of employment (employees normal work schedule even if employee has a variable work schedule) immediately preceding the first day of paid family leave, excluding the week in which the paid family leave began.

**For each of these weeks, the employer would determine the gross wages (including PTO and other non-worked time) paid to the employee. The 8 numbers are added up and divided by 8 to determine the average weekly wage.**

Periods of disability or leave in which the employee was not working, should not be counted to the employee's detriment as part of the 8-week calculation.

*Example:* Employee's last day of active work is Thursday, May 31, 2018. Employee's first day of paid family leave is Friday, June 1, 2018. Using Method A, the 8 week period would be the 8 weeks immediately preceding and including May 31, 2018 (i.e., Friday, April 6, 2018 to Thursday, May 31, 2018). Using Method B, the 8 week period would be the 8 weeks immediately preceding June 1, 2018, excluding the week in which the paid family leave began (i.e., Sunday, April 1, 2018 to Saturday, May 26, 2018).

*Example when the employee works a variable schedule:* Employee works one week on and then one week off. Employee may have a very high weekly wage when he/she works in a week but the next week receive nothing. Over 8 weeks the employee essentially work 4 weeks. In that instance, you divide the total wages by 8 weeks and even though the employees' average weekly wage looks lower, it really isn't because the employees is getting paid for weeks the employee would not normally work.

For individual business owners the AWW is determined by computing the individual business owner's total net income in the 52 week period immediately preceding the period of leave and dividing such total wages by 52.

Employers and employees can agree to allow the employee to supplement PFL benefits up to their full salary or wages with accrued vacation, sick, personal, or other paid time off during the paid leave, enabling him or her to receive full salary.

### **Continued Health Insurance**

Similar to the FMLA, during any period of PFL, employers must maintain the employee's existing health benefits for the duration of PFL as if the employee had continued to work.

### **Job Protection**

The new law requires employers to reinstate employees returning from PFL to his or her prior position of employment (or to a comparable position with comparable pay, benefits, and other terms and conditions of employment). In addition, the taking of paid leave under the new law must not serve to reduce any of the employee's accrued benefits at the time of taking such leave.

## **Employer Notice Obligations**

Employers must provide written guidance to all employees regarding their rights and obligations under the PFL, including how to file a claim for PFL. Such guidance must be contained in an employee handbook if an employer maintains one. In addition, all employers must display or post a notice concerning PFL in the form prescribed by the Workers' Compensation Board Chair. We have provided a sample handbook policy in this Toolkit.

## **Employee Notice Obligations**

The Final Regulations clarify an employee's notice obligations. When the need for family leave is foreseeable, employees must provide the employer at least 30 days' advance notice of their intention to take family leave. The Regulations describe foreseeable qualifying events as expected birth of a child, placement of a child for adoption or foster care, planned medical treatment, or military exigency. The Regulations further provide that if giving 30 days' advance notice is not practicable because of a lack of

knowledge of the approximate date leave will need to begin, a change in circumstances, or a medical emergency, employees must notify their employer as soon as it is practicable. Similar to the FMLA, the Final Regulations state that it should generally be practicable to advise an employer of the need within the time prescribed by the employer's usual and customary notice requirements.

## Restrictions on Taking PFL

Employees may not collect benefits for short-term disability required by New York State law and PFL concurrently. Additionally, employees who also are eligible for disability benefits may receive only a combined amount of 26 weeks of disability benefits and PFL benefits in a 52-consecutive calendar week period.

Other situations in which PFL benefits may not be payable include when the employee is:

- Receiving total disability payments pursuant to a claim for workers' compensation, volunteer firefighters' benefits, or volunteer ambulance workers' benefits;
- Not employed or is on administrative leave from his or her employment;
- Collecting sick pay or paid time off from the employer;
- Works at least part of that day with pay for the employer or for any other employer; and/or
- Using the same time for the same family member in question if spouses are employed by same employer.

