



NY PAID FAMILY LEAVE PROGRAM (PFL)

An Overview of Regulations in Effect 1.1.18

September 13, 2017

New York State Paid Family Leave (PFL)

- ▶ Signed into law by Governor Cuomo in 2016, New York's PFL program is one of the most comprehensive in the nation, joining programs already active in CA, RI and NJ

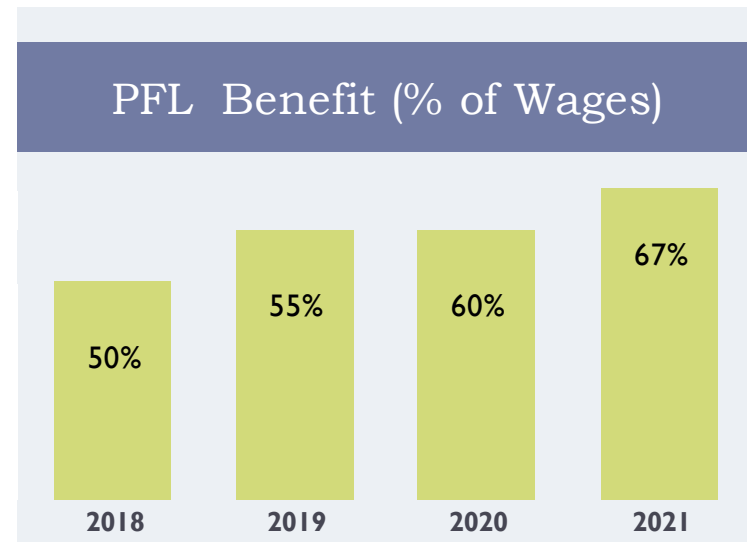
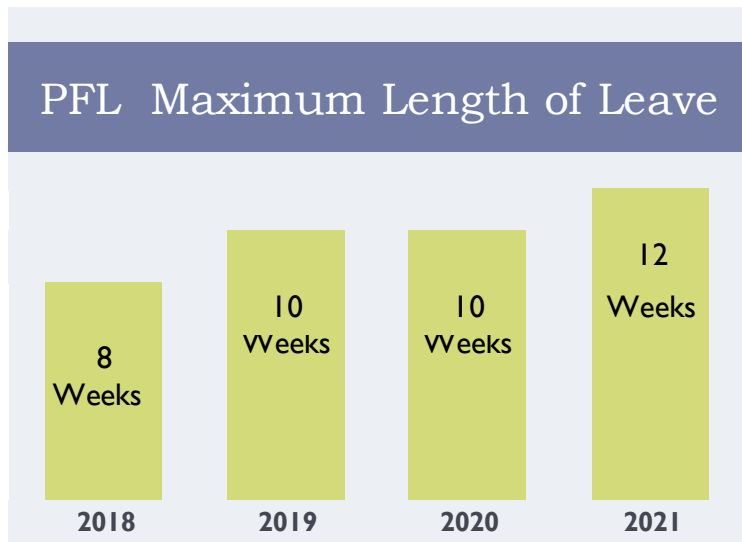


- ▶ Provides paid time-off, job protection and benefit continuation

New York State PFL

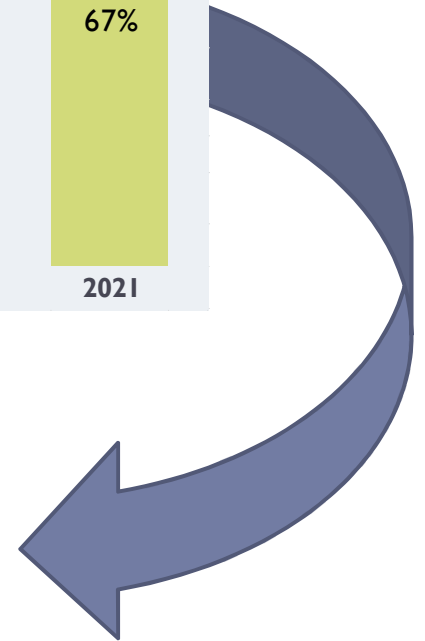
- ▶ Beginning January 2018, all NYS private employers will supply paid time off as a mandatory benefit for employees requesting leave to:
 - ▶ Bond with a newborn or newly placed adopted or foster child
 - ▶ Leave can be taken within the first year of birth/placement; so *beginning 1/1/18 this will include babies born in 2017*
 - ▶ Care for a family member with a serious health condition
 - ▶ This includes child, spouse, parent, parent-in-law, **grandparent**, **grandchild** or **domestic partner**
 - ▶ For a qualifying exigency arising from a family member's military service
 - ▶ Exactly as defined in the Federal Family and Medical Leave Act