In addition, unless otherwise expressly permitted by the employer, leave available under the FMLA can run concurrently with PFL, provided the employer gives the employee the required FMLA notices. If an employer fails to provide this notice, the employer will be deemed to have permitted the eligible employee to receive family leave benefits without concurrently using the benefits available under the FMLA.

For a subsequent, unrelated disability, an employee may seek benefits up to the maximum number of available weeks permitted. Importantly, employees who have a qualifying event in 2017, such as the birth of a baby, may be entitled to leave in 2017 and again in 2018 under the new PFL.

## How Benefits are Funded

PFL should not impose significant costs on New York employers, employees, or insurance carriers. The maximum employee contribution will be a modest deduction from each employee's paycheck. The Department of Financial Services (DFS) has established this employee contribution for coverage beginning January 1, 2018, to be 0.126% of an employee's weekly wage, up to and not to exceed the statewide average weekly wage.<sup>2</sup> This equates to a maximum employee contribution of approximately

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<sup>2</sup> Employers were provided the option to begin early collection of the weekly contribution amount commencing July 1, 2017.

\$1.65 per week for 2018. This amount is subject to change on September 1st of each year.

The deduction will appear on the employee's pay statement under statutory deductions and will be labeled "NY Paid Family Leave Ins."

## Enforcement

Employees who feel their rights under this PFL law were violated (for example, they were denied health insurance coverage while on leave), or that they have been discriminated or retaliated against for taking PFL, may file a discrimination claim at the Workers' Compensation Board.

## What Should Employers Do Now?

- ✓ Notify employees of the planned payroll deductions and PFL claims process as soon as possible. A sample communication is included with this Toolkit.
- ✓ Post the required poster or "Notice of Compliance." You can obtain the required notice from your insurance carrier. If you are self-insured, you can get the required notice by contacting the Board at [Certificates@wcb.ny.gov](mailto:Certificates@wcb.ny.gov).
- ✓ Prepare for extended leave requests, especially in 2018. In preparation, consider the following:
  - Employees potentially can exhaust 12 weeks of FMLA leave during 2017 but still receive another 8 weeks of PFL for the same reason during 2018.
  - Many more employees are eligible for leave under PFL than are eligible for federal FMLA. There is no minimum hours worked requirement, and employees are covered after 26 weeks of consecutive employment or 175 days worked, and there is no small-worksite exception. Unlike unpaid FMLA, many more employees are likely to take PFL.
  - PFL can be taken to care for a broader number of family members than federal FMLA. Therefore, an employee might be able to take 12 weeks of leave for a spouse under FMLA and additional 8-12 weeks (depending on the phase-in period) under PFL.
  - Employees who ordinarily would file for short-term disability during periods of disability occasioned by childbirth now have the option of filing for PFL benefits; this will provide them a higher benefit and extend absences to 8, 10, and then 12 weeks (depending on the phase in period), compared to a traditional 6-8 week disability period. For example, a condition like bed rest for an expecting mother would be covered under DBL, since it's the mother's own "disability." She would be able to file a DBL claim for the time she was on bedrest prior to birth and recovery after birth (typically 6 weeks for normal delivery and 8 weeks for C-section). When her child is born, Mom can choose whether to use DBL for her recovery first or use Paid

Family Leave for bonding with her newborn.

- PFLL calculates the 12-month period for benefits using a rolling 12-month period measured backward from any day that leave is taken. This is the same as the FMLA rolling method used when administering FMLA leave.

In sum, employers must now determine whether and/or to what extent the PFLL benefits overlap with company leave policies and/or collective bargaining agreement benefits, if any. Further, employers must ensure that a written PFLL policy is adopted before January 1, 2018, and that it informs employees that overlapping leaves under FMLA or company policy will be run concurrently whenever possible. As sample handbook policy is included with this Toolkit, which you may send to employees as an attachment to the sample communication referenced above.

## FMLA vs PFLL at a Glance

Category	FMLA	PFLL
Employer Coverage	Employers with 50 employees.	Employers with 1 employee.
Employee Eligibility	Employees must work at a worksite that employs 50 employees within 75 miles and must have worked for 12 consecutive months and at least 1250 hours in the months preceding FMLA.	Employees whose regular employment schedule is at least 20 hours per week and have worked at least 26 consecutive weeks before the first full day of family leave. In addition, employees with a regular work schedule of less than 20 hours per week are eligible after 175 days worked.
Paid or Unpaid	Unpaid	Paid  Provides 50% of the employee's Average Weekly Wage, capped at a percentage of New York's average weekly wage. Once fully implemented in 2021 PFLL will provide 67% of the employee's average weekly wage capped at 67% of the New

		York Average weekly wage.
<b>Job Protection?</b>	Yes – narrow exception for key employees	Yes
<b>Amount of Time Off Provided</b>	12 weeks	8 weeks (12 weeks when fully phased in in 2021)
<b>Minimum leave Increment</b>	Smallest increment an employer uses for other forms of leave as long as it is no more than one hour.	Full day increments

### Reasons for Leave

Covered Reasons for Leave	FMLA	PFL
Caring for employee's own serious health condition	Yes	No
Bonding with a newborn adopted or foster child	Yes	Yes
Caring for a seriously ill family member (see next chart below)	Yes	Yes
Time to attend to family matters due to a qualifying military exigency	Yes	Yes



### Covered Family Members

Relation	FMLA	PFL
Spouse	Yes	Yes
Domestic Partner	No	Yes
Child*	Yes	Yes
Child 18 or older but incapable of self-care.	Yes	No
Domestic Partner's Child	No	Yes
Parent	Yes	Yes
In -Laws	No	yes
Grandparent	No	Yes
Grandchild	No	Yes

### Accrual and use of Vacation, PTO and Sick Time

	FMLA	PFL
Accrual of vacation, PTO of Sick time	Per company policy	Per company policy
Forced use of vacation, sick or PTO.	Per company policy	Prohibited <sup>3</sup>

### Maintenance of Health Insurance

	FMLA	PFL
Maintenance of Health Insurance Required?	Yes	Yes

<sup>3</sup> Employers and employees can agree to allow the employee to supplement PFL benefits up to their full salary or wages with accrued vacation, sick, personal, or other paid time off during the paid leave, enabling him or her to receive full salary. Unlike when leave is designated under the FMLA, employers may not require employees to exhaust all paid time off when taking paid family leave. **NOTE:** Employers who provide salary continuation may request reimbursement from their insurance carrier, e.g. pursuant to a PTO policy.

## The Claims Process

When an employee has a foreseeable situation, they should provide their employer 30 days advance notice of their intention to use Paid Family Leave. If the event was not foreseeable, the employee must notify their employer as soon as practical.

To request PFL, the employee requesting PFL must complete Part A of the Request For Paid Family Leave (Form PFL-1). All items on the form are required unless noted as optional. The employee must then provide the form to the employer to complete Part B. The employer must complete Part B of the Request For Paid Family Leave (Form PFL-1) and return it to the employee within three days. The employee must then submit the completed claim package (see below) to their employer's Paid Family Leave insurance carrier within 30 days of their first day of paid leave. The insurance carrier must process the claim and issue a determination, *i.e.* pay or deny the request, within 18 calendar days of receiving the completed request.

Employees requesting leave are responsible for completing [claim forms and additional forms](#) required; depending on the type of leave requested. The employee should retain a copy of each submitted form for their records. Employers and employees are responsible for providing insurers with dates that employees use Paid Family Leave.

## Employee Documentation

When filing a Paid Family Leave claim, an employee must submit supporting documentation to the insurance carrier or self-insured employer, as detailed here:

### Childbirth

The documentation requirement for a claim for Paid Family Leave to bond with a newly born child depends on whether the applicant is the birth mother or the second parent.