Phased-in Benefits



Percentage of employees average weekly wages is calculated based on 8 weeks prior to leave OR the State Average Weekly Wage rate, whichever is less

The New York State Average Weekly Wage for calendar year 2016 is \$1,305.92



Which Employers are Impacted?

- ▶ If an employer is covered under Disability Benefits Law (Article 9 of Workers' Compensation Law), they must also have PFL, which means:

Paid Family Leave impacts almost all businesses in New York state

- ▶ Even if you aren't subject to the Family Medical Leave Act (FMLA), which mandates that employers with 50 or more employees provide unpaid leave, **PFL will still apply**

Which Employees are Eligible?

- ▶ A new employee working **full-time** becomes eligible for PFL benefits **26 weeks** from the date they were hired
 - ▶ FT work is defined as 20 or more hours a week regardless of the number of days worked per week
- ▶ If the new employee is **part-time**, they become eligible after working 175 days
 - ▶ There is no hours requirement for each day worked

PFL Waiver (Limited Use)

- ▶ Employee shall be provided the option to file PFL waiver
“When an employer and employee know at the date of hire that the employee’s schedule will not allow them to become eligible for PFL benefits.”
 - ▶ FT schedule that is less than 26 consecutive weeks
 - ▶ PT schedule that will not work 175 days in 52 week period
- ▶ Waiver is at the employee’s election and cannot be applied automatically by the employer
- ▶ The covered employer shall keep a copy of the fully executed waiver on file for the duration of employment

Revoking PFL Waiver

- ▶ Within eight weeks of any change in the regular work schedule of an employee that would make an employee eligible for PFL benefits, any waiver filed will be deemed revoked
- ▶ An employee whose waiver has been revoked shall be obligated to begin making contributions to the cost of family leave benefits, *including any retroactive amounts due from date of hire*, as soon as the employee is notified by the covered employer of such obligation
- ▶ This is the **ONLY** time retro-deductions may be made

PFL and Union Contracts

- ▶ Employees subject to a collective bargaining agreement (CBA) can not waive PFL obligations unless they are providing family leave benefits at least as favorable
- ▶ CBA may contain different rules from the law; if not, the regulations shall apply
- ▶ No CBA may allow an eligible employee to waive his rights to PFL

Eligibility and Breaks in Service

- ▶ The following shall be counted towards eligibility as long as the contributions to the cost of family leave benefits have been paid:
 - ▶ scheduled vacation time
 - ▶ Personal time
 - ▶ sick time
 - ▶ All other time away from work that has been approved by the employer or other periods where the employee is away from work but is still considered to be an employee by the employer
 - ▶ Periods of absence that are due to the nature of that employment, when employment is not terminated during those periods of absence

Example

- ▶ An employee (FT) begins working for a construction company on September 1, 2017. He works until the mandatory company shut down on December 1, 2017. He has acquired 12 weeks work towards eligibility. Shut down lasts until February 1, 2018. He returns to same employer on February 1st and resumes FT employment. He will acquire his 26 week eligibility on April 20th 2018. As long as the employee comes back to work for the same employer and when the same shut down occurs, he will continue to be covered

For the period he is not in employment however, he will not have PFL coverage available

Employees with Multiple Covered Employers

- ▶ An employee with multiple covered employers must take family leave from all covered employers during the same family leave period; not at separate intervals
- ▶ However, an employee with multiple covered employers is not required to take paid family leave from each covered employer during a single period of family leave
 - ▶ i.e. can take leave from one and continue to work at the other
- ▶ Reasoning: An employee with two jobs may have deductions taken from two jobs that reach the maximum deduction for each employer, and receive equivalent benefits
- ▶ Carriers are permitted to create a system to coordinate benefits