The birth mother must submit a birth certificate, if available, or documentation of pregnancy or birth from a health care provider. The document must include the mother's name and the child's due date or birth date. The second parent must submit, if available, a birth certificate naming them as a parent. If a birth certificate naming the second parent is not available, the second parent may submit a Voluntary Acknowledgment of Paternity or a Court Order of Filiation naming them as a parent.

If those documents are not available, the second parent can submit birth documentation from the birth mother's health care provider **and** either a marriage certificate or evidence of a civil union or domestic partnership to demonstrate the relationship to the birth mother.

If none of these documents are available, the second parent may submit other documentary evidence of parental relationship to the child, to be evaluated on a case-by-case basis by the carrier.

**Claim Package:** <https://www.ny.gov/sites/ny.gov/files/atoms/files/bonding1.pdf>

### **Foster Care**

A claim for Paid Family Leave to bond with a fostered child requires the submission of a letter of placement issued by a county or city department of social services or local voluntary agency. If a second parent is not named in documentation, a copy of the document plus a document verifying the relation to the parent named in the foster care placement will be needed.

**Claim Package:** <https://www.ny.gov/sites/ny.gov/files/atoms/files/bonding1.pdf>

### **Adoption**

A claim for Paid Family Leave to bond with an adopted child requires a court document finalizing adoption, or, for Paid Family Leave taken before the adoption is complete, a document showing that the adoption process is underway. Examples of proof of a pending adoption include a signed statement from an attorney, adoption agency or adoption-related social service provider that the employee is in the process of adopting a child.

If the second parent is not named in that document, they must also file documentation verifying the relationship to the parent named in the adoption.

**Claim Package:** <https://www.ny.gov/sites/ny.gov/files/atoms/files/bonding1.pdf>

### **Serious Health Condition**

A claim for Paid Family Leave to care for a family member with a serious health condition requires a medical certification, completed by the care recipient's health care provider.

An authorization for personal health disclosure form is required by the HIPAA Privacy Rule and must be completed by the care recipient and retained on file with the health care provider in order to submit the required medical information.

**Claim Package:** [https://www.ny.gov/sites/ny.gov/files/atoms/files/care\\_for\\_family\\_member1.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/care_for_family_member1.pdf)

### **Active Military Duty Deployment**

A claim for Paid Family Leave to assist loved ones when a family member is deployed abroad on active military duty generally requires either a PFLL-5 “Military Qualifying Event” certification or a US Department of Labor “Certificate of Qualifying Exigency for Military Family Leave.” Those forms include (1) military documentation of the family member’s deployment or impending deployment (active duty orders or other notice from the military), and (2) documentation of the reason for leave.

**Claim Package:** <https://www.ny.gov/sites/ny.gov/files/atoms/files/military1.pdf>

## Sample Employee Communication for Employees who do not appear to be Eligible to Waive Coverage

Please complete all blanks and delete highlighted text if your company is not covered under FMLA. Include the model handbook policy or your own policy as you deem appropriate.

Date:

To:

From:

Re: **New York Paid Family Leave Effective 01/01/2018**

As you may be aware there is a new law in New York that requires private employers to provide employees who work in New York paid family leave beginning on January 1, 2018. Eligible employees can take up to eight weeks of paid family leave to bond with a child, care for a family member with a serious illness, or to care for family matters when a family member has been called to active duty. \_\_\_\_\_ (insert name of carrier or company if self-insured) will be handling our New York Paid Family Leave coverage.

### **Things you should know:**

- For 2018, if you're eligible, you'll be entitled to eight weeks of paid family leave benefits payable at 50% of your average weekly wage. The maximum amount you can receive is \$653 a week.
- If you've had a baby, adopted or began fostering a child in 2017, you can request paid family leave to bond with your child for leaves beginning on or after January 1, 2018. You may request paid family leave to bond with your child for up to a year from birth, adoption or foster care placement.
- You can't use paid family leave for your own health condition. You can, however, file a disability claim if you have a medical condition that prevents you from working.
- If you're receiving full salary from us (*i.e.* paid bonding or supplemental pay allowing combined 100%), your payment will continue to come from us. Otherwise, benefit payment will come from \_\_\_\_\_ (name of carrier or company if self-insured).

- You're only allowed a combined maximum of 26 weeks of leave for NY DBL (disability) and NY PFL (paid family leave) in a 52 week period. So, if you've already used 26 weeks of NY DBL in the prior 52 weeks, you won't be entitled to additional time under NY PFL during that time.
- You can take NY PFL as full weeks, or from time to time, in little as full day increments if needed.
- If you don't take NY PFL all at one, you'll need to let \_\_\_\_\_ (name of carrier or company if self-insured) know each time you take a day off to be used as NY PFL.
- NY PFL will run at the same time as your FMLA (if applicable) when appropriate.
- There's no waiting period for NY PFL.
- A claim for NY PFL can only remain open for one year. After that you'd need to refile a new PFL claim if you need more time.
- Our NY Paid Family Leave Policy is attached for your reference and additional information is also available at: <https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-how-it-works>

### **Deductions from Pay**

New York's Paid Family Leave is entirely employee-funded. That is, the benefit is paid for by employees. If your deductions did not begin on July 1, 2017, we will begin taking deductions on January 1, 2018. The deduction will appear on your pay statement under statutory deductions and will be labeled "NY Paid Family Leave Ins."

The maximum employee contribution / deduction in 2018 is 0.126% of an employee's weekly wage up to the annualized New York State Average Weekly Wage. Use the [ny.gov/pfcalculator](https://www.ny.gov/pfcalculator) to view an estimate of your weekly payroll deduction.

### **Claims Process**

Contact \_\_\_\_\_ [name of carrier or company if self-insured] if you want to take NY PFL for one of these three leave related situations. They'll check to see if you're entitled to benefits and provide you with the information needed to process your leave claim.

## Sample Employee Communication for Employees who appear to be Eligible to Waive Coverage.

Please complete all blanks, and delete highlighted text if your company is not covered under FMLA. Include the model handbook policy or your own policy as you deem appropriate.

Date:

To:

From:

Re: **New York Paid Family Leave Effective 01/01/2018**

As you may be aware there is a new law in New York that requires private employers to provide employees who work in New York paid family leave beginning on January 1, 2018. Eligible employees can take up to eight weeks of paid family leave to bond with a child, care for a family member with a serious illness, or to care for family matters when a family member has been called to active duty.

\_\_\_\_\_ [name of carrier or company if self-insured] will be handling our New York Paid Family Leave coverage.

### **Things you should know:**

- For 2018, if you're eligible, you'll be entitled to eight weeks of paid family leave benefits payable at 50% of your average weekly wage. The maximum amount you can receive is \$653 a week.
- If you've had a baby, adopted or began fostering a child in 2017, you can request paid family leave to bond with your child for leaves beginning on or after January 1, 2018. You may request paid family leave to bond with your child for up to a year from birth, adoption or foster care placement.
- You can't use paid family leave for your own health condition. You can, however, file a disability claim if you have a medical condition that prevents you from working.
- If you're receiving full salary from us (*i.e.* paid bonding or supplemental pay allowing combined 100%), your payment will continue to come from us. Otherwise, benefit payment will come from \_\_\_\_\_ [name of carrier or company if self-insured].