PFL Coverage

- ▶ Employees will receive the PFL salary benefit through their insurance policy
- ▶ PFL will be automatically added as a rider to DBL, and will appear as a separate line item on your bill;
 - ▶ Premiums are anticipated (but not required) to be funded in full through employee payroll deductions
 - ▶ Deductions were allowed to begin July 1, 2017, primarily for those self-funding the benefit

*Note on Early Deductions

- ▶ The rate set by the State applies to everyone; it is the max amount an employer can deduct and the max amount the carrier can charge in premiums
- ▶ *“A covered employer shall use his or her employees’ contributions to provide PFL benefits to employees and shall promptly return to employees any surplus in employee contributions that exceed the annual premium”*
- ▶ Employees who began deductions early may face a situation where premiums end mid-2018, or, employees will need to be reimbursed

PFL Premium

- ▶ On June 1, 2017, the Department of Financial Services announced the PFL rates for 2018 as a percentage of income rather than a fixed rate, set at 0.126% of an employee's weekly wage, capped at NY State's current average weekly wage of \$1305.92
- ▶ NYS Minimum Wage:

Effective Date	Workers Employed in New York City by Businesses with 11 or More Employees	Workers Employed in New York City by Businesses with 10 or Fewer Employees	Workers Employed in Nassau, Suffolk and Westchester Counties	Workers in the Remainder of New York State ("Upstate")
December 31, 2016	\$11.00 per hour	\$10.50	\$10.00	\$9.70
December 31, 2017	\$13.00 per hour	\$12.00	\$11.00	\$10.40

Max Rate – Another Look

- ▶ NYS DFS released Circular Letter No. 11 on July 28 to clarify how insurance carriers must collect the correct premiums based on **total annual wages**
 - ▶ This takes into consideration the fact that some employees earn wages on an irregular schedule, such as where commissions or bonuses are part of an employee's wages
 - ▶ Therefore, employers will want to consider collecting 0.126% of wages capped at the annualized NYSAWW of \$67,907.84, which is \$85.56
 - ▶ Some employees will not see variations in their deductions, other employees may meet the annual max before year-end



PFL & Existing Time-Off/HR Policies

Similarities, Differences & Interactions

PFL & Federal FMLA Comparison

	FMLA	NY PFL
Covered Employers	50 or more employees	All employers subject to Workers Compensation Law
Benefit	Unpaid, job-protected leave	Paid, job-protected leave
Eligible Employees	Employed for 12 months and worked 1,250 hrs in the previous 12 months	Employed for 26 weeks or 175 days if employed PT * no hours requirement
Qualifying Coverage	Employee's own serious health condition, the birth/placement of a child, to care for an immediate family member (spouse, child or parent) and military exigency	Cannot be used for employee's own serious health condition. Covers birth/placement of a child, and expands family members to also include domestic partners, parent-in-law, grandparent, grandchild. Also includes military exigency
Length of Leave	Up to 12 weeks in a 12 month period	Starts at 8 weeks in 2018, and will phase-in, up to 12 weeks in 2021
Job Restoration	Must be restored to his/her original job, or to an "equivalent job" which means virtually identical to the original job in terms of pay, benefits and other employment terms and conditions	Must be restored to position held prior to leave or comparable position with comparable benefits, pay and terms and condition of employment
Intermittent Leave	Allowable for ones own, or a family member's, serious health condition when medically necessary; employer-optional for bonding leave. Used in as little as 1hr increments	Allowable for the same scenarios as FMLA, plus bonding leave. Must be taken in full-day increments (1/5 the weekly benefit)
PTO Interaction	Employer could require an employee to use accrued and unused PTO to substitute unpaid leave for paid leave	Employer cannot require an employee to use accrued and unused PTO, the employee has the option to choose.