- You're only allowed a combined maximum of 26 weeks of leave for NY DBL (disability) and NY PFL (paid family leave) in a 52 week period. So, if you've already used 26 weeks of NY DBL in the prior 52 weeks, you won't be entitled to additional time under NY PFL during that time.
- You can take NY PFL as full weeks, or from time to time, in little as full day increments if needed.
- If you don't take NY PFL all at one, you'll need to let \_\_\_\_\_ know each time you take a day off to be used as NY PFL.
- NY PFL will run at the same time as your FMLA (if applicable) when appropriate.
- There's no waiting period for NY PFL.
- A claim for NY PFL can only remain open for one year. After that you'd need to refile a new PFL claim if you need more time.
- Our NY Paid Family Leave Policy is attached for your reference and additional information is also available at: <https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-how-it-works>

### **Deductions from Pay**

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The maximum employee contribution / deduction in 2018 is 0.126% of an employee's weekly wage up to the annualized New York State Average Weekly Wage. Use the [ny.gov/pfcalculator](https://www.ny.gov/pfcalculator) to view an estimate of your weekly payroll deduction.

### **Waiver Form**

Our records reflect that your regular employment schedule is 20 hours or more per week but you will not work 26 consecutive weeks, **or** your regular employment schedule is less than 20 hours per week but you will not work 175 days in a 52 consecutive week period. As a result you have the option to waive paid family leave coverage. To waive coverage please review and complete the linked form below and provide it to \_\_\_\_\_.

<https://www.ny.gov/sites/ny.gov/files/atoms/files/PFLWaiver.pdf>

**Please note that if this waiver is revoked either by you or by a change in your work schedule (e.g. if you are later determined to be an eligible employee), retroactive deductions may be taken for the period of time covered by this waiver, and this period of time counts towards your eligibility for paid family leave.**

### **Claims Process**

Contact \_\_\_\_\_ *[name of carrier or company if self-insured]* if you want to take NY PFL if you want to take NY PFL for one of these three leave related situations. They'll check to see if you're entitled to benefits and provide you with the information needed to process your leave claim.

## Sample Handbook Policy

### **NEW YORK STATE PAID FAMILY LEAVE**

#### **Eligibility Requirements**

Employees who have a regular work schedule of 20 or more hours per week and have been employed at least 26 consecutive weeks prior to the date paid family leave (“PFL”) begins (or who have a regular work schedule of less than 20 hours per week and have worked at least 175 days prior to the date PFL begins) are eligible for PFL. An employee has the option to file a waiver of PFL and therefore not be subject to deductions when his or her regular employment is: (i) 20 or more hours per week but the employee will not work 26 consecutive weeks; or (ii) less than 20 hours per week and the employee will not work 175 days in a 52 consecutive week period.

#### **Entitlement**

PFL is available to eligible employees for up to eight (8) weeks (*increases to ten (10) weeks on or after January 1, 2019 and up to twelve (12) weeks on or after January 1, 2021*) within any 52 consecutive week period: (a) to participate in providing care, including physical or psychological care, for the employee’s family member (child, spouse, domestic partner, parent, parent-in-law, grandchild or grandparent) with a serious health condition; or (b) to bond with the employee’s child during the first twelve months after the child’s birth, adoption or foster care placement; or (c) for qualifying exigencies, as interpreted by the Family and Medical Leave Act (FMLA), arising out of the fact that the employee’s spouse, domestic partner, child, or parent is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States. The 52 consecutive week period is determined retroactively with respect to each day for which PFL benefits are currently being claimed.

PFL benefits are financed solely through employee contributions via payroll deductions. The weekly monetary benefit will be 50% of the employee’s average weekly wage or 50% of the state average weekly wage, whichever is less (*increases to 55% on or after January 1, 2019, 60% on or after January 1, 2020 and 67% or after January 1, 2021*).

The Company and an employee may agree to allow the employee to supplement PFL benefits up to their full salary with paid time off, to the maximum extent permitted by applicable law.

An employee who is eligible for both statutory short-term disability benefits and PFL during the same period of 52 consecutive calendar weeks may not receive more than 26 total weeks of disability and PFL benefits during that period of time. Statutory short-term disability benefits and PFL benefits may not be used concurrently.

#### **Definition of a Serious Health Condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves: (a) inpatient care in a hospital, hospice or residential health care facility; or (b) continuing treatment or continuing supervision by a health care provider. Subject to certain

conditions, the continuing treatment or continuing supervision requirement may be met by a period of incapacity of more than three (3) consecutive full days during which a family member is unable to work, attend school, perform regular daily activities or is otherwise incapacitated due to illness, injury, impairment or physical or mental conditions, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: (a) treatment two or more times by a health care provider; or (b) treatment on at least one occasion by a health care provider, which results in a regimen of continuing treatment under the supervision of the health care provider. The continuing treatment or continuing supervision requirement also may be met by any period during which a family member is unable to work, attend school, perform regular daily activities, or is otherwise incapacitated due to a chronic serious health condition or an illness, injury, impairment, or physical or mental condition for which treatment may not be effective. A chronic serious health condition is one which: (a) requires periodic visits for treatment by a health care provider; (b) continues over an extended period of time (including recurring episodes of a single underlying condition); and (c) may cause episodic rather than a continuing period of incapacity. Examples of such episodic incapacity include but are not limited to asthma, diabetes, and epilepsy. Other conditions may meet the definition of continuing treatment.

### **Use of Leave**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently in increments of at least one full day or on a reduced leave schedule, except that an employee may only take intermittent or reduced leave to care for a family member with a serious health condition where it is shown to be medically necessary. Employees must make reasonable efforts to schedule intermittent or reduced leave so as not to unduly disrupt the Company's operations. Leave taken on an intermittent or reduced leave schedule will not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

### **Employee Responsibilities**

An employee must provide thirty (30) days' advance notice before the date leave is to begin if the qualifying event is foreseeable. When thirty (30) days' notice is not practicable for reasons such as lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, the employee must provide notice as soon as practicable and generally must comply with the Company's normal call-in procedures. Failure by the employee to provide (30) days' advance notice of a foreseeable event may result in partial denial of the employee's benefits for a period of up to thirty (30) days from the date notice is provided.

Employees must provide sufficient information to make the Company aware of the qualifying event and the anticipated timing and duration of the leave. Employees must specifically identify the type of family leave requested.

**To request leave employee should contact \_\_\_\_\_ at (\_\_\_\_) \_\_\_\_\_.  
\_\_\_\_\_ will then provide employees with direction on what additional information will be needed to process the leave claim.**

Employees must provide medical certifications and periodic recertification or other supporting

documentation or certifications supporting the need for leave. For example, an employee requesting paid family leave must submit a completed Request for Paid Family Leave or PFL-1 form and additional certification form(s) as follows: (1) Bonding Certification: PFL-2 Form plus documentation; (2) Health Care Provider Certification: PFL-4 Form plus Personal Health Information (PHI) Release (PFL-3 Form); or (3) Military Qualifying Event: PFL-5 Form plus documentation.

### **Job Benefits and Protection**

During any PFL taken pursuant to this policy, the Company will maintain coverage under any existing group health insurance benefits plan as if the employee had continued to work. The employee must make arrangements with his or her manager prior to taking leave to pay their portion of any applicable health insurance premiums each month.

The Company's obligation to maintain health insurance coverage ceases if an employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, the Company will send a letter notifying the employee that coverage will be dropped on a specified date unless the co-payment is received before that date.

Any employee who exercises his or her right to PFL will, upon the expiration of that leave, be entitled to be restored to the position held by the employee when the leave commenced, or to a comparable position with comparable benefits, pay, and other terms and conditions of employment. The taking of leave covered by PFL will not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

### **Leave Concurrent with FMLA**

The Company will require an employee who is entitled to leave under both the FMLA and PFL, to take PFL concurrently with any leave taken pursuant to the FMLA. When the total hours taken for FMLA in less than full-day increments reaches the number of hours in an employee's usual workday, the Company may deduct one (1) day of PFL from an employee's annual available PFL.

If employees have any questions regarding this policy, they should contact their manager.