PFL & FMLA

- ▶ PFL regulations impose employee and employer notice obligations largely similar to FMLA
 - ▶ Employees must notify their employer at least 30 days in advance when leave is foreseeable
 - ▶ When the need for leave is unexpected, the employee must provide notice as soon as possible and practical
 - ▶ *Note – no advance notice is required by the carrier*
 - ▶ Content of notice should include
 - ▶ Type of family leave
 - ▶ Anticipated timing and duration
- ▶ WC Board to provide a poster detailing the benefits

Employee Notice Obligations

- ▶ Similar to FMLA, an employee need not expressly assert rights under PFL or even mention family leave
- ▶ Employer should seek further information to determine whether PFL is being sought by employee

PFL & FMLA

- ▶ Important distinction – FMLA is generally administered by the employer, while PFL will be administered by the carrier
 - ▶ There may be scenarios where one leave program's benefits do not apply to the other
 - ▶ Employee's own illness
 - ▶ Expanded caregiver definitions (domestic partner, grandparent etc.)
 - ▶ There could be scenarios where approval differs
 - ▶ One approves leave, one denies
 - ▶ Provider certification differs
- ★ Employers will need to continue to send FMLA paperwork, in the proper timelines, for the leave to run concurrent!

PFL Intermittent Leave

- ▶ Can take in one-day increments for all types of leave
- ▶ Employee “shall” advise employer and carrier of the schedule for intermittent leave when it applies for leave; if not, carrier can withhold payment until it receives a “request for payment together with the date of leave”
- ▶ Employer can (should) require notice from employee “as soon as is practicable before each day of intermittent leave”

PFL & Paid Time Off

- ▶ An employer can offer their employees the *option* to use accrued time or charge all or part of their leave to PFL
- ▶ If an employer pays full salary during a period of PFL, they may request reimbursement from their carrier, similar to seeking reimbursement for workers' compensation benefits
 - ▶ Employees won't be able to collect both vacation pay and PFL benefits simultaneously
 - ▶ When an employee elects to use paid time, they will still be afforded the full protections of PFL (job/benefit protection)

Reminder on Additional PFL Benefits

- ▶ An employer may not discriminate against employees for taking PFL, meaning:
 - ▶ Employees are guaranteed job protection upon return from PFL, defined as “returning an employee to the same or a comparable job”
 - ▶ As part of the collective bargaining process, unions may include in the collective bargaining agreement specific reinstatement provisions relating to union and trade work
 - ▶ Employees are also guaranteed continuation of health insurance while out on PFL
 - ▶ Employees who contribute to the cost of health insurance must continue to pay their portion of the premium cost

Insurance Premiums During Leave

- ▶ Employees are required to continue to pay their portion of premiums, or, can have their coverage cancelled following the same guidelines as FMLA
 - ▶ Can drop if 30 days late; must give 15 days notice, and then can drop 15 days after date of letter
 - ▶ If coverage is cancelled and the employee returns to work, coverage must be reinstated
 - ▶ Cancellation for non-payment is not a COBRA-qualified event
- ★ Best practice to set up a process now for collecting premiums during leave!

Items to Think About

- ▶ Creation of a new PFL policy
- ▶ Updating other policies where PFL may apply
 - ▶ FMLA
 - ▶ STD
 - ▶ Vacation and other PTO
 - ▶ Call-in procedures
 - ▶ Plan Docs & SPDs

Items to Think About

- ▶ With a requirement for 30 days notice to the employer for foreseeable leave, first requests may come as early as Nov/Dec
- ▶ Consider those employees with babies born in 2017, as well as those with on-going family situations
- ▶ Consider who will be eligible for PFL waiver
- ▶ When re-aligning staff, don't forget your variable hour employees and ACA tracking for benefit eligibility

PFL & DBL
From the Carrier's Perspective- The Hartford

PFL & DBL- What is the same?

- ▶ **Who is covered**
 - ▶ All Active FT and PT employees eligible under the DBL/PFL (work state NY)
- ▶ **Minimum Number of Employees covered**
 - ▶ One
- ▶ **Obtaining coverage**
 - ▶ Both DBL and PFL must be with the same carrier
 - ▶ Public entities not subject to the law may opt into PFL
- ▶ **Employer Reimbursement**
 - ▶ Yes if employer advances benefits via salary continuation.



DBL & PFL- What is different?

- ▶ What is the definition of part time?
 - ▶ DBL: part-time is anything other than the employer's normal workweek
 - ▶ PFL: part time is a work schedule less than five days per week
- ▶ Eligibility

<u>New York DBL</u>	<u>New York PFL</u>
Full Time: 4 consecutive weeks working	Full Time: 26 weeks working for same employer
Part Time: 25 days in calendar year working	Part Time: 175 days working for same employer
Eligibility transfers when entering new employment.	NOT transferable when entering new employment.



DBL & PFL- What is different? (cont.)

▶ Weekly Benefit Amount

<u>New York DBL</u>	<u>New York PFL</u>
50% of Average Weekly Wage to \$170 per week maximum	2018: 50% of Statewide Average Weekly Wage 2019: 55% of Statewide Average Weekly Wage 2020: 60% of Statewide Average Weekly Wage 2021: 67% of Statewide Average Weekly Wages

▶ When do payments begin?

- ▶ **DBL: 8th day for accident/sickness**
- ▶ **PFL: 1st day of qualified paid leave event**

▶ Maximum payment period (duration)

<u>New York DBL</u>	<u>New York PFL</u>
26 weeks minus any days that were taken for paid family leave during any 52 consecutive calendar weeks	2018: 8 weeks 2019: 10 weeks 2020: 10 weeks 2021: 12 weeks Intermittent benefits are paid in one full day increments DBL and PFL combined can not exceed 26 weeks during any 52 consecutive calendar weeks

DBL & PFL- What is different? (cont.)

▶ Offsets

- ▶ DBL: Benefits are not reduced by PTO or Vacation Time
- ▶ PFL: Benefits are not payable if employee is receiving PTO, Vacation Time or Sick Time

▶ Job Entitlement

- ▶ DBL: No
- ▶ PFL: YES, even those employers with less than 50 employees (not subject to FMLA)

▶ Employee contributions

- ▶ DBL: .5% of covered wages but no more than .60 per week
- ▶ PFL: Set by the Department of Financial Services every year

Taxability

- ▶ **NYS Department of Taxation and Finance PFL Circular, August 2017**
 - ▶ Benefits paid to employees will be taxable non-wage income that must be included in federal gross income
 - ▶ PFL Deduction is post-tax
 - ▶ Employer is to put contribution collected on payroll W2 for each NY employee under box 14
 - ▶ If The Hartford is doing W2 service for DBL that process will continue, however we will be generating 1099-MISC forms for all PFL claimants

PFL Claims

- ▶ PFL claims will be verified via a claim form and follow a similar process to DBL
 - ▶ Claim forms to be released by the WC Board, should be available early Fall
 - ▶ For DBL, the employer's portion must be received for benefits to be payable
 - ▶ For PFL, the employer's portion CAN be blank. A claim can still be approved without the employer's portion
- ▶ Leave is limited to a Total of 26 Weeks in a 52 week Period for Both NYDBL and NYPFL
 - ▶ Entitlement to Paid Family Leave and Disability Benefits are dependent on each other, therefore tracking of time taken for each is critical to minimize overpayment

PFL Claims (cont.)

- ▶ **Employees receiving partial WC benefits may still qualify for PFL**
 - ▶ However if they are not working and collecting WC they may not use PFL at the same time.
- ▶ **Reminder - maternity is unique due to the baby bonding, in addition to ones own disability**
 - ▶ Mother-to-be can go out on DBL 2 weeks prior to her due date
 - ▶ As soon as the baby is born, mother can decide to continue DBL claim or begin PFL claim for baby bonding
 - ▶ If mother has complications (including postpartum depression) and has moved to PFL, she can go back on DBL

PFL Billing

- ▶ Billing frequency for PFL must match the billing frequency of DBL
 - ▶ RECOMMENDED – Billing that is Quarterly in arrears
- ▶ Employers will provide correct volume of covered wages onto the bill, to be multiplied by the rate
 - ▶ This process should not require detailed or frequent payroll reports
 - ▶ Remains subject to audit by the carrier and/or Workers Comp Board

Items to Think About

Do you want to align your disability solution (DBL/Short Term Disability/Salary Continuation) with the PFL benefit? If so how?

- ▶ Do you want to pay for it?
- ▶ Do you want to offering a voluntary solution? Do you need another payroll deduction slot?
- ▶ Are you funding a similar benefit and no longer need to?
- ▶ How is your payroll vendor handling this?

